

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

JRPP No	2013SYE085
DA Number	13/172
Local Government Area	City of Botany Bay
Proposed Development	<p>Integrated Development Application for a staged mixed-use development including the following works resulting in 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 car parking spaces within a basement configuration over the distinct stages. The staging includes the following works:</p> <p>Prior to Stage One works commencing, subdivision of the two existing lots by consolidation and re-subdivision into two new lots, based upon the staging of the mixed-use development.</p> <p><u>Stage One Works including:</u></p> <ul style="list-style-type: none"> ▪ Demolition of existing buildings within Stage One including demolition of the existing building on proposed Lot 1; ▪ Site works, remediation and excavation for proposed Lot 1; ▪ Construction of proposed driveway access; ▪ Erection of Building "C" being a 13-storey mixed-use building with ground floor retail, basement level car parking and associated landscaping. <p><u>Stage Two Works including:</u></p> <ul style="list-style-type: none"> ▪ Demolition of existing buildings within Stage Two including demolition of the existing building on proposed Lot 2; ▪ Site works, remediation and excavation for proposed Lot 2; ▪ Construction of proposed driveway as an extension of Lot 1 driveway; ▪ Erection of Buildings "A" and "B" being one x 13-storey and one x 12 storey mixed-use building with ground floor retail, basement level car parking and associated landscaping.
Street Address	671-683 Gardeners Road, Mascot (corner of Kent Road)
Lot & DP Nos.	Lot 1 in DP 777315 and Lot 500 in DP 1030729
Capital Investment Value (CIV)	\$56,017,529

Applicant/Owner	Dickson Rothschild
Number of Submissions	Nil
Recommendation	Refusal
Report by	Rodger Dowsett, Director Planning and Development

PRECIS

Background

Council received Development Application No. 13/172 on the 10 September 2013, for consent to redevelop the site as follows:

Integrated Development Application for a staged mixed-use development including the following works resulting in 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 car parking spaces within a basement configuration over the distinct stages. The staging includes the following works:

Prior to Stage One works commencing, subdivision of the two existing lots by consolidation and re-subdivision into two new lots, based upon the staging of the mixed-use development.

Stage One Works including:

- Demolition of existing buildings within Stage One including demolition of the existing building on proposed Lot 1;
- Site works, remediation and excavation for proposed Lot 1;
- Construction of proposed driveway access;
- Erection of Building "C" being a 13-storey mixed-use building with ground floor retail, basement level car parking and associated landscaping.

Stage Two Works including:

- Demolition of existing buildings within Stage Two including demolition of the existing building on proposed Lot 2;
- Site works, remediation and excavation for proposed Lot 2;
- Construction of proposed driveway as an extension of Lot 1 driveway;
- Erection of Buildings "A" and "B" being one x 13-storey and one x 12 storey mixed-use building with ground floor retail, basement level car parking and associated landscaping.

The application has been 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 site is zoned B4 – Mixed Use pursuant to Botany Bay Local Environmental Plan 2013. The proposal falls within the definition of “shop top housing” and is permissible in this zone with development consent.

The floor space ratio (FSR) of the proposed development is 3.2:1, which is compliant with BBLEP 2013 however the proposal seeks a Clause 4.6 Variation to the 44m height limit for proposed Building A to an overall height of 45.6m. Buildings B & C are compliant with the height limit under BBLEP, however Buildings B and C do not comply with the height controls stipulated in BBDCP 2013.

The application is also Integrated Development as the proposal requests approval for excavation works for the basement level that will transect the groundwater of the locality.

As such the application was referred to the NSW Office of Water who issued their General Terms of Approval on 18 October 2013. In their letter of concurrence the Office of Water advised Council that the basement must be constructed as a “fully tanked” structure to prevent the need for permanent or semi-permanent pumping of groundwater seepage from below-ground areas.

The application was notified for a 30 day period from 2 October 2013 to 1 November 2013 in accordance with Council’s Notification Development Control Plan No. 24 together with the Integrated Development Provisions under the *Environmental Planning and Assessment Act 1979*, being notified to surrounding property owners and advertised in the Southern Courier.

No submissions were received following the notification of the development application.

The following table provides a summary of compliance:

Control	Required	Proposal	Complies
FSR	3.2:1 (under BBLEP 2013 (22,963.2m ²))	<u>BBLEP 2013</u> 3.2:1 (22,963.2m ²)	Yes
Height	44 metres (under BBLEP 2013)	Building A = 45.6m; Building B = 44m; Building C = 42.5m.	Building A exceeds the 44m height limit by 1.65m. As such a Clause 4.6 variation has been submitted.
Car Parking	438 spaces are required as follows for the proposal: <ul style="list-style-type: none"> • 395 residential; • 35 visitors; • 8 Commercial. 	308 spaces are proposed as follows: <ul style="list-style-type: none"> • 286 residential • 14 visitors • 8 Commercial 	No – The car parking proposed has been calculated based on one space per 2 bedroom dwelling, where the DCP requires 2 spaces per 2 bedroom dwelling.
Communal Open Space	20% for residential flat buildings	35% (2532m ²)	Yes
Units Sizes	Studios 60m ² 1 Bedroom 75m ² 2 Bedroom 100m ² 3 Bedroom 130m ²	Studios 56-58m ² 1 Bedroom 69-75m ² 2 Bedroom 93-97m ² 3 Bedroom 154m ²	No No No Yes
Units Mix	Total number of studio/one bedroom = Maximum of 35 %	37%	No
Building Separation	Buildings over 25m (9 storeys and above) <input type="checkbox"/> 24m between habitable rooms / balconies <input type="checkbox"/> 18m between habitable rooms / balconies and non	<i>Building A to Building B</i> There is no separation between Building A & B as they are joined by a common party wall, to appear as one building. It should be noted that the sections of the building that are	Yes

	<p>habitable rooms</p> <p>□12m between non habitable rooms</p>	<p>less than the required separation contain minimal opposing openings and those that occur are to treated with small highlight windows privacy screens / louvres.</p> <p><i>Building B to Building C</i> Achieves min separation of 24 m balcony to balcony.</p> <p><i>Separation to Adjoining Development</i> Building A (ground floor plant room) to No 3-5 Kent Road – 4.5m. Levels 1-2 = 8.7m Levels 3-12 terrace= 9m-9.5m increasing to 12m at the south-eastern end of Building A Level 13 = 18.2m</p> <p>Building B to 3-5 Kent Rd – All levels 12m where it adjoins Building A, reducing to 9.5m and then increasing to 12m at the eastern end of Building B.</p> <p>Building C to 3-5 Kent Rd – All levels 12m to the southern boundary;</p> <p>Building C to 659 Gardeners Rd – All levels 12m to the eastern boundary. 18m habitable room to habitable room</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Building C complies, however should the western setback of the proposed development under DA13/135 at 659-669 Gardeners Road be reduced, then the building separation will be less than 18m and becomes non – complying.</p>
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Table 1 – Development Details

The development application has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act. The proposed development is not consistent with the maximum height of buildings for the subject site under Botany Bay Local Environmental Plan (BBLEP 2013) and Botany Bay Development Control Plan (BBDCP 2013). The proposed development is also inconsistent with the development controls of BBDCP 2013, in respect of setbacks, bulk, scale, height, off street car parking, unit mix, unit/balcony sizes and overshadowing. On this basis, the proposed development is not considered appropriate in its current form and it is recommended that the Panel refuse Development Application No. 13/172 for the reasons outlined in this report.

Site Description

The subject site is commonly known as 671-683 Gardeners Road, Mascot. The site has a 106.88m frontage to Gardeners Rd, with an arc frontage of 71.48 metres to Kent Road. The

southern boundary has a length of 106.7 metres and an eastern boundary of 53.07 metres. The site is formed by the following two (2) allotments, which make up a total site area of 7,176m²:

- Lot 1 in DP 777315 and Lot 500 in DP 1030729;

The site is located within the B4 – Mixed use zone, is relatively level and contains some mature trees located along the Gardeners Road/Kent Road frontages.

The building currently located on Lot 1 is used for food manufacturing and distribution. The building on Lot 500 (eastern allotment) is divided into two separate tenancies being used for food manufacturing and distribution, and warehousing respectively. The buildings, which are separated by dividing walls are of concrete walls with a metal roof and first floor mezzanines, being sited on the southern and eastern boundaries.

Existing car parking is located on the northern side of the buildings. There are presently two (2) access driveways to Lot 500 (eastern allotment) and one (1) access driveway to Lot 1, within the arc boundary. Overhead power cables exist along the nature strip frontage.

Location Plan



Site Photos



Photo 1 – No. 671 when viewed from Gardeners Road



Photo 2 -No. 683 when viewed from Gardeners Road



Photo 3 – No. 683 where it adjoin 3-7 Kent Rd

Description of Surrounding Development

Immediately to the east of the subject site at Nos. 659-669 Gardeners Road are existing industrial premises. It should be noted that in respect of this development site, Council has received Development Application No. 13/135 for the demolition of existing remnant building slabs, removal of nineteen (19) trees, excavation and site remediation. Site amalgamation and construction of a mixed use development comprising two new towers (9 and 13 storeys) containing 309 apartments, 2,637m² ground level commercial tenancies and three (3) levels of at grade and basement services including garbage area, storage and parking for 427 vehicles, 33 bicycles and 7 motorcycles. This development application is currently under assessment and will be referred to the JRPP for determination in the near future, following the submission of additional information. Further to the east are mixed commercial/industrial uses.

To the west of the site on the opposite side of Kent Road are located mixed industrial and commercial uses.

To the north of the site on the far side of Gardeners Road are located mixed commercial and industrial uses.

Immediately to the south of the site at Nos. 3-5 Kent Road are located industrial warehouse buildings.

Site and Development History

- Development Application No. 1342 was approved on the 18 February 1987, for the redevelopment of the premises at 671 – 675 Gardeners Road. No specific details of the approved use are known, however approval was granted for the use of the premises by one occupant.
- Development Application No. 97/0223 was approved on the 21 November 1996, for the industrial change of use – use of premises for warehousing and distribution of fashion accessories and internal alterations and additions.
- Section 96(2) Application was approved on the 26 October 2000, to amend Development Consent No. 97/0223 to reduce the area of the approved use by dividing the premises into two tenancies (A) and (B). A separate application was lodged for the physical division of the premises.
- Development Application No. 01/072 was approved on the 13 October 2000, for the installation of division walls to separate the building into two tenancies.
- Development Application No. 03/114 was approved on the 4 February 2003, for the continued use of Unit 2 for the warehousing of cosmetic products and associated office.
- Development Application No. 02/623 was approved on the 4 February 2003, for the installation of new illuminated business identification signage associated with Unit 2.

- Development Application No. 04/260 was approved on the 2 February 2004, for the use of Unit 1 for the servicing and warehousing of aviation engines and parts and associated office, together with the repositioning of pallet racking.
- Council issued a Building Certificate on the 24 March 2004, for the repositioned racking system.
- Development Application No. 04/414 was approved on the 11 May 2004, for the internal alterations to Unit 2 involving internal partitions.
- Development Application No. 09/365 was approved on the 19 February 2010, for the change of use of Unit 2 for the warehousing of furniture.
- Council received a Building Certificate Application No. 09/089 on the 11 June 2009, for the unauthorised opening to the rear wall of the building, timber staircase to the factory mezzanine and for the mezzanine floor areas. This application was not determined by Council due to a change in property ownership, however an inspection of the premises by Council officers on the 25 November 2011, revealed that the unauthorised works were still present on site.
- Development Application No. 11/198 was approved on the 20 December 2011, for the change of use and internal alterations to Unit 2 from a warehouse and distribution centre to food preparation, storage, packaging and distribution.
- Council received Development Application No. 12/202 on the 5 November 2012 for the demolition of the existing buildings on the site, erection of a mixed use development comprising 2 x 13 storey mixed use buildings with 2 levels of basement car parking, ground floor retail/ commercial floor space and multi unit residential development above with associated landscape works. The application was withdrawn on the 15 December 2012, as the proposed development was not permissible under BBLEP 1995.

Description of Development

The application requests consent for a staged mixed-use development including the following works resulting in 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 car parking spaces within a basement configuration over the distinct stages. The staging includes the following works:

Prior to Stage One works commencing, subdivision of the two existing lots by consolidation and re-subdivision into two new lots, based upon the staging of the mixed-use development.

Stage One Works including:

- Demolition of existing buildings within Stage One including demolition of the existing building on proposed Lot 1;
- Site works, remediation and excavation for proposed Lot 1;
- Construction of proposed driveway access;
- Erection of Building "C" being a 13-storey mixed-use building with ground floor retail, basement level car parking and associated landscaping.

Stage Two Works including:

- Demolition of existing buildings within Stage Two including demolition of the existing building on proposed Lot 2;
- Site works, remediation and excavation for proposed Lot 2;
- Construction of proposed driveway as an extension of Lot 1 driveway;
- Erection of Buildings "A" and "B" being one x 13-storey and one x 12 storey mixed-use building with ground floor retail, basement level car parking and associated landscaping.

The proposed unit mix of the application is as follows:

	TOTAL	Dwelling Mix
Studio	54	22.3%
1 bedroom	35	14.4%
2 bedroom	152	62.8%
3 bedroom	1	0.4%
TOTAL	242	100%

Table 2 – Proposed Unit Mix

The development comprises of 3 Buildings as follows (as identified from left to right):



Proposed Site Plan



Proposed Northern Elevation (view from Gardeners Road)

- **Building A**

Building A is located at the western most part of the subject site adjacent to the arc frontage to Kent Road. It is proposed to contain 2 x commercial tenancies with a total of 256m², loading area, residential lobby at ground floor and 11 x studio units, 11 x 1 bedroom units and 59 x 2 bedroom units, resulting in a total of 81 units.

- **Building B**

Building 2 is located at the centre of the site fronting Gardeners Road and is joined to Building A by a common party wall at the upper levels. The proposed building contains one ground floor commercial tenancy of 96m², 11 x studio units, 12 x 1 bedroom units and 46 x 2 bedroom units, resulting in a total of 69 units.

- **Building C**

Building C is located at the eastern part of the site with a frontage to Gardeners Road. This building is proposed to contain one ground floor commercial tenancy of 123 m², with two ground floor units and residential lobby, 32 x studio units, 14 x 1 bedroom units, 45 x 2 bedroom units and 1 x 3 bedroom unit, resulting in a total of 92 units.

The proposed development is described in detail in the five (5) sections detailed below:

Basement Car Parking and Parking Allocation

The development proposes two levels of basement car parking, divided into two parts by a common part wall and to reflect the staging of construction as follows:

Stage 1 - is located beneath Building C and will contain a total of 49 car parking space to Basement Level 1 and 51 car parking spaces to Basement Level 2, providing a total of 100 resident car parking spaces.

Stage 2 – is located beneath Buildings A & B and will contain a total of 92 car parking space to Basement Level 1 and 94 car parking space to Basement Level 2, providing a total of 186 resident spaces. Each basement includes disabled parking spaces, lift access, bicycle parking space, storage area and plant rooms.

The basement car park is provided over two levels with Basement Level 2 having a FFL of RL-1.65 (incorrectly marked as RL-2.65 on the submitted plans). Visitor car parking and commercial car parking is provided at grade along the southern boundary of the site with total of 22 car parking spaces proposed.

Retail Component

As detailed above, there are four (4) retail tenancies proposed with a total combined floor area of 475m². Internal access from the residential lobbies has not been provided, however each tenancy has direct access to plant/loading and garbage areas and to the service lift. Each tenancy has a presentation to the street frontage.

Level	Unit No.	Gross Floor Area	Required Car Parking
Ground	Unit 1	208m ²	3.4
Ground	Unit 2	48m ²	0.8
Ground	Unit 3	96 m ²	1.6
Ground	Unit 4	123 m ²	2.05
TOTAL			8 spaces

Table 3 – Required Commercial Car Parking

Residential Component

The proposed development is comprised of three residential towers above ground floor commercial tenancies, with details of each building provided below.

- **Building A –**

Building A is located at the western most part of the site at the arc frontage to Kent Road. It contains at total of 81 units and two ground floor commercial tenancies. The building is 13 storeys stepping down to 11 storeys along the southern boundary at the rear. The top floor of Building A is the highest point of the proposed development at RL48.65 metres.

Access to the units is located via the residential lobbies at the rear with pedestrian pathways from Gardeners Road. The floor plates are presented as a fan shape to reflect the arc boundary to Kent Road.

The following table provides a summary of the Building A:

Unit No.	No. of Bedrooms	Dwelling Size (m ²)	Private Open Space (m ² / dwelling)	Car parking provision	Cross Ventilation
A101	2 bedrooms	94m ²	22m ²	1	Y
A102	2 bedrooms	93m ²	28m ²	1	Y
A103	2 bedrooms	95m ²	14m ²	1	Y
A104	2 bedrooms	90m ²	22m ²	1	Y
A105	1 bedroom	73m ²	16m ²	1	Y
A106	2 bedrooms	97m ²	11m ²	1	Y
A107	Studio	56m ²	9m ²	1	Y
A201	2 bedrooms	94m ²	22m ²	1	Y

Unit No.	No. of Bedrooms	Dwelling Size (m²)	Private Open Space (m² / dwelling)	Car parking provision	Cross Ventilation
A202	2 bedrooms	93m ²	28m ²	1	Y
A203	2 bedrooms	95m ²	14m ²	1	Y
A204	2 bedrooms	90m ²	22m ²	1	Y
A205	1 bedroom	73m ²	16m ²	1	Y
A206	2 bedrooms	97m ²	11m ²	1	Y
A207	Studio	56m ²	9m ²	1	Y
A301	2 bedrooms	94m ²	22m ²	1	Y
A302	2 bedrooms	93m ²	28m ²	1	Y
A303	2 bedrooms	95m ²	16m ²	1	Y
A304	2 bedrooms	90m ²	22m ²	1	Y
A305	1 bedroom	73m ²	16m ²	1	Y
A306	2 bedrooms	97m ²	11m ²	1	Y
A307	Studio	56m ²	9m ²	1	Y
A401	2 bedrooms	94m ²	15m ²	1	Y
A402	2 bedrooms	93m ²	18m ²	1	Y
A403	2 bedrooms	95m ²	13m ²	1	Y
A404	2 bedrooms	90m ²	30m ²	1	Y
A405	1 bedroom	73m ²	15m ²	1	Y
A406	2 bedrooms	97m ²	13m ²	1	Y
A407	Studio	56m ²	9m ²	1	Y
A501	2 bedrooms	94m ²	15m ²	1	Y
A502	2 bedrooms	93m ²	18m ²	1	Y
A503	2 bedrooms	95m ²	13m ²	1	Y
A504	2 bedrooms	90m ²	30m ²	1	Y
A505	1 bedroom	73m ²	15m ²	1	Y
A506	2 bedrooms	97m ²	13m ²	1	Y
A507	Studio	56m ²	9m ²	1	Y
A601	2 bedrooms	94m ²	15m ²	1	Y
A602	2 bedrooms	93m ²	18m ²	1	Y
A603	2 bedrooms	95m ²	13m ²	1	Y
A604	2 bedrooms	90m ²	24m ²	1	Y
A605	1 bedroom	73m ²	18m ²	1	Y
A606	2 bedrooms	97m ²	13m ²	1	Y
A607	Studio	56m ²	9m ²	1	Y
A701	2 bedrooms	94m ²	15m ²	1	Y
A702	2 bedrooms	93m ²	18m ²	1	Y
A703	2 bedrooms	95m ²	16m ²	1	Y
A704	2 bedrooms	90m ²	24m ²	1	Y
A705	1 bedroom	73m ²	18m ²	1	Y
A706	2 bedrooms	97m ²	11m ²	1	Y
A707	Studio	56m ²	9m ²	1	Y
A801	2 bedrooms	94m ²	15m ²	1	Y
A802	2 bedrooms	93m ²	18m ²	1	Y

Unit No.	No. of Bedrooms	Dwelling Size (m ²)	Private Open Space (m ² / dwelling)	Car parking provision	Cross Ventilation
A803	2 bedrooms	95m ²	16m ²	1	Y
A804	2 bedrooms	90m ²	24m ²	1	Y
A805	1 bedroom	73m ²	18m ²	1	Y
A806	2 bedrooms	97m ²	11m ²	1	Y
A807	Studio	56m ²	9m ²	1	Y
A901	2 bedrooms	94m ²	15m ²	1	Y
A902	2 bedrooms	93m ²	18m ²	1	Y
A903	2 bedrooms	95m ²	13m ²	1	Y
A904	2 bedrooms	90m ²	30m ²	1	Y
A905	1 bedroom	73m ²	18m ²	1	Y
A906	2 bedrooms	97m ²	13m ²	1	Y
A907	Studio	56m ²	9m ²	1	Y
A1001	2 bedrooms	94m ²	15m ²	1	Y
A1002	2 bedrooms	93m ²	18m ²	1	Y
A1003	2 bedrooms	95m ²	16m ²	1	Y
A1004	2 bedrooms	90m ²	30m ²	1	Y
A1005	1 bedroom	73m ²	18m ²	1	Y
A1006	2 bedrooms	97m ²	13m ²	1	Y
A1007	Studio	56m ²	9m ²	1	Y
A1101	2 bedrooms	94m ²	15m ²	1	Y
A1102	2 bedrooms	93m ²	18m ²	1	Y
A1103	2 bedrooms	95m ²	13m ²	1	Y
A1104	2 bedrooms	90m ²	30m ²	1	Y
A1105	1 bedroom	73m ²	15m ²	1	Y
A1106	2 bedrooms	97m ²	13m ²	1	Y
A1107	Studio	56m ²	9m ²	1	Y
A1201	2 bedrooms	93m ²	18m ²	1	Y
A1202	2 bedrooms	147m ²	13m ²	1	Y
A1203	2 bedrooms	121m ²	24m ²	1	Y
A1204	2 bedrooms	110m ²	15m ²	1	Y

Table 4 – Building A Details

- Building B –

Building B is located at the centre of the site fronting Gardeners Road and is joined to Building A by a common party wall at the upper levels. The proposed building contains one ground floor commercial tenancy of 96m², 11 x studio units, 12 x 1 bedroom units and 46 x 2 bedroom units, resulting in a total of 69 units. Building B is proposed to be 12 storey's.

The following table provides a summary of Building B as proposed:

Unit No.	No. of Bedrooms	Dwelling Size (m²)	Private Open Space (m² / dwelling)	Car parking provision	Cross Ventilation
B101	2 bedrooms	94m ²	22m ²	1	Y
B102	2 bedrooms	93m ²	28m ²	1	Y
B103	1 bedroom	69m ²	27m ²	1	Y
B104	2 bedrooms	93m ²	28m ²	1	Y
B105	2 bedrooms	94m ²	22m ²	1	Y
B106	Studio	56m ²	9m ²	1	Y
B201	2 bedrooms	94m ²	22m ²	1	Y
B202	2 bedrooms	93m ²	28m ²	1	Y
B203	1 bedroom	69m ²	27m ²	1	Y
B204	2 bedrooms	93m ²	28m ²	1	Y
B205	2 bedrooms	94m ²	22m ²	1	Y
B206	Studio	56m ²	9m ²	1	Y
B301	2 bedrooms	94m ²	22m ²	1	Y
B302	2 bedrooms	93m ²	28m ²	1	Y
B303	1 bedroom	69m ²	27m ²	1	Y
B304	2 bedrooms	93m ²	28m ²	1	Y
B305	2 bedrooms	94m ²	22m ²	1	Y
B306	Studio	56m ²	9m ²	1	Y
B401	2 bedrooms	94m ²	15m ²	1	Y
B402	2 bedrooms	93m ²	18m ²	1	Y
B403	1 bedroom	69m ²	18m ²	1	Y
B404	2 bedrooms	93m ²	18m ²	1	Y
B405	2 bedrooms	94m ²	15m ²	1	Y
B406	Studio	56m ²	9m ²	1	Y
B501	2 bedrooms	94m ²	15m ²	1	Y
B502	2 bedrooms	93m ²	18m ²	1	Y
B503	1 bedroom	69m ²	18m ²	1	Y
B504	2 bedrooms	93m ²	18m ²	1	Y
B505	2 bedrooms	94m ²	15m ²	1	Y
B506	Studio	56m ²	9m ²	1	Y
B601	2 bedrooms	94m ²	15m ²	1	Y
B602	2 bedrooms	93m ²	18m ²	1	Y
B603	1 bedroom	69m ²	18m ²	1	Y
B604	2 bedrooms	93m ²	18m ²	1	Y
B605	2 bedrooms	94m ²	15m ²	1	Y
B606	Studio	56m ²	9m ²	1	Y
B701	2 bedrooms	94m ²	15m ²	1	Y
B702	2 bedrooms	93m ²	18m ²	1	Y
B703	1 bedroom	69m ²	18m ²	1	Y
B704	2 bedrooms	93m ²	18m ²	1	Y
B705	2 bedrooms	94m ²	15m ²	1	Y
B706	Studio	56m ²	9m ²	1	Y
B801	2 bedrooms	94m ²	15m ²	1	Y

Unit No.	No. of Bedrooms	Dwelling Size (m ²)	Private Open Space (m ² / dwelling)	Car parking provision	Cross Ventilation
B802	2 bedrooms	93m ²	18m ²	1	Y
B803	1 bedroom	69m ²	18m ²	1	Y
B804	2 bedrooms	93m ²	18m ²	1	Y
B805	2 bedrooms	94m ²	15m ²	1	Y
B806	Studio	56m ²	9m ²	1	Y
B901	2 bedrooms	94m ²	15m ²	1	Y
B902	2 bedrooms	93m ²	18m ²	1	Y
B903	1 bedroom	69m ²	18m ²	1	Y
B904	2 bedrooms	93m ²	18m ²	1	Y
B905	2 bedrooms	94m ²	15m ²	1	Y
B906	Studio	56m ²	9m ²	1	Y
B1001	2 bedrooms	94m ²	15m ²	1	Y
B1002	2 bedrooms	93m ²	18m ²	1	Y
B1003	1 bedroom	69m ²	18m ²	1	Y
B1004	2 bedrooms	93m ²	18m ²	1	Y
B1005	2 bedrooms	94m ²	15m ²	1	Y
B1006	Studio	56m ²	9m ²	1	Y
B1101	2 bedrooms	94m ²	15m ²	1	Y
B1102	2 bedrooms	93m ²	18m ²	1	Y
B1103	1 bedrooms	69m ²	18m ²	1	Y
B1104	2 bedrooms	93m ²	18m ²	1	Y
B1105	2 bedrooms	94m ²	15m ²	1	Y
B1106	Studio	56m ²	9m ²	1	Y
B1201	2 bedrooms	93m ²	18m ²	1	Y
B1202	1 bedroom	78m ²	18m ²	1	Y
B1203	2 bedrooms	93m ²	18m ²	1	Y

Table 5 – Building B Details

- **Building C**

Building C is located at the eastern part of the site with a frontage to Gardeners Road. This building is proposed to contain one ground floor commercial tenancy of 123 m², with two ground floor soho units and residential lobby, 32 x studio units, 14 x 1 bedroom units, 45 x 2 bedroom units and 1 x 3 bedroom unit, resulting in a total of 92 units. Building is separated from Building B by approximately 25 metres with communal open space at ground level. Its height is RL 47.10 metres, being twelve storey's in height.

The following table provides a summary of the Building C:

Unit No.	No. of Bedrooms	Dwelling Size (m ²)	Private Open Space (m ² / dwelling)	Car parking provision	Cross Ventilation
C001	1 bedroom	86m ²	34.8m ²	1	Y
C002	1 bedroom	86m ²	41.4m ²	1	Y

Unit No.	No. of Bedrooms	Dwelling Size (m²)	Private Open Space (m² / dwelling)	Car parking provision	Cross Ventilation
C101	2 bedrooms	95m ²	17m ²	1	Y
C102	1 bedroom	75m ²	20m ²	1	Y
C103	2 bedrooms	94m ²	37m ²	1	Y
C104	Studio	57m ²	12m ²	1	Y
C107	2 bedroom	97m ²	12m ²	1	Y
C108	Studio	58m ²	11m ²	1	Y
C201	2 bedrooms	95m ²	17m ²	1	Y
C202	1 bedroom	75m ²	20m ²	1	Y
C203	2 bedrooms	94m ²	37m ²	1	Y
C204	Studio	57m ²	12m ²	1	Y
C205	2 bedrooms	94m ²	12m ²	1	Y
C206	Studio	62m ²	15m ²	1	Y
C207	2 bedrooms	97m ²	12m ²	1	Y
C208	Studio	58m ²	11m ²	1	Y
C301	2 bedrooms	95m ²	17m ²	1	Y
C302	1 bedroom	75m ²	14m ²	1	Y
C303	2 bedrooms	94m ²	20m ²	1	Y
C304	Studio	57m ²	12m ²	1	Y
C305	2 bedrooms	94m ²	12m ²	1	Y
C306	Studio	62m ²	15m ²	1	Y
C307	2 bedrooms	97m ²	12m ²	1	Y
C308	Studio	58m ²	11m ²	1	Y
C401	2 bedrooms	95m ²	17m ²	1	Y
C402	1 bedroom	75m ²	20m ²	1	Y
C403	2 bedrooms	94m ²	14m ²	1	Y
C404	Studio	57m ²	12m ²	1	Y
C405	2 bedrooms	94m ²	12m ²	1	Y
C406	Studio	62m ²	15m ²	1	Y
C407	2 bedrooms	97m ²	12m ²	1	Y
C408	Studio	58m ²	11m ²	1	Y
C501	2 bedrooms	95m ²	17m ²	1	Y
C502	1 bedroom	75m ²	20m ²	1	Y
C503	2 bedrooms	94m ²	14m ²	1	Y
C504	Studio	57m ²	12m ²	1	Y
C505	2 bedrooms	94m ²	12m ²	1	Y
C506	Studio	62m ²	15m ²	1	Y
C507	2 bedrooms	97m ²	12m ²	1	Y
C508	Studio	58m ²	11m ²	1	Y
C601	2 bedrooms	95m ²	17m ²	1	Y
C602	1 bedroom	75m ²	20m ²	1	Y
C603	2 bedrooms	94m ²	14m ²	1	Y
C604	Studio	57m ²	12m ²	1	Y
C605	2 bedrooms	94m ²	12m ²	1	Y

Unit No.	No. of Bedrooms	Dwelling Size (m²)	Private Open Space (m² / dwelling)	Car parking provision	Cross Ventilation
C606	Studio	62m ²	15m ²	1	Y
C607	2 bedrooms	97m ²	12m ²	1	Y
C608	Studio	58m ²	11m ²	1	Y
C701	2 bedrooms	95m ²	17m ²	1	Y
C702	1 bedroom	75m ²	20m ²	1	Y
C703	2 bedrooms	94m ²	14m ²	1	Y
C704	Studio	57m ²	12m ²	1	Y
C705	2 bedrooms	94m ²	12m ²	1	Y
C706	Studio	62m ²	15m ²	1	Y
C707	2 bedrooms	97m ²	12m ²	1	Y
C708	Studio	58m ²	11m ²	1	Y
C801	2 bedrooms	95m ²	17m ²	1	Y
C802	1 bedroom	75m ²	20m ²	1	Y
C803	2 bedrooms	94m ²	14m ²	1	Y
C804	Studio	57m ²	12m ²	1	Y
C805	2 bedrooms	94m ²	12m ²	1	Y
C806	Studio	62m ²	15m ²	1	Y
C807	2 bedrooms	97m ²	12m ²	1	Y
C808	Studio	58m ²	11m ²	1	Y
C901	2 bedrooms	95m ²	17m ²	1	Y
C902	1 bedroom	75m ²	20m ²	1	Y
C903	2 bedrooms	94m ²	14m ²	1	Y
C904	Studio	57m ²	12m ²	1	Y
C905	2 bedrooms	94m ²	12m ²	1	Y
C906	Studio	62m ²	15m ²	1	Y
C907	2 bedrooms	97m ²	12m ²	1	Y
C908	Studio	58m ²	11m ²	1	Y
C1001	2 bedrooms	95m ²	17m ²	1	Y
C1002	1 bedroom	75m ²	20m ²	1	Y
C1003	2 bedrooms	94m ²	14m ²	1	Y
C1004	Studio	57m ²	12m ²	1	Y
C1005	2 bedrooms	94m ²	12m ²	1	Y
C1006	Studio	62m ²	15m ²	1	Y
C1007	2 bedrooms	97m ²	12m ²	1	Y
C1008	Studio	58m ²	11m ²	1	Y
C1101	2 bedrooms	95m ²	17m ²	1	Y
C1102	1 bedroom	75m ²	20m ²	1	Y
C1103	2 bedrooms	94m ²	14m ²	1	Y
C1104	Studio	57m ²	12m ²	1	Y
C1105	2 bedrooms	94m ²	12m ²	1	Y
C1106	Studio	62m ²	15m ²	1	Y
C1107	2 bedrooms	97m ²	12m ²	1	Y
C1108	Studio	58m ²	11m ²	1	Y

Unit No.	No. of Bedrooms	Dwelling Size (m ²)	Private Open Space (m ² / dwelling)	Car parking provision	Cross Ventilation
C1201	3 bedrooms	154m ²	28m ²	1	Y
C1202	1 bedroom	75m ²	20m ²	1	Y
C1203	2 bedrooms	93m ²	14m ²	1	Y
C1204	2 bedrooms	97m ²	12m ²	1	Y

Table 6 – Building C Details

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.

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

Groundwater was encountered across the site at depths varying from 2.5-3 metres below natural ground level (ie. 1.65 metres AHD). 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 Act 1912* 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. In a letter dated 18 October 2013, NSW Office of Water has provided its General Terms of Approval for the proposed development.

State Environmental Planning Policy (Infrastructure) 2007

Clause 104 - Traffic Generating Development

The proposed development falls within the provisions of Schedule 3 of the SEPP – Traffic Generating Development that is required to be referred to the NSW RMS. The application was not initially accompanied by a Traffic Report. Council received the Traffic Report on the 14 November 2013, prepared by John Coady Consulting Pty Ltd and dated 12 November 2013, which was then referred to NSW RMS.

In a letter dated 24 December 2013, 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. The applicant submitted a Detailed Site Investigation prepared by Peter J Ramsay & Associates dated October 2012.

The findings of the investigation are that the site contains contamination, namely fill with levels of heavy metals, Dieldrin, polycyclic aromatic hydrocarbons (PAH's), total petroleum hydrocarbons (TPH's) and asbestos all above acceptable EPA criteria. The report concludes that the site can be remediated and that a Remediation Action Plan (RAP) will be required prior to excavation. An Acid Sulfate Soils Assessment should be undertaken prior to excavation and an assessment of groundwater contamination should be undertaken should groundwater extraction be required.

Council's Environmental Scientist has reviewed the submitted report and advises 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 Robert Dickson Architect, dated 9 August 2013, was also submitted to verify that the plans submitted were drawn by a registered Architect.

The Council's Design Review Panel (DRP) has also considered the proposal on 29 August 2012, at pre-DA stage. The Panel acknowledged that the proposed development is generally in accordance with recent approved residential development in the area and with the vision for the Precinct which is "*undergoing a transition in urban form*". The Panel made recommendations in respect of height, bulk and street activation.

The recommendations of the Panel made at the meeting are:

- *There are a large number of significant mature trees along the north and northwest boundaries of the site. The Panel favours the concept design, which will result in the retention of the majority of these trees;*
- *It is recommended that a podium be incorporated into Option 2 design to create a good streetscape consistent with the desired future character of Gardeners Road frontage. The podium should be continuous from Building A and bridge across to Building C. The section of podium between Building B and Building C should have a high two storey opening to provide a visual link to Gardeners Road from the future north-south New Street. The podium at this location should be narrow in depth to minimize the shadow effect onto the planned public open space;*
- *The height and bulk of the preferred Option 2 should continue to be refined in the next stage of design development to achieve an improved outcome in terms of visual amenity impact;*
- *The recess between Building A and B should be made more pronounced and its height could be lowered by three levels to reduce the visual bulk of the building block which is more than 55m in width;*
- *Block C should be lowered to a maximum of nine (9) storey's in accord with the building block model of the master plan and to avoid excessive overshadowing of the adjoining site and the future New Street;*
- *The presentation and activation to the street frontage at ground level and articulation of the podium and tower blocks are paramount;*
- *Consideration should be given to link the podium/awning to adjacent future development to the east when relocation of the vehicular entry occurs.*

Officer's Concluding Comments to DRP Issues:

The design currently before the Panel is an elaboration of Option 2, presented to the DRP in 2012.

The area is generally characterized by commercial/industrial uses to the west and north. Land to the south and east will undergo transition from industrial to mixed use/residential similar to that proposed under this development application.

The design has been amended to retain all significant mature trees on the northern setback area. A podium has been incorporated into the design to a height comparable to four storeys. The design has not incorporated a continuous podium as suggested by the DRP. The Applicant has stated that this was investigated, however resulted in adverse overshadowing impact onto the communal open space area and reduced connections between the existing trees and the open space area.

The suggested recess between Building A and B has been made more pronounced however the height has been maintained at one level separation. Modulation and articulation of the façade has been enhanced to address bulk and scale, however there remains a bulk and scale impact when viewed from the New Street from the south.

The building bulk and scale has been further reduced by reducing the floor plates to Level 12 to be setback from the levels below. This creates an interesting roofline and increases building articulation.

In respect of the height to Building C, this has not been reduced to nine storeys. The upper level has been setback from the south and reduced in size to address overshadowing.

The design incorporates four commercial tenancies at street level. Whilst these are setback from the boundary, even further than envisaged in the masterplan, they do present to the street boundary, which contains the existing mature trees to be retained. The result of this is the open space forecourt area with a northerly aspect and a direct relationship to the existing trees. The size of the tenancies is considered appropriate and it is considered that these would be viable and active spaces in the future.

In performing a detailed assessment, it is considered that the proposed development is inconsistent with the aims and objectives of the policy as the proposal results in non complying setbacks, its height, bulk and scale are inconsistent with that envisaged for the Urban Block under BBDCP 2013. Building separation whilst compliant will become an issue with the adjoining site to the east, should the proposed development at 659 Gardeners Road alter its western setback.

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. Further to the south east and east, 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 *shop top housing* 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 inconsistent with the built form envisaged for the site under BBLEP 2013 and BBDCP 2013, in that the height of proposed Building A at 45.6m exceeds the 44m height limit and the height of Building B & C are greater than 9 storeys, proposed at 12 storeys each. Whilst the Applicant has incorporated a tower element at the corner of Kent Road and Gardeners Road, this needs further emphasis by reducing the height for the remainder of the site. The Applicant has submitted a Clause 4.6 Variation request which is not supported in this instance.

Building separation to the east arises as an issue if the adjoining site to the east is required to alter or reduce their western boundary setback. This site is currently the subject of Development Application No. 13/135. This application proposes a building along the frontage to Gardeners Road with a setback to the common boundary with the subject site of 6m. The levels are offset and there is no corresponding level beyond level 9, therefore the current 18m building separation is considered acceptable. Again, the issue of overshadowing, visual impact and privacy would arise if this was to alter. At present, the Applicants for DA13/135 have been requested by Council to demonstrate that the site adjoining it to the east at 653 Gardeners Road can be redeveloped in accordance with the DCP as its is constrained by lot width and road widening. Essentially, the building footprints proposed under DA13/135 could be amended.

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 will comprise of two towers accessible from Gardeners Road. Considerable setbacks have been provided to Gardeners Road and Kent Road to address road traffic noise and to retain the existing significant mature trees.

Building A & B appear as a single tower and its bulk is delineated by the reduction in levels to Building B by one storey and again at its eastern elevation. Building A is then lowered in height to 12 storeys at the south to emphasise its position as a gateway landmark when viewed from the west.

Building C is a free standing 12 storey tower with an 8m setback from Gardeners Road. The building is delineated in scale providing articulated facades to the street frontage and being stepped down at the rear when viewed from the south.

The buildings comprise a built form that is described as a contemporary painted masonry style with external elements providing visual interest. However, the overall built form is not consistent with the desired built form of the Urban Block precinct as it undergoes redevelopment, as envisaged under BBDCP 2013. The proposed built form will create adverse streetscape impacts on the future open space area as the bulk and height dominate and tower above without any modulation of form. Further consideration should be given to overshadowing impacts to the adjoining property to the south.

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 3.2:1 which complies with Clause 4.4(2) of BBLEP 2013. The Applicant has been required to acquire both subject allotments to facilitate the proposed development of the land, which will require consolidation. This is a requirement of Councils BBDCP 2013. A total of 242 apartments are proposed, comprising of 54 x studio units, 35 x 1 bedroom units, 152 x 2 bedroom units and one (1) x 3 bedroom unit. The number of units provided within the building is considered inappropriate given that insufficient car parking is proposed for the development which will have a significant adverse impact on the local road network, the future occupants of the site and surrounding development. The design could be amended to provide an additional level of basement car parking to accommodate the number of two bedroom apartments proposed. Alternatively, a reduction in the number of studio and one bedroom units may assist in alleviating this non-compliance. The Applicant in a letter dated the 31 January 2014 states that the proposed unit mix meets current market demand.

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 adequate solar access and cross ventilation to the majority of apartments in accordance with SEPP 65. The Residential Flat Design Code (RFDC) recommends that at least 60% of the proposed units shall achieve flow through ventilation with the proposal indicating 78% of proposed units able to achieve cross flow ventilation. The applicant has confirmed that all habitable spaces are adequately ventilated.

The RFDC recommends that at least 70% of all proposed units and balconies shall achieve 2 hours of direct sunlight during the period 9.00am and 3.00pm at mid-winter in dense urban areas. The proposal indicates that 70% of proposed units in Stage 1 and 85% of units in Stage 2 will receive at least 3 hours sunlight during mid-winter to balconies. In addition, the development can meet the requirements of BASIX.

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

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.

The landscaping associated with the development is designed around the retention of the existing mature trees along the road frontages. Therefore, a large proportion of the site is available for deep soil planting.

A large communal open space area is proposed between Building B and C which is consistent with the Masterplan, which adjoins the termination of the proposed new road from the south. This space is above partially located above basement 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 landscape areas are proposed to Level 12 of the buildings, which are designed to be sheltered from the elements.

There are three distinct types of landscaping proposed. This includes private open space balconies, communal open space at grade and at Level 12 and deep soil zones at the sites perimeter boundaries. 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 deep soil area proposed for the site is 17%, with 36% of the site being communal open space.

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.

The majority of units proposed do not meet the minimum unit sizes specified under Part 9A of BBDCP 2013. This results in an unacceptable level of amenity with regards to privacy, ventilation, and access to sunlight.

Private recreational areas are provided in the form of balconies off the living areas and are supplemented by communal landscaped areas to ensure an overall quality of living for future occupants. Whilst a range of balcony sizes are proposed within the development, not all units achieve the minimum balcony sizes required under Part 9A of BBDCP 2013.

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. However, it is considered that as a result of the lack of off street car parking, overshadowing, non complying built form, height and setback, the amenity of future residential of both sites will be compromised and as such the development is inconsistent 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. Casual surveillance to the communal open space area fronting Gardeners Road is available from the street, from the commercial tenancies and from the lower level

residential units, including the ground floor units proposed under Stage 1. 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 37%. The proposed units are undersized in respect of the minimum units sizes required under BBDCP 2013. On this basis, the proposed development is considered unacceptable as it fails to provide adequate internal amenity for the future occupants of the development. Unit mix is discussed further in this report under the BBDCP 2013 assessment.

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 use of operable sun shade devices to the tower balconies assists in breaking up the bulk and providing vertical elements to the upper levels. Whilst the base of the building located behind the existing vegetation emphasizes the public domain area by introducing horizontal elements such as louvre screens. The curved façade element to the Kent Road frontage provides interest at the gateway location through variation of floor plates which creates articulation through shadow effect.

Aesthetically and functionally, the development proposes reasonable internal design and layout, despite the undersized balconies and units. The external design requires further refinement by modulation of the façade form along the internal elevations of Building B and C when viewed from the open space area. The 12 storey towers rise above contribute to the impact of the scale of the buildings. Whilst not a public street, the space is to be for public pedestrian and recreational use and the setback of upper levels should be considered to assist in alleviating the impact of scale. Further consideration should be given to overshadowing impacts to future residential units at 3-7 Kent Rd, directly to the south. As previously stated, building separation will

become an issue with the adjoining proposed development to the east, should that site amend or reduce its western boundary setback.

The proposal is therefore considered to be inconsistent with the aims and objectives of SEPP65 particularly in respect of setback, building separation, height, bulk and scale.

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 height of 45.6m to Building A breaches the 44m building height control in BBLEP 2013.	No
Allow reasonable daylight access to all developments and the public domain	The proposal responds to the site topography. The proposed buildings include a common rooftop open space. The western building height exceeds 44 metres and will create direct overshadowing impacts result to the site to the south and east.	No
<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	Building A = 29m Building B = 18m Building C = 18-33	No
<i>Building Separation</i>		
Development scaled to support desired area character with appropriate massing/spacing between buildings	Building A & B adequate separation can be achieved to the south.	No

<p>9 storeys +/-over 25m height: 24m between habitable rooms/balconies 18m between habitable/balconies and non-habitable rooms 12m between non-habitable rooms</p>	<p><i>Building A to Building B</i> There is no separation between Building A & B as they are joined by a common party wall, to appear as one building. It should be noted that the sections of the building that are less than the required separation contain minimal opposing openings and those that occur are to treated with small highlight windows privacy screens / louvres.</p> <p><i>Building B to Building C</i> Achieves min separation of 24 m balcony to balcony.</p> <p><i>Separation to Adjoining Development</i> Building A (ground floor plant room) to No 3-5 Kent Road –4.5m. Levels 1-2 = 8.7m Levels 3-12 terrace= 9m-9.5m increasing to 12m at the south-eastern end of Building A Level 13 = 18.2m</p> <p>Building B to 3-5 Kent Rd – All levels 12m where it adjoins Building A, reducing to 9.5m and then increasing to 12m at the eastern end of Building B.</p> <p>Building C to 3-5 Kent Rd – All levels 12m to the southern boundary;</p> <p>Building C to 659 Gardeners Rd – All levels 12m to the eastern boundary. 18m habitable room to habitable room</p>	<p>Yes</p> <p>Yes</p> <p>Half or required distance</p> <p>Half of required distance</p> <p>Half of required distance</p> <p>No – 24m required</p>
<p>Zero building separation only in appropriate context (between street wall building types – party walls)</p>	<p>Zero building separation is proposed between Building A & B and this is considered acceptable in this instance as the design incorporates a view corridor from the communal open space area through to the future New Street to the south.</p>	<p>Yes</p>
<p>Where building step creates terrace, the building separation distance for floor below applicable</p>	<p>The proposal provides the less than recommended distances apart and does not adequately demonstrate that daylight access, urban form and visual and acoustic privacy can be satisfactorily addressed within the site or to the adjoining properties.</p>	<p>No</p>

<i>Street Setbacks</i>		
Minimise overshadowing of the street and/or other buildings	<p>Building A = 7.6 metres; Building B = 16 metres; Building C = 8 metres;</p> <p>The New Street to the south will be overshadowed until 10:00am and after 12 noon.</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> Building A = 4.5m to a height of 4.5m then 8.6m to Level 11 and then 18m beyond Level 11 Building B = 9m; Building C = 12m</p> <p><i>Side Setback</i> Building C = 12 metres (eastern boundary)</p>	<p>Yes</p> <p>No</p>
Rear setbacks maintain deep soil zones	There is a 3m deep soil landscaping area along the southern and eastern boundary and increasing to 9.3m to the Gardeners Road frontage.	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 complies with the 3.2:1 FSR under BBLEP 2013	Yes
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	<p>35% of site area (2,511sqm) is communal open space</p> <p>50% of the open space area is deep soil area, which equates to 17% of the site area</p>	Yes

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 eastern and southern boundaries, increase along the northern boundary to over 7m.	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 perimeter boundaries will be aligned with those on adjoining sites.	Yes
Increase permeability of paved areas by limiting paved area and/or using pervious paving materials	Communal open space area is turfed over basement. Commercial tenancy forecourt is a combination of pavement and turfing.	Yes
<i>Fences and Walls</i>		
Respond to identified architectural character for the street/area	Clear glass balustrades proposed to the apartments. A retaining wall of 1 metre above ground level is proposed to the Kent Road elevation, located behind the proposed landscape garden beds and existing mature trees. This provides a platform for the proposed decking off the ground floor commercial tenancy No. 1.	Yes
Delineate public and private domain without compromising safety or privacy	Ground floor units are delineated by a 1.8m high timber screen fence, softened by landscaping. Landscaping to the street frontage 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, sun decks, BBQ, water features and benches and seats are located within the communal open space at Level 12 of each building. 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 and to Level 12 communal terraces.	Yes
Contribute to streetscape character and amenity of the public domain	Existing overgrown vegetation amongst existing mature trees to be thinned and turfed to improve surveillance. Plant species selection to be further refined.	Yes

Improve energy efficiency and solar efficiency of dwellings and microclimate of private open spaces	Private open space areas receive in excess of 3 hours of direct sunlight. Sun shade devices to each balcony assist in controlling the micro-climate.	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	35% of site area (2,511m ²)	Yes
Minimum private open space for ground level apartments is 25m ² with minimum 4m dimension in one direction	Unit C001 = 34.8m ² (8.7m x 4m) Unit C002 = 41.4m ² (4.7m x 8.8m)	Yes
<i>Orientation</i>		
Position and orient buildings to maximise north facing walls – within 30° east and 20° west of north	The site running east west provides increased access to direct sunlight from the north.	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 buildings are sited towards the rear, however this has been to retain existing vegetation along the street frontage and provide a buffer from the heavy traffic on Gardeners Road.	Yes
Orient living spaces and associated private open space to north	Private open space areas and living areas where possible are oriented to the north or west. Some south facing studio units	Yes
Building elements used to modify environmental conditions to maximise sun access in winter and sun shading in summer	Sun shade louvers are proposed to the north and west elevations.	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>	There is ample deep soil planting area across the site to accommodate large trees and smaller shrubs. Where the communal open space area is over basement, there is still adequate depth to accommodate quality landscaping with large shrubs.	Yes
<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 two on site stormwater detention system at the low point in the basement 1 and 2 of Stage 1	Yes

Landscape design to incorporate appropriate vegetation	The proposed landscape plan includes species which promote water minimisation	Yes
Safety		
Reinforce development boundary to distinguish between public and private space	Soho units are well defined. 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 with lobby location towards the rear of the site. Commercial tenancies are oriented towards Gardeners Road.	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	Living areas are orientated over balcony aspect/communal open space.	Yes
Use bay windows/ balconies that protrude beyond main façade to enable wider angle of vision	The upper levels are pushed and pulled at the facade to provide a wider angle of vision	Yes
Use corner windows to provide oblique views	There is some stepping within the building to create oblique views	Yes
Casual views available to common internal areas	South facing units overlook rear at grade car parking	Yes
No blind/dark alcoves in design/layout	Corridor are wide and have windows at each end 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 boom gate to access the entire site. Commercial/visitor car parking is at grade	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 to the south and east are compliant, being half of the required separation distances under the SEPP. Building separation to the east will become non-compliant should the adjoining proposed development alter its western boundary setback.	Yes

Layout to minimise direct overlooking of rooms/ private open spaces	The distance between habitable room windows to apartments to the proposed adjoining development at 659 Gardeners Road is 18m to balconies/habitable rooms. The corresponding levels are offset and the proposed western facade at 659-669 Gardeners Road is largely plant room at each level with opening limited to living room window and an obscure balcony return.	Yes
Use of site and building design element to increase privacy without compromising access to light and air	Adequate rear and side setbacks are provided to adjoining properties. Vertical fins are provided between adjacent balconies. Operable external louvres to the windows/balconies are proposed.	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.	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 width of 1.8m with service lift.	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>Required</p> <p>438 spaces are required as follows for the proposal:</p> <ul style="list-style-type: none"> • 395 residential; • 35 visitors; • 8 Commercial. <p>Proposed</p> <p>308 spaces are proposed as follows:</p> <ul style="list-style-type: none"> • 286 residential • 14 visitors • 8 Commercial 	No
Limit visitor parking on small sites where impact on landscape/open space is significant	242 apartments require 35 visitor spaces. There are 14 visitor spaces proposed at grade.	No

Preference to underground parking – where above ground parking is proposed the design must mitigate impacts on streetscape/amenity	Resident parking is located across two levels of basement parking. Commercial and visitor parking is located at grade and to the rear of the site.	Yes
Provision of bicycle parking easily accessible from ground level	Bicycle spaces are located on Basement Level 1 for each stage within proximity to the ramps and lifts.	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	Both units have internal access and given that Gardeners Road is not highly amenable, this is considered acceptable.	No-Acceptable
Maximise accessible, visitable and adaptable apartments – min. AS1428 requirements	10% of units (ie. 24 units) are adaptable. There is opportunity to ensure there are more adaptable units within the site.	Yes
Separate and clearly delineated pedestrian and vehicle entries	There is one vehicular access to the site from Gardeners Road. Pedestrian access is at this point and across the Gardeners Road frontage at five (5) other locations. 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 can be achieved in the future	Yes
<i>Vehicle Access</i>		
Max. driveway width = 6m	The driveway width at the Gardeners Rd boundary will be 15m down to 6m at the control gate.	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>		

<p><i>Studio:</i> Internal area = 38.5m² External area = 6m² <i>1 Bed cross through:</i> Internal area = 50m² External Area = 8m² <i>1 bed maisonette/loft:</i> Internal area = 62m² External area = 9.4m² <i>1 bed single aspect:</i> Internal area = 63.4m² External area = 10m² <i>2 bed corner:</i> Internal area = 80m² External area = 11m² <i>2 bed cross through:</i> Internal area = 89m² External area = 21m² <i>2 bed cross over:</i> Internal area = 90m² External area = 16m² <i>2 bed corner with study:</i> Internal area = 121m² External area = 33m² <i>3 bed:</i> Internal area = 124m² External area = 24m²</p>	<p>All units achieve the minimum internal areas.</p> <p>Single aspect apartment are limited to 10% of all apartment and confined to Building C</p>	Yes
Single aspect apartments max 8m depth from window	All single-aspect apartments are greater than 8m in depth.	No
Back of a kitchen max. 8m from window	The back wall to all kitchens are less greater than 8m from a window/balcony.	No
Cross over/cross through apartments over 15m - min. 4m width	All apartments have a minimum width greater than 4m.	Yes
Units to accommodate a variety of furniture arrangements, range of activities, household types, furniture removal/ placement	Most have a variety of furniture arrangements. Some apartments feature a 'flexible floor plan	Yes
Unit layout to respond to natural and built environment/ optimise site opportunities	Units layouts maximise solar access to living space. Highlight east-facing windows to the corner apartments are proposed.	Yes
Kitchen not main circulation space of unit	Kitchens are located centrally within most units, away from entry halls.	Yes

<i>Apartment Mix</i>		
Variety of unit types and appropriate mix dependant on population trends and location	Studio and 1 bedroom units equate to 37% of all proposed dwellings.	Yes
<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 with corner apartments having a splayed balcony with portions less than 2m in depth.	Yes
Balustrade design to enable views, casual surveillance, safety and visual privacy	Clear frameless balustrades are proposed.	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	Ceiling height of 2.85 metres	Yes
Ceilings allow better access to natural light by use of taller windows, highlight windows and fanlights.	There are 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 2.85m. The commercial floor space premises and lobby levels have a minimum ceiling height of greater than 4.3m	Yes

<i>Flexibility</i>		
Building over 15m long - multiple building entries and circulation cores required	Multiple building entries and circulation cores are provided to each building.	Yes
Unit layout accommodates changing use of rooms	24 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	Yes
<i>Ground Floor Apartments</i>		
Front gardens and terraces contribute to spatial/visual structure of street whilst maintaining privacy	Both units have POS facing Gardeners Road to increase privacy and create a buffer from Gardeners Road.	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	Street setback is 10 metres. Privacy is achieved with a 1.8m high timber fence integrated into landscape garden beds	Yes
Provision of private gardens accessible from living areas	Garden is directly accessible from the living room	Yes
High number of accessible and visitable units	There are only two ground floor units due to the high traffic nature of Gardeners Rd	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 2.85m.	Yes
Maximum number of units accessible from single core/corridor = 8	8 apartments accessible from each corridor.	Yes
Long corridors articulated	Corridors are short, safe and have windows for natural light	Yes
<i>Mixed Uses</i>		
Complimentary mix of uses compatible with locality	The proposed shop top housing 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 4.3m.	Yes
Max 10-18m building depth for residential/ smaller commercial uses	Commercial tenancy depth ranges from 4.3m – 14m	Yes
Separate commercial services (eg loading dock) from residential	Separate loading area for commercial tenancies.	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	Yes
No blank walls on ground level	Blank walls at ground level are not visible from the street and are at acute angles	Yes
Acoustic separation between uses (esp. for residential uses)	Stage 1 – Commercial tenancy is separated from the ground floor soho units by the residential entrance to the building and solid core walls. Stage 2 – Residential sites 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 <i>2 bed</i> = 8m ³ <i>3 bed & above</i> = 10m ³	100% of units achieve at least 50% of storage requirements within the units. 40% of the units achieve 100% of the unit requirements within the units.	Yes
Storage not within units appropriately secured	Basement storage is provided. Security of basement storage units will depend on the locks.	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 basement levels	Yes
Basement storage excluded from FSR calculations	The basement level storage is excluded from FSR calculations.	Yes
<i>Acoustic Privacy</i>		
Building separated from neighbouring buildings	Building separation is compliant with adjoining site to the east and south. The	Yes

	eastern building separation of 18m becomes non compliant if the proposed building at 659-669 Gardeners Rd is reduced.	
Like uses of adjoining units located together ie living rooms with living rooms, bedrooms with bedrooms	Adjoining apartments have like room uses	Yes
Storage/circulation spaces used to buffer noise	Internal storage areas/circulation areas 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)	<p>Stage 1 70% of units receive at least 3 hours of direct sunlight in midwinter</p> <p>79% of living rooms achieve 2 hours of solar aces in midwinter</p> <p>90% of balconies received 2 hours of direct sunlight in midwinter</p> <p>Stage 2 85% of living rooms and balconies achieve 3 hours of sunlight in midwinter</p>	Yes
Max. 10% single aspect units with southerly aspect (SW-SE)	Stage 1 = 9.8% single aspect apartments Stage 2 = 0%	Yes
Oriented to optimise northern aspect	Due to the orientation of the buildings the majority of apartments either have a northerly, eastern or western aspect	Yes
Direct daylight access to communal open space b/n March – September	Communal areas on Level 12 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 north/south aspect for natural ventilation.	Yes
Min. 60% units naturally cross ventilated	78% of all apartments have natural ventilation. A plenum system is provided to a number of units	Yes
Min. 25% kitchens access to natural ventilation	33% of all kitchens have immediate access to window	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 giving continuous cover and	A single awning is proposed to the commercial tenancy No. 1 facing Kent	Yes

complementary to existing awnings	Road, located on private domain.	
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 is strong horizontal and vertical framing elements with frameless glass balustrades, operable and fixed louvers 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 western elevations which orientate towards the Gardeners Road/Kent Road streetscape.	Yes
Important corners provided with visual prominence	Corner elements provide interest along the Gardeners Road frontage, whilst the curved facade to Kent Road reflect the gateway prominence of the site into Mascot from the inner west.	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	Each building 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. 452322M_02 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
Landuse Zone	N/A	The site is zoned B4 – Mixed Use under the BBLEP 2013.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Is the proposed use/works permitted with development consent?	Yes	The proposed <i>shop top housing</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	Building A = 45.6m Building B = 44m Building C = 42.5m Building A exceeds the 44m height limit by 1.65m. As such 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?	Yes	The proposed FSR is 3.2:1, which complies with Clause 4.4(2) of BBLEP 2013.
Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m ² min and maximum height of 22 metres and maximum FSR of 1.5:1?	N/A	The subject site is not located within an R3 or R4 zone.
Is the site within land marked "Area 3" on the FSR Map	N/A	The subject site is not identified as being within "Area 3" on the FSR map.
Is the land affected by road widening?	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.
The following provisions in Part 6 of the LEP apply to the development: 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 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.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
<p>6.2 – Earthworks</p> <p>6.3 – Stormwater management</p> <p>6.8 - Airspace operations</p> <p>6.9 – Development in areas subject to aircraft noise</p> <p>6.16 – Design excellence</p>		<p>Clause 6.2 – Earthworks. The proposed development involves bulk excavation to accommodate 2 basement levels. The development application has been accompanied by a Geotechnical Assessment. The development application is Integrated Development and in a letter dated 18 October 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.</p> <p>Clause 6.3 – Stormwater. The development application involves an underground On Site Detention system/rainwater tank for collection and reuse of rainwater for landscaping on site. The development is considered to be consistent with Clause 6.3 of BBLEP 2013.</p> <p>Clause 6.8 – Airspace Operations. The subject site lies within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority. The application proposed buildings to this maximum height and was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration. IN a letter dated 19 November 2013, SACL raised no objections to the proposed maximum height of 49.1 metres AHD. The development is considered to be consistent with Clause 6.8 of BBLEP 2013.</p> <p>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.</p> <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>

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		<p>The proposed FSR remains compliant with the 3.2:1 permitted under BBLEP 2013, however a compliant FSR is achieved at the cost of amenity for future occupants of the buildings and surrounding locality in terms of residential parking, which is significantly short and undersized units and private open spaces areas in respect of the provisions of BBDCP 2013.</p> <p>The bulk, scale and height of the proposed development is considered inappropriate in terms of building setbacks.</p> <p>Whilst the built form as proposed is contemporary in nature and presents an articulated façade providing enhanced interest to the streetscape and the precinct generally, the non-compliance in respect of parking, unit and balcony sizes unfortunately result in a design which jeopardises the amenity of its future occupants.</p> <p>On this basis, it is considered that the development application is inconsistent with Clause 6.16 of BBLEP 2013.</p>

Table 8 – BBLEP 2013 Compliance Table

Note 1 – 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 Building A at 45.6m, exceeds the 44m height limit permitted under Clause 4.3 of BBLEP 2013. As such, the applicant has submitted with this development application a Clause 4.6 variation to the height limit. The objection to the height control has been assessed in accordance with relevant case law and the applicant variation request is not supported in this instance for the reasons outlined below.

1. *Is the requirement a development standard?*

The subject height limit is a development standard contained in Clause 4.3 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.*

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

(2A) Despite subclause (2), if an area of land in Zone R3 Medium Density Residential or Zone R4 High Density Residential exceeds 2,000 square metres, the height of a building on that land may exceed the maximum height shown for the land on the Height of Buildings Map.

(2B) Subclause (2A) does not apply to land identified as “Area 1” on the Height of Buildings Map.

(2C) Despite subclause (2), if an area of land identified as “Area 2” on the Height of Buildings Map has a site area exceeding 1,900 square metres, the maximum height for a building on that land may exceed the maximum height shown for the land on the Height of Buildings Map by no more than 2 metres.

The Applicant provides the following comments in respect of each objective:

- (a) *The proposed development seeks to develop in accordance with the Mascot Station Precinct Masterplan and DCP. In the position where the height limit is exceeded, the Masterplan and DCP envisage a landmark gateway element in the order of 13 storeys, which is to appear more substantive than other built form in the immediate vicinity. Floor to ceiling heights of 3.05m are proposed, which is greater than the standard or minimum ceiling height of 2.7 metres. This is to achieve adequate solar access and ventilation to the proposed units.*
- (b) *The proposed building is generally located in the location set out in the Masterplan (with some increased setbacks to the street to retain existing vegetation). The height non compliance is located at the landmark corner position and meets the objective that taller buildings are appropriately located. The tallest element is located where the Masterplan locates the tallest building on the site.*
- (c) *The desired future character of the area includes signaling the northwest gateway to the Mascot Station Precinct (that is the intersection of Gardeners Rd and Kent Rd) via a landmark tower element which emphasises the distinctive curvilinear character of the corner.*

The proposed height of the building only gives rise to a minor non compliance. The height contributes to the scale of the corner element of the building, setting it off from levels below and achieving a building silhouette, which achieves a landmark gateway element at the corner.

- (d) *The height non compliance at the corner does not disrupt any views, create a loss of privacy to neighbouring sites or other portions of the subject site, does not increase overshadowing to existing development.*

The desired future character of the site includes a visually interesting and prominent element at the corner of Gardeners Rd/Kent Rd. The emphasis created at Building A through scale and the curvilinear forms of the tower achieves this objective. The corner however is setback from the public domain and well screened by trees, which minimizes view impacts from the public domain. The tower is at the southern side of the street and this will not affect solar access to the public domain. The screening and setback reduce the impact of the tower on pedestrians in the public domain.

The uppermost storey of Building A is setback from the roof below at the southern side. This minimizes any shadow or visual impact when viewed from the south which shall include the neighbouring sites as well as the future envisaged public domain including the new road and park.

- (e) *The proposed landmark element at the corner of the site is set out in the Masterplan and this small area of additional height contributes to the legibility of the centre positively. This element helps to create a gateway to the precinct when viewed from outside the precinct. When viewed from inside the precinct, that is to the south and east, the visual impact of the additional height is minimized. The upper most storey of Building A is setback from the roof below at the southern side. The additional height also*

acts as a design feature to integrate the lift overrun into the fabric of the building to avoid any unsightly lift overrun or services on the roof when the building is viewed from the south.

Comment: The Applicant has identified the underlying object or purpose of the standard. The Masterplan, which now forms the BBDCP 2013 envisages a 13 storey tower at the location proposed. The DCP also envisages that the other two eastern towers be set at a height of 9 storey. Under the current design, Building B & C are each 12 storeys. Therefore the variation in height envisaged in the DCP is not achieved as there is only one level difference between the tower and Building B when viewed from Gardeners Road east.

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

(a) *The proposal meets the objectives of the development standard notwithstanding its non-compliance with the standard. In this instance one must determine the objectives of the standard and if not expressly stated in the LEP what are the inferred objectives?*

The Applicant claims that compliance with the height standard of 44 metres is unreasonable and unnecessary in the circumstances of the case on the following grounds:

The proposed development achieves a diverse mix of uses and unit types and is fully consistent with the objectives of the sites mixed use zoning. The proposed development responds to current market conditions and addresses the call from the Department of Planning to provide more housing in well serviced locations rather than at the urban fringe.

The extent of the non compliance of the development control is relatively minor, with the majority of the buildings on site being well below the 44m height limit.

The proposed unit mix and yield has been considered in detail by the consultant team to achieve a viable and economically sound mix of uses for this particular site. The floor to ceiling heights proposed are more generous than that set out in the RFDC. This increases solar access and natural ventilation and provides tolerance in slab thickness and areas for servicing to ensure the proposed buildings are buildable.

The designs nominated structure is robust and flexible. This structure will allow for changes of use within the building to respond to changing market and housing demand in the future.

In terms of obtaining the objects of Section 5(a)(i)(ii), while there are no ecological communities on the subject site, the contribution of the proposed development to urban consolidation has a flow on effect to the general viability of species habitats, in that, if urban consolidation is achieved, the release of land at the urban periphery will be reduced and create less pressure on significant habitats existing on non-urban land.

Comment: The applicant's justification is not supported in this instance. The proposed development results in a significant lack of off street car parking for the majority of the two bedroom units and this is unacceptable. Furthermore, the unit mix does not comply with the 35% minimum under BBDCP 2013, being 37%. In addition to this, the unit sizes do not comply with the minimum units sizes specified under BBDCP 2013.

Building separation issues under SEPP 65 arise at the eastern edge of the site with the proposed development at 659-669 Gardeners Road and the setbacks, site layout, and future site boundaries are all inconsistent with BBDCP 2013. Ultimately, the proposed development will not provide sufficient amenity for its future occupants and as such, a request to vary the height control is not appropriate in instances where significant amenity controls are being thwarted.

Therefore, it is considered that the proposal does not satisfy the underlying objectives for the height control, as the built form has not been developed in a cohesive or coordinated manner.

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

The underlying objectives and purposes of the height control remain relevant to the proposed development. The proposed development is inconsistent with the objectives of the height control 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 applicant has provided the following justification to demonstrate that the underlying objectives of the height control Clause 4.3 of BLEP 2103 would be thwarted or defeated if compliance were required:

- *The area of the building which does not comply with the standard is small;*
- *The extent of non compliance is minor;*
- *The location of the non compliance eliminates environmental impacts on the surrounding area given the location of the non compliance on the site. This is achieved by locating the area of non compliance away from the southern boundary and setting the portion of the building back from the level below. This in effect minimises visual impact of the additional height when viewed from the south and minimises shadow impacts as the area of additional height cast a shadow over the roof of the level below, not on surrounding sites;*
- *The majority of built form on the site is well below the LEP height limit of 44m as follows:*

Building B (Level 13(which is a partial storey))

Lift overrun – 42.8m

Parapet – 41.4m

Roof – 44m

Building C (Level 13(which is a partial storey))

Lift overrun – 42.9m

Parapet – 41.9m

Roof – 41m

- *The non compliance allows the building to emphasise the corner through differences in scale when compared to other building on the site;*
- *The proposed development meet the objectives of Clause 4.3 of the LEP;*
- *The proposed development achieves the desired future character of the Mascot Station Precinct by creating a gateway element at the corner of the site and defining the intersection of Gardeners Rd/Kent Rd.*

Comment: As previously stated, the proposed development does not meet the objectives of Clause 4.3 as the built form proposed has not been developed in a cohesive or coordinated manner. This has resulted in a development being proposed which has a significant shortfall of off street car parking. The building separation to the proposed adjoining building to the east is complying at 18m, however should the proposed building at 659 Gardeners Road be required to reduce its western setback, then the separation distance becomes non complying and potentially introduces both overshadowing impacts and privacy issues.

The proposed ceiling heights of 3.05m for residential units and 4.3m for ground floor commercial are excessive and could be reduced to accommodate additional level of basement car parking required to achieve an appropriate level of car parking for future residents.

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

The applicant's rationale, being that the development standard has been virtually abandoned or destroyed by Council's own actions, is not supported. Their key rationale includes:

- Whilst the proposal exceeds the numeric height control, it is consistent with the 13 storey envisaged for this part of the subject site.
- Other developments have been approved in the area which exceed the height control.

Comment: The variation sought is considered inappropriate in this instance. The overall built form proposed requires further consideration in respect of building separation, setbacks, off street car parking, unit/balcony sizes and unit mix.

4. Is the objection well founded?

It is considered that the proposal is inconsistent with the underlying objectives of the standard identified in 2 above.

The Applicant, in addressing this question, states that the proposed development seeks additional height while complying with FSR and providing the required car parking. This is not correct. The FSR proposed at 3.2:1 is consistent with BBLEP 2013, however as previously stated, the shortfall in off street car parking is significant to the point that the majority of two bedroom units proposed (a total of 152) is only afforded one (1) car parking space, where two (2) are required under BBDCP 2013. This will have a significant adverse impact on the local road network and on the amenity of the future occupants of the development.

It is acknowledged that the height of Building A attempts to provide a tower element to the gateway location on Kent Road, however the height of Building B & C are not consistent with the heights identified in BBDCP 2013, which limit the height of these buildings to 9 storeys. As such, the tower element is not as strongly emphasised as that envisaged in the DCP.

Therefore, in accordance with Clause 4.6(4)(a)(i) and (ii), it is considered that the Applicant has not adequately addressed the matters required to be demonstrated under Clause 4.6 and it is considered that the proposed development is not in the public interest as it is inconsistent with the objectives of the standard, the objectives for development stipulated in BBLEP 2013 and is inconsistent with the development controls in BBDCP 2013.

Note 2 -Design Excellence

The proposed built form is a part 13 and part 12 storey tower to Gardeners Road and Kent Road and a 12 storey tower at the eastern part of the site fronting Gardeners Road. This is not consistent with the envisaged adjoining development to the east in terms of building mass, height and setbacks/separation distances. Overall, the built form is inconsistent with the urban block controls set out in Part 9A of BBDCP 2013. The multitude of non-compliances results in a built form which does not achieve an overall level of amenity in respect of visual amenity impact and overshadowing. The recommendations made by the Design Review Panel in July 2012 have not been fully incorporated into the design currently before the Panel in respect of height variation to Buildings A & B and the lowering in height of Building C and podium continuation.

The proposed development fails to satisfy Clause 6.16 as the character and design of the development are inconsistent with the desired future character envisaged for the Urban Block precinct under BBDCP 2013.

The objectives and provisions of BBLEP 2013 have been considered in relation to the subject development application. The proposal is considered to be inconsistent with Clause 4.6(4) of the BBLEP 2013 in respect of height and is considered to be inconsistent with Clause 6.16 – Design Excellence.

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
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 Buildings Map and Clause 4.3 of the Botany Bay Local Environmental Plan 2013.	Building A = 45.6m Building B = 44m Building C = 42.5m Building A exceeds the 44m height limit by 1.65m. As such a Clause 4.6 variation has been submitted. Refer to discussion below.	No – Refer to Note 1
	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.	Building C exceeds 9 storeys Building B exceeds 9 storeys Building A complies at 13 storeys, however this building exceeds the 44m height control as detailed above.	No – Refer to Note 1
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 3.2:1 (22,963m ²)	Yes
	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.	The development does not comply with the four storey form on the eastern boundary adjoining 659-669 Gardeners Road. The required 4 storey form between Building A and B has not been incorporated into the design. The provision for the New Street to extend into the site and provide vehicular access to the western part of the site has not been accommodated and this has jeopardised the setbacks for the eastern building and compromised amenity to the adjoining proposed development to the east. The staging of the development locks in the building blocks and results in a development which will not relate to the New Street, or surrounding development.	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.	Both lots are amalgamated as per Control C1	Yes

	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 proposes the re-subdivision of the lots, so that Building C (Stage 1) sits alone on a smaller new allotment and the remainder of the site on a larger allotment.	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.	<p>The average and minimum setbacks to Gardeners Rd and Kent are achieved.</p> <p>The 3m setback of Building C (Levels 1-4) to the new alignment of the required public open space area will be achieved.</p> <p>For Levels 5-13, the average setback of 6m (minimum of 5-7m) will not be achieved as the upper levels are not setback and are maintained at 3m, adversely impacting on the public domain area in terms of scale.</p>	<p>Yes</p> <p>Yes</p> <p>No – Refer to Note 3</p>
	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.	<p>Section BB in Figure 37 applies to the subject site.</p> <p>There is no defined podium when viewed from the south. The 22m distance between Building B & C is achieved; however the upper levels are not setback to assist with the impact of scale on the pedestrian environment.</p>	No – Refer to Note 4
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.	<p>The side and rear setbacks required under Figure 11 for the subject site are not compliant.</p> <p>The southern setback for Building A is acceptable.</p> <p>The southern setbacks for Building B & C are not achieved as at grade car parking and driveway access dominates the southern setback area.</p> <p>The eastern setback for Building C is not consistent with that depicted in Figure 11, which recommends a four storey building on the boundary at the street edge and a 9 storey tower located behind with a far greater setback from the southern boundary than currently proposed.</p>	No – Refer to Note 3
9A.4.3.6 – Building Separation	C1 Mixed Use developments containing residential units must comply with the principles and provisions of State Environmental Planning Policy No. 65 (SEPP65) and the RFDC.	Building C complies in that its separation distance is 18m between habitable rooms/balconies to the proposed adjoining development at 659 Gardeners Road to the immediate east.	Yes – however subject to DA13/135 remaining unchanged
9A.4.4.4 Active Street	C1 All development within Urban Blocks 1, 3 and 4 must provide retail	Commercial tenancies are provided to the Kent Road and Gardeners Rd	Yes

Frontages and Awnings	or commercial street frontages where shown in Figures 49, 50, 51 and 52.	frontages, however these are not at the street edge, due to the retention of existing significant trees. The presence of two ground floor residential units in Building C is not consistent with the definition of an active street frontage under BBLEP2013. The subject site is not required to have an active street frontage under BBLEP 2013.	
	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 9am, 12 noon and 3pm for both solstices. Additional building setbacks may be required where internal site shadow impacts or impacts on adjoining properties are considered by Council to be unreasonable.	Shadow diagrams have been submitted for winter solstice. These indicate that there is overshadowing of the future built form blocks to the southern and eastern adjoining properties. The adjoining property to the south receives no direct sunlight to its lower and mid levels at all throughout the day on June 21, however the diagrams submitted would need to be further developed in order to ascertain the exact level of impact.	No – Refer to Note 5
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 adjoining properties or the public domain areas (existing or future)	Yes
9A.4.4.7 Dwelling Size and Mix	C1 Dwellings are to have the following minimum areas: Studio: 60m ² 1 bedroom: 75m ² 2 bedrooms: 100m ² 3 bedrooms: 130m ²	The majority of the units proposed are undersized, as follows: Studios 56-58m ² 1 Bedroom 69-75m ² 2 Bedroom 93-97m ² 3 Bedrooms - 154 m ²	No – Refer to Note 6 Yes
	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 37%	No – Refer to Note 6
9A.4.4.8 Landscaped Area	C8 Developers are required to execute all nominated proposed public domain works identified on Figures 57, 58, 59 and 60, including landscaping works.	Provision is made within the proposed development for the required public domain area that traverses the subject site. This provides a pedestrian through link	Yes

		<p>from Gardeners Road south towards the New Street. The applicant states in a letter dated the 31 January 2014 that this open space area will be retained in private ownership.</p> <p>The amenity of the future open space area is however questioned as the upper levels of the Buildings B & C (which exceed the recommended heights in the DCP) are not setback at the upper levels.</p>	
	C9 Public parks must generally contain a minimum of 80% of deep soil area, and support planting of large scale trees. The remaining 20% may contain pavement area or hard surfaces. The 80:20 ratio can be flexible depending on the design of space.	Limited deep soil area available for the open space area, which is predominantly located over basement and not specifically required to be dedicated as public land.	No – Refer to Note 7
9A.4.4.9 Private Open Space and Communal Open Space	<p>C2 The minimum private open space requirement per dwelling for multi dwellings and residential flats are as follows:</p> <p>Residential Flats: Studio and 1 bedroom: 12m² 2 Bedrooms: 15m² 3 bedrooms: 19m²</p>	<p>Studio = 9m² 1 bedrooms = 15-27m² 2 bedrooms = 11-30m²</p>	No – Refer to Note 8
	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.	35% of site area (ie. 2,511m ²)	Yes
	C7 More than 70% of the communal open space area should be capable of growing plants, grasses and trees.	70% of communal open space is capable of growing plants, grasses and trees.	Yes
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><u>Required</u></p> <ul style="list-style-type: none"> Commercial/ 475m² ÷ 60 = 8 spaces Studio/ 54 x 1 space = 54 spaces 1 bedroom/ 35x 1 = 35 spaces 2 bedroom/ 152 x 2 = 304 spaces 3 bedroom/ 1 x 2 = 2 spaces Visitor/ 1space per 7 units = 35 spaces <p>Total = 438 spaces</p> <p><u>Proposed</u></p> <ul style="list-style-type: none"> Commercial = 8 spaces Studio = 54 spaces 1 bedroom = 35 spaces 2 bedroom = 174 spaces 3 bedroom = 2 spaces Visitor = 35 spaces <p>Total = 308 spaces</p>	No – 130 spaces short. Refer to Note 9
9A.4.5.4 Solar Access and Shadow	<p>C3 Development must demonstrate:</p> <p>(i) Neighbouring developments will obtain at least three hours of</p>	The proposed development at 659-669 Gardeners Road adjoining to the	Yes

	<p>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 will achieve 3 hours of direct sunlight for its private open space areas or 50% of habitable room windows. A number of the western end units private open space balconies and living room windows of the southern building will be affected by overshadowing from proposed Building C.</p> <p>Communal open space at 659 Gardeners Road will be in shadow between the hours of 9:00am and 3:00pm. This shadow is cast by its own proposed northern building.</p> <p>To the south at 3-7 Kent Road, no specific plans are available for this site at present, however the shadow diagrams submitted indicate that some overshadowing of the lower levels will occur throughout the day. As stated before, the diagrams need further consideration of potential built form to ascertain the exact level of impact.</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 Pedestrian Wind Environment Statement has been submitted with the application prepared by Windtech and dated 31 October 2013.</p> <p>The submitted report does not identify specific wind criteria, however states that the Level 12 communal terraces, the ground level corridor between Building A & B and the central public domain area may potentially be exposed to adverse wind conditions and recommends specific measures be incorporated into the design to mitigate against these effects.</p>	Yes, subject to design measures
9A.4.6.3 Fencing	<p>C1 Where fencing of the front boundary is proposed for Multi dwellings and Residential flat buildings the design must consider the following:</p> <p>(i) Solid metal panel fences (colourbond/sheet metal) of any height are not permitted along street frontages;</p> <p>(ii) Masonry/brick fences over 600mm and timber/steel picket/palisade or plain picket fences over 1 metre high may be permitted. The design of fencing over 1 metre in height must take into consideration</p>	<p>1.8 metre high fencing to screen the two ground floor soho units. This is located behind landscape screen planting.</p> <p>A smaller timber and fire fence of approximately 1m height is proposed to part of the pedestrian paths within the front setback open space area.</p>	Yes

	<p>sightline issues when exiting this or adjacent properties. The design of the fence can be modified by setback or by using splays at least 1 metre x 1 metre in size;</p> <p>(iii) A mixture of materials is preferable with a maximum of 60% solid material over the whole fence surface;</p> <p>(iv) Design should consider the need for horizontal rhythms along the street such as vertical entry elements, boundary markers or fence post frequency;</p> <p>(v) Where possible, the design should avoid the use of continuous lengths of fencing (a maximum of 6 metres without articulation) at the street frontage;</p> <p>(vi) Access gates shall be hung so that the direction of swing is inward; and</p> <p>(vii) Satisfactory provision shall be made for access to public utility installations.</p>		
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Table 10 – BBDCP 2013 Compliance Table

Note 1: 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 proposed development has not adequately addressed the built form objectives and is out of scale with the desired future built form envisaged in the DCP. The development has neglected to address the interface between its eastern face and the adjoining property to the east by proposing a 12 storey tower within 12 metres from the eastern boundary with no variation in setback or stepping in of the levels. As such, the increased height across the site will have an adverse impact on the streetscape amenity (particularly when viewed from the future open space area and New Street from the south), privacy and overshadowing.

Control C1 of Section 9A.4.3.1 states that the maximum height of buildings must be in accordance with the Height of Buildings Map and Clause 4.3 of the BBLEP 2013.

The Height of Building Map in BBLEP 2013 limits the height of buildings for the subject site at 44m. The proposed height of Building A will 13 storeys having an overall height above natural ground level of 45.6m, with exceeds the 44m height limit.

The applicant has submitted a Clause 4.6 variation to the maximum height which is discussed in detail in this report. The variation request is not supported in this instance due to the overall design not being in accordance with the block controls specified in the BBDCP 2013, the significant shortfall in off street car parking spaces, and the resulting privacy/overshadowing impact to the site to the south.

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

In addition to the height of Buildings Map under BBLEP 2013, BBDCP 2013 specifies the additional height requirements for sites. In this instance, Control C3 states that development must conform to the maximum height of buildings in storeys as indicated in Figure 16, which limits the height of Building B & C to 9 storeys. A 4 storey form is envisaged between Building A & B and between Building C and the eastern boundary to 659-669 Gardeners Road.

The development application does not incorporate the 4 storey forms required nor the overall storey limit, by proposing two towers at 12 storeys each. This results in the issues of bulk and scale, overshadowing and privacy, which is exacerbated by the proposed reduction in the eastern “Building C” setback.

On this basis, it considered that the non compliance with the height of buildings specified in the Part 9A.4.3.1 is unacceptable and is not supported in this instance.

Note 2 – Floor Space Ratio

The objectives of FSR in Section 9A.4.3.2 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 provide appropriate bulk and scale relationships between buildings within the Mascot Station Town Centre Precinct;*
- O3 To ensure development has minimal impact on neighbouring properties in terms of the potential loss of views, loss of privacy, overshadowing or visual intrusion.*

Whilst the proposed FSR of 3.2:1 is consistent with that permitted under BBLEP 2013, the proposed scale of the new buildings on the subject site is inappropriate and inconsistent with the objectives and controls of Section 9A.4.3.2 in that the four (4) storey forms have not been incorporated into the design and Buildings B & C are increased in height from 9 storeys to 12 storeys and Building C is not positioned in the manner envisaged in the DCP to assist in reducing overshadowing and privacy impacts to the east.

Control C3 of Section 9A.4.3.3 states that *development must comply with the future layout and built form controls for Urban Block 1 in Figure 11. This may result in the FSR not being achieved.*

The height and building footprints depicted in Figure 11 encourage a higher built form to the western part of the site at 13 storeys, tapering down to 4 storeys between Buildings A & B, Building B at 9 storeys, and Building C at 9 storeys, tapering back to 4 storeys at the eastern boundary.

As mentioned throughout this report, the 4 storey form is not incorporated in either Building B & C which are each 12 storey, with Building C being positioned 12 metres from the eastern boundary. The issues of building separation, privacy, scale and overshadowing have not been adequately addressed in the current design which fails to ensure adequate amenity for its future occupants and that of the adjoining development sites.

Note 3 – Street Setbacks

The objectives for street setbacks in Section 9A.4.3.4 are as follows:

- O1 To provide for new buildings that spatially define street with well lit articulated facades;*
- O2 To define the street edge at the ground and lower levels of the retail and commercial areas;*
- O3 To reduce bulk, ensure adequate exposure to sunlight and ventilation and create the opportunity for visual and acoustic privacy at the upper levels of mixed use buildings;*
- O4 To provide a threshold which creates a transition between public and private space for residential flat buildings;*
- O5 To enable residential flat buildings to be situated with a landscaped setting;*
- O6 To ensure new development is compatible with the desired future streetscape character;*
- O7 To create cohesive streetscapes with consistent building alignments particularly at ground level; and*
- O8 To enable well articulated and stepped building facades at upper levels.*

The subject site is required to provide a public domain open space area traversing from north to the New Street at the southern boundary. Provision has been made for this over the proposed basement carpark. Apart from providing the required 3m setback to the open space area from both Building B & C, the proposal does not incorporate increased setbacks at the upper levels, which adversely impacts on the amenity of the space in the future. This is unacceptable due the visual impact of such a scale on the pedestrian environment, making the open space area inhospitable. The submitted wind assessment report highlights that this area will be subject to adverse wind conditions, which could be reduced through greater setbacks. Overshadowing of the public domain area occurs between 9:00am and 10:00am and again between 1:00pm to 3:00pm.

Control C1 and C4 of Section 9A.4.3.4 states that all development within Urban Block 1 must comply with the street setbacks and Section plans identified in Figure 30, 31 and 37.

As stated in the table above, the upper levels of Buildings B & C must be setback a minimum of 5-7m, an average of 6m from the public domain boundary. The application proposes a 3m setback for all levels of both towers, which does not comply with the setbacks required in Figure 30, 31 and 37. The proposed setbacks will contribute to the impacts of scale, overshadowing and plant growth within the public open space area which is not supported in this instance.

Note 4 – Building Separation

The objectives for building separation under Section 9A.4.3.6 are as follows:

O1 To ensure future developments provide for buildings with appropriate massing and separations between buildings to provide amenity.

The proposed development provides half of the SEPP65 required building separation distances to the southern boundary and eastern boundary. However, under Figure 11 of BBDCP 2013, it is envisaged that the adjoining future development to the immediate east at 659-669 Gardeners Road would be built within 6m of the shared boundary. At present, this is the current setback proposed under Development Application No. 13/135. The setback and position of proposed Building C is not consistent with those depicted in Figure 11 or Figure 16 and as such, a twelve (12) storey building is now proposed along the eastern boundary with a setback of 12 metres. This results in a complying 18m building separation between the two buildings, however this may become non-complying if the adjoining proposed building has a reduced western boundary setback, which may give to amenity issues in terms of loss of privacy, visual impact and overshadowing. On this basis, it is considered that the proposed development is not consistent with Part 9A.4.3.6

Note 5 - Solar Amenity

Control C3 of Section 9A.34.5.4 states that development must demonstrate that:

- (a) Neighbouring development will obtain at least three hours of direct sunlight to 50% of the primary open private space and 50% of windows to habitable rooms; and*
- (b) 30% of any common open space will obtain at least two hours of direct sunlight between 9:00am and 3:00pm on June 21.*

In accordance with Section 9A.4.5.4, shadow diagrams have been submitted for winter solstice. These indicate that there is excessive adverse overshadowing of the future built form blocks to the southern and eastern adjoining properties.

The adjoining property to the south receives no direct sunlight to its lower and mid levels at all throughout the day on June 21.

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

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

Comment: The site is located within the Mascot Station Precinct, identified as a high density mixed use commercial/residential area and accordingly, it is unreasonable to expect that adjoining properties will retain existing sunlight. The site is bound to the north and west by Gardeners Rd/Kent Road with an existing stand of significant mature trees along the frontage. Existing development to the south and east is warehouse buildings, however as with the subject site, it is envisaged that these properties will be redeveloped in the near future for high density residential flat development. For 3-7 Kent Road to the south, BBDCP 2013, envisages three (3) x 13 storey tower buildings with storey forms between (a mirror image to that envisaged at the subject site). For 659-669 Gardeners Road Development Application No. 13/135 proposes a 9 storey tower fronting Gardeners Road and a 12 storey tower at the rear fronting a New Street. It is noted that the openings on the western elevation of both buildings are limited, with only a dining room/living room window proposed for the north building.

Shadow diagrams have been submitted which indicate that the adjoining developments to the south will be affected by overshadowing to the lower and mid levels of its future buildings throughout the day on June 21. The area of concern in terms of overshadowing from Building C is the south-western units for the northern building. The north facing units of the southern building would be expected to receive in excess of 2 hours sunlight between 9:00am and 3:00pm. This will be overshadowed by its own northern building at the lower levels throughout the day, together with the communal open space area between its proposed northern and southern building.

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

Comment: The proposed design may result in adverse overshadowing to the future buildings at 3-7 Kent Rd to the immediate south. No specific plans are available for this site at this stage. The submitted shadow diagrams indicate that the lower and mid levels of the northern building will be in shadow throughout the day on June 21. The width and length of the shadow could be significantly reduced if the mid section of Buildings A and B were to be lowered as envisaged in the DCP. In addition, the entire footprint of Buildings A & B could have a reduced setback to Gardeners Road, without adversely affecting the existing trees.

- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For*

larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.

Comment: As submitted on the aerial perspective shadow analysis, any future north facing glazed areas to the future buildings at 3-7 Kent Road will be in shadow between 9:00am and 3:00pm and will therefore not achieve a minimum of 2 hours sunlight during the winter solstice.

The west facing dining room and living room windows proposed under DA13/135 will be in shadow between the hours of 2:00pm to 3:00pm, receiving a limited amount of direct solar access at an acute angle between 12 noon and 2:00pm.

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

Comment: The private open space areas proposed under DA13/135 at the upper levels of its rear northern building will be affected by the proposed development, between 1:00pm and 3:00pm. Due to the design and orientation of the proposed development, any future north facing private open space balconies to be located at 3-7 Kent Road will be overshadowed by the proposed development from 9:00am to 3:00pm. Therefore, its private open space balconies will not achieve acceptable amenity in respect of solar access.

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

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

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

Comment: The area is a high-density locality currently undergoing significant re-development centred on Mascot train station. The adjoining properties to the south and east are yet to be redeveloped, however Development Application No. 13/135 is currently under assessment for 659-669 Gardeners Road and 3-7 Kent Road are at the preliminary design stage. The potential for increased density and height for buildings within the precinct from what was permitted under BLEP 1995 is now a reality as BBLEP 2013 was gazetted on the 21 June 2013.

The following table indicates the proposed unit mix.

	TOTAL	Dwelling Mix
Studio	54	22.3%
1 bedroom	35	14.4%
2 bedroom	152	62.8%
3 bedroom	1	0.4%
TOTAL	242	100%

Table 11 – Proposed Unit Mix

The objectives for dwelling size and mix under Section 9A.4.4.7 are as follows:

O1 To ensure housing choice is encouraged through the provision of an appropriate mix of dwelling sizes.

As indicated in the above table, the proposed dwelling mix does not comply with the minimum 35% studio and one bedroom units under Control C2 in the BBDCP 2013. The proposed unit mix is considered inappropriate. The applicant argues that the DCP control is a non statutory guideline and that variation is therefore considered acceptable.

The following table provides a comparison of unit mix throughout Mascot Station Precinct.

Address	FSR Control	Approved FSR (BBLEP 1995)	Approved Unit Mix	Approval Date
214 Coward Street (JRPP Application)	2.5:1	4.5:1	Studio/1 bedroom = 16 units (12.6%) 2/3 bedrooms = 111 units (87.4%)	16 December 2010
230 Coward Street (aka 25 John Street)	2.5:1	4:1	Studio/1 bed = 26 units (27.3%) 2/3 bedroom = 69 units (72.7%)	23 August 2006
3-9 Church Avenue	2:1	2.08:1	Studio/1bed = 36 units (24%) 2/3 bedrooms = 116 units (76%)	21 May 2008
13A Church Avenue	2:1	2.36:1	1 bedrooms = 20 (38%) 2/3 bedrooms = 32 (62%)	30 June 2009
10-14 Church Avenue & 619-629 Gardeners Road (JRPP Application)	2:1	2.52:1	Studio/1 bedroom = 178 units (35.6%) 2/3 bedrooms = 322 units (64.4%)	3 August 2011
1-5 Bourke Street	3.3:1	3.35:1	1 bedrooms=22 units (19%)	11 August 2004

Address	FSR Control	Approved FSR (BBLEP 1995)	Approved Unit Mix	Approval Date
			2/3 bedrooms=93 units (80%)	
7 Bourke Street & 30-32 John Street	2.9:1	4.16:1	1 bedroom = 23 units (40%) 2/3 bedrooms = 35 units (60%)	13 January 2011
24-26 John Street	2:1	3.46:1	1 bedroom = 20 units (56%) 2/3 bedrooms = 16 units (44%)	6 September 2009
8 Bourke Road & 37 Church Avenue (Court Approval)	3.3:1	4.24:1	Studio/1bedroom = 35 units (16.7%) 2/3 bedroom = 174 units (83.3%)	13 May 2009
208-210 Coward Street (JRPP Application)	2.5:1	4.44:1	Studio/1 bedroom = 35 units (24%) 2/3 bedrooms = 112 units (76%)	5 December 2011
5 Haran Street (Court Approved)	2:1	3.4:1	1 bedroom = 8 units (26.6%) 2/3 bedrooms = 22 units (73.3%).	June 2013
103-105 O’Riordan Street, Mascot	2:1	3.16:1	Studio/1 bedroom = 28 units (56%) 2/3 bedrooms = 22 units (44%)	June 2012

Table 3 – Comparison of Unit Mix within Mascot Station Precinct

Where any variation is supported, this should be considered against areas of compliance. In this regard, the majority of units proposed under this application do not comply with the minimum unit sizes required under Section 9A.4.4.7.

Control C1 specifies the following minimum unit sizes:

Studio = 60m²
1 bedroom = 75m²
2 bedroom = 100m²
3 bedroom = 130m²

As detailed in the tables to this report, the majority of units do not meet the minimum unit sizes ranging in size from:

Studios 56-58m²
1 Bedroom 69-75m²
2 Bedroom 93-97m²

It is therefore considered that the proposed development will not provide adequate internal amenity for its future occupants and does not contribute to the mix of

housing encouraged within the precinct. On this basis, the proposed development is inconsistent with Part 9A.4.4.7 of BBDCP 2013.

Note 7 – Landscaped Area

The proposed development incorporates a central open space area located above basement car parking. Figure 57 of BBDCP 2013 identifies this space as a shareway for pedestrians and residents to access the precinct to and from the south, once the New Street is established. The DCP does not specify whether this is to be dedicated to Council. The Applicant states in letter dated 31 January 2013, that this land is to remain as a semi private area with public access to remain in private ownership.

It is preferable that this land be dedicated to Council as public open space, as ongoing maintenance and liability will be in the control of the private realm or future strata corporations. Alternatively, easements would need to be created to ensure ongoing public access through the site to and from Gardeners Road.

Note 8 – Private Open Space

The objectives for private open space under Section 9A.4.4.9 are as follows:

- O1 To provide residents with opportunities for both passive and active recreation;*
- O2 To enable residents to have a pleasant outlook;*
- O3 To maximise provision of deep soil areas.*

The proposed development does not meet the minimum balcony sizes required under Control C2, which are as follows:

Studio and 1 bedroom: 12m²
2 Bedrooms: 15m²
3 bedrooms: 19m²

The proposed balcony sizes have the following range:

Studio = 9m²
1 bedrooms = 15-27m²
2 bedrooms = 11-30m²

It is considered that the amenity of future occupants of the building will be reduced by the undersized balcony sizes. This is in addition to the undersized units and the lack of car parking for two bedroom units. On this basis, the proposed balcony sizes are unacceptable and the proposed development is inconsistent with Part 9A.4.4.9 of BBDCP 2013.

Note 9 – Car Parking

The objectives of car parking under Section 9A.4.4.11 are as follows:

- O1 To maintain pedestrian access to generally continuous lengths of active frontages or residential ground floor entries;*
- O2 To provide safe and legible car access to buildings throughout each urban block within the Town Centre Precinct.*

Control C1 of Section 9A.4.4.7 requires the following car parking provision for the proposed development:

	Required Spaces	Proposed
1 space/ Studio	54	54
1 space/1 bedroom	35	35
2 spaces/ 2 bedroom	304	174
2 spaces/ 3 bedroom	2	2
Commercial 1space/60sqm	8	8
Visitor spaces = 1 space per 7 units	35	35
TOTAL	438	308

Table 12 – Required and Proposed Car Parking

As can be seen from the above table, there is a significant shortfall of one hundred and thirty (130) off street car parking spaces for the proposed development, where a large number of two (2) bedroom units are allocated only one (1) space. This is considered unacceptable as it increases pressure on the local streets for on street parking. Both Gardeners Road and Kent Road carry an excessive amount of traffic and there is no provision for on street parking on these roads. The site is bound by these two roads, which creates an unsafe pedestrian environment.

The shortfall of off street car parking at a site located at the edge of Mascot Station Town Centre Precinct is not supported as it will adversely affect the amenity of future occupants of the building, existing and future occupants of nearby and adjoining sites and will contribute to the existing on street car parking problem within the locality. Therefore, it is considered that the proposed development is not acceptable in terms of off street car parking and is inconsistent with Part 9A.4.4.11 of BBDCP 2013.

(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 will have a significant adverse environmental, social or economic impacts on the locality in respect of inadequate off street car parking, building separation at the eastern elevation of Building C and in respect of non-compliant unit sizes required under BBDCP 2013.

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

These matters have been considered in the assessment of the development application. The subject site is currently used for food manufacturing, storage, packing and distribution. 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 shop top housing 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 as a result of the proposed development in its current form and the resulting amenity impacts arising from the numerous non compliances, the site is not suitable for the proposed development. The proposed development is inconsistent with the objectives and controls specific to this site under Botany Bay Development Control Plan 2013 (BBDGP 2013) in respect of height, bulk, scale, privacy and overshadowing; unit sizes, unit mix, balcony sizes, car parking provision, setbacks, building separation and the amenity issues arising from these non compliances. In addition, the proposed development is not consistent with the maximum height of buildings applicable to the subject site under Clause 4.3 of Botany Local Environmental Plan 2013 (BBLEP 2013) is therefore not considered to be a suitable in its current form.

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

The application was notified to surrounding property owners / occupiers, advertised in the local newspaper, and a sign placed on site for a thirty (30) day period from 2 October 2013 to 1 November 2013 in accordance with *Development Control Plan No. 24 – Notification of Development Applications* and the Integrated Development Provisions under the *Environmental Planning and Assessment Act 1979*.

No submissions were received in response to the notification of the development application.

(e) The public interest.

These matters have been considered in the assessment of the development application. It is considered that approval of the proposed development is not in the public interest as it will have a significant adverse impact upon the locality in terms of visual impact arising from its height bulk and scale, setbacks, lack of off street car parking, overshadowing, unit mix, unit sizes and balcony sizes.

Other Matters

External Referrals

- *Ausgrid (Formerly Energy Australia)*

Ausgrid have by letter dated 2 October 2013 advised that if existing kiosk S.4762 is to be re-used, this may not be possible due to the age and type of kiosk and the required loads for the proposed development and its current network arrangement. If repositioning is possible, it would most likely require replacement of this substation with a new one. New substations would be required to be established before the existing substations could be removed in order to be able to support existing network load.

- *NSW Office of Water*

The Office of Water in a letter dated 18 October have provided their General Terms of Approval to the proposed development.

- *NSW Police Service*

NSW Police in a letter dated 8 October 2013 have raised no objection to the proposed development.

- *Sydney Airports Corporation Limited (SACL)*

SACL by letter dated 19 November 2013 confirmed that they raise no objections to the development to a maximum height of 49.1 metres above Australian Height Datum (AHD) as shown on the plans. This does not include the height required for construction cranes, etc.

- *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 24 December 2013, RMS have advised that they have no objection to the proposed development.

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.

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 is permissible in the B4 – Mixed Use Zone, and proposes an FSR of 3.2:1 as permitted under BBLEP 2013. However, the applicant has submitted a Clause 4.6 Variation to the maximum height of Buildings for the subject site of 44m in respect of the proposed non compliance to Building A of 1.65m. The Clause 4.6 variation is not supported in this instance as it is inconsistent with the objectives of the standard, the objectives for development within the B4 – Mixed Use zone of BBLEP 2013 and is inconsistent with the development controls of BBDCP 2013.

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 proposed development is largely inconsistent with the height control of BBLEP 2013, with the development controls stipulated in BBDCP 2013, in particular height, bulk, scale, setbacks, overshadowing, off street car parking, unit mix, unit sizes and balcony sizes and therefore will result in adverse amenity impacts in the locality. On this basis, it is recommended that the proposed development in its current form is not supported and it is recommended that the Panel refuse Development Application No. 13/172 for the reasons outlined in this report.

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:

(1) Refuse Development Application No. 13/172 for the reasons outlined below.

1. The proposed development is inconsistent with the objectives and requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings, in that it does not fulfil the requirements of Part 2 - Design Quality Principles in respect of scale, built form, density, amenity, social dimensions and aesthetics. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
2. The proposed development is inconsistent with the objectives and development standards of Clause 4.3 of Botany Bay Local Environmental Plan 2013 as it exceeds the Maximum Height of Buildings for the subject site, which results in adverse impacts on the streetscape amenity. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
3. The proposed development fails to adequately justify the variation to the maximum height of buildings under Clause 4.3, through the submitted Clause 4.6 Variation. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
4. The proposed development is inconsistent with the objectives and requirements of Clause 6.16 – Design Excellence of Botany Bay Local Environmental Plan 2013, as the character and design of the development in its current form is inconsistent with the desired future character envisaged for the Urban Block precinct under BBDCP 2013. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
5. The proposed development fails to satisfy the requirements of Part 9A of Botany Bay Development Control Plan 2013, in relation to not comply with building height, built form, scale, setbacks, solar amenity, unit mix, unit sizes, balcony sizes and off street car parking. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(iii)*).
6. The proposed development is not in the public interest as the proposed design in its current form results in adverse impacts on the amenity of the locality as a result of its height, bulk, scale, setbacks, overshadowing, lack off street car parking, which are inconsistent with the built form envisaged for the subject site. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(e)*).