

**SUPPLEMENTARY REPORT TO THE JOINT REGIONAL PLANNING  
PANEL  
(Sydney East Region)**

<b>JRPP No</b>	<b>2013SYE085</b>
<b>DA Number</b>	<b>DA13/172</b>
<b>Local Government Area</b>	<b>City of Botany Bay</b>
<b>Proposed Development</b>	<p><b>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 &amp; C) with 242 residential units, 4 commercial tenancies and 450 car parking spaces within a basement configuration over the distinct stages. The staging includes the following works:</b></p> <p><b>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.</b></p> <p><b><u>Stage One Works including:</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Demolition of existing buildings within Stage One including demolition of the existing building on proposed Lot 1;</b></li> <li>▪ <b>Site works, remediation and excavation for proposed Lot 1;</b></li> <li>▪ <b>Construction of proposed driveway access;</b></li> <li>▪ <b>Erection of Building "C" being a 13-storey mixed-use building with ground floor retail, basement level car parking and associated landscaping.</b></li> </ul> <p><b><u>Stage Two Works including:</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Demolition of existing buildings within Stage Two including demolition of the existing building on proposed Lot 2;</b></li> <li>▪ <b>Site works, remediation and excavation for proposed Lot 2;</b></li> <li>▪ <b>Construction of proposed driveway as an extension of Lot 1 driveway;</b></li> <li>▪ <b>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.</b></li> </ul>
<b>Street Address</b>	<b>671-683 Gardeners Road, Mascot</b>

<b>Applicant/Owner</b>	<b>Dickson Rothschild</b>
<b>Report by</b>	<b>Rodger Dowsett, Director Planning and Development</b>

## 1.0 Executive Summary

This development application seeks 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 450 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 was reported to the JRPP on the 5 March 2014 with a recommendation for refusal based on two main areas of concern, being insufficient car parking for residents and undersized units.

Discussions that occurred during the JRPP meeting confirmed that the two main areas of concern could be satisfactorily addressed by the applicant.

The Panel made the following recommendation on the 5 March 2014:

1. *The Panel resolves unanimously to defer the determination of the application in order to allow the applicant to lodge amended drawings by the 21 March 2014.*
2. *The Panel requests the planning assessment officer to prepare a supplementary report in response to the amended drawings by 9 April 2014.*

3. *Following receipt of the supplementary report, the Panel will determine the application by communicating by electronic means unless it considers that a further public meeting is required.*

It is considered that the amendments and additional information satisfactorily resolve the outstanding issues and accordingly, the application is recommended for approval.

## **2.0 Consideration of Response to JRPP Resolution**

### ***Point 1***

In relation to Point 1 of the Panels resolution, the Applicant submitted the amended architectural drawings on the 11 March 2014. A Clause 4.6 variation to the FSR was submitted on the 9 April 2014.

The amended plans incorporate an additional (third) basement car parking level to a depth of RL -5.65 metres. The additional basement level comprises of lift access, storage areas, bicycle parking spaces and a total of 146 car parking spaces, being 94 spaces for Buildings A & B and 52 spaces for Building C.

In total, the basement car parking levels accommodate a total of 428 car parking spaces for future residents which complies with the requirements of BBDCP 2013. A total of fourteen (14) visitor car parking spaces and a total of eight (8) commercial car parking spaces are proposed at grade which also complies with the requirements of BBDCP 2013. Therefore a total of 450 car parking spaces are proposed for the development.

Amended architectural plans also include changes to the undersized units. These units are now compliant with the requirements of BBDCP 2013, except that a total of 27 units remain marginally undersized, however these have been increased in size. In some instances, this was achieved by a reduction in the building setbacks to the northern boundary to Gardeners Road for Buildings A & B by approximately 1 metre. In some instances, balcony sizes were reduced to accommodate additional internal unit area to achieve compliance.

This equates to an additional 1000sqm of floor area to the proposed residential units, which increases the FSR from 3.2:1 (22,963.2 m<sup>2</sup>) up to 3.34:1 (23,991 m<sup>2</sup>). As such, the Applicant has submitted a Clause 4.6 variation on the 9 April 2014, which has been considered in this supplementary report and is considered acceptable.

### ***Clause 4.6 Variation to Floor Space Ratio (FSR)***

The FSR for the proposed development is 3.34:1 which exceeds the maximum 3.2:1 permitted under BBLEP 2013. A summary of the FSR pursuant to the BBLEP 2013 is provided in the table below:

<b>Botany Bay LEP 2013</b>	
<b>Permitted FSR under Clause 4.4</b>	<b>Proposed FSR</b>
3.2:1 (22,963m <sup>2</sup> )	3.34:1 (23,967m <sup>2</sup> )

## **Table 5 – FSR**

The applicant has submitted a Clause 4.6 exception to the development standard in respect of the maximum FSR for the subject site specified under Clause 4.4. The Applicant has demonstrated in their Clause 4.6 Variation request that the subject development is similar in height and scale to existing and approved development nearby to the site and will not create any unreasonable amenity impacts in terms of overshadowing, privacy or view loss. The Clause 4.6 Variation also highlights that a compliant 3.2:1 development could have a similar bulk and scale to the proposed development and a similar traffic generation rate. The variation to the FSR control is supported by Council.

### **1. Is the requirement a development standard?**

The subject floor space ratio requirement is a development standard contained in Clause 4.4 of Botany Bay Local Environmental Plan 2013.

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

The specific objectives in respect of FSR under BBLEP 2013 have been identified and addressed by the applicant below:

*“(a) to establish standards for development density and intensity of land use;*

*The subject site is in an accessible location as defined by the Department of Planning and Infrastructure, that is within 800m of a railway station. The proposed intensity of the land use is consistent with state planning policy which seeks increased densities in accessible locations. The proposed increase in FSR does not increase the residential density of the proposed development in comparison to that as lodged. It only seeks by a small degree to increase the internal unit size of a number of units in line with Councils DCP.*

*The proposed variation from the standard is very minor constituting a 4% variation. This minor increase in order to achieve larger internal areas for several of the units in the development achieves a development where all of the units are within 3% of areas sought in Council’s DCP. It is noted that all of the units are consistent with SEPP 65 and the RFDC for unit layout and desirable internal areas.*

*The increase in FSR within the development does not materially change the overall proposed building envelope in comparison to a building envelope which complies with the FSR standard of 3.2:1 represented by the as-lodged design. The increase in internal floor area has been achieved largely along the northern portion of the proposed façade. This means that the increase in floor area has not increase overshadowing or visual impacts on neighbouring mixed use sites to the south of the subject site.*

*The minor decrease in the northern setback in Building B maintains a generous setback to the street, maintaining acoustic privacy for future residents and maintaining the development’s compliance with Council’s minimum front setback controls set out in BBDCP 2013.*

*In summary, the proposed minor increase in FSR achieves better amenity for the development while giving rise to no additional impacts on neighbouring sites when compared to a development which complies with the FSR control for the site. In this regard, compliance with Clause 4.4 is unnecessary in the circumstances of the case.*

- (b) *to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality;*

*The proposed FSR increase on the site is very minor (4%) and does not result in a building which is out of character with the character of the locality. It is noted that based on the new masterplan for Mascot, the local area is undergoing a significant change in character. This is already in evidence on sites to the east and near the train station where numerous large buildings have been developed and are in the process of being developed. The proposed development is generally consistent with Council's Masterplan and the DCP and LEP which has been devised around it. The proposed development, like other developments in the area has sought variation to the indicative building envelopes in the DCP based on the specifics of the site. In the case of the subject site, variations from the building have arisen in order to protect the existing trees at the northern and western portions of the site. In addition, the orientation of buildings have been modified to maximize the northern aspect.*

*The proposed increase in FSR has not materially changed the siting, character, bulk or scale of the development. The increase in internal areas have resulted from the following:*

- *Reduced balcony sizes in Building A (no change in building setback);*
- *Reduced balcony sizes in Building B and minor decrease in the setback of the balconies at the upper levels of Building B;*
- *Minor decrease in the setback of a minor extent of wall at the northwest, southwest and southeast corners of Building C.*

*The bulk and scale of the development when viewed from the public domain will be imperceptible when compared with the as-lodged and FSR compliant development. This is because where the glassline has been moved, it has only moved by a very small degree.*

*The minor decreases in setbacks of the proposed Building C at the northern, western and southern facades, the encroachment to the northern and west has not changed the overall setback of the building but only decreased by a small degree the step in the façade along the façade. This modification is less than 500mm. At the southern façade a minor decrease in the southern setback to Typical Unit 05 is proposed. This is only over approximately 1/3 of the façade length and the setback is reduced by only 500mm. This does not change the minimum southern setback of the development. However, it does increase the articulation of the southern façade by modifying the wall plane of the façade and adding an extra step.*

*The proposed increase in FSR has maintained the articulation of the façade consistent with the as-lodged development., In some cases, such as the with Building C as described above, the proposed increase in floor space has actually increase the articulation of the façade, contributing to the breaking up of the bulk and scale.*

*When compared to the bulk and scale of a development which complies with the FSR on the site, such as that represented by the as-lodged design, the proposed minor increase in FSR does not change the perceived bulk and scale of the development and in the case of Building C, actually increases building articulation when viewed from the south. This result in a bulk and scale which is compatible with the existing and future character of the area.*

- (c) *to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation;*

*The proposed development is on a site which is at the gateway of the new Mascot Station Precinct, and which has been rezoned for a radically different character to that which has existed in the area historically. The subject site is on the edge of the town centre and has been earmarked as a gateway where a landmark element is desired to signal the new town centre as a remarkable precinct which is consciously different to the areas around. Kent Rd and Gardeners Rd, in this regard, act as a boundary or edge to the precinct with a different character on the opposite side of Gardeners Rd.*

*The proposed FSR non-compliance in no way alters the basic relationship of the proposed built form with its context. Generous separation is achieved to lower scale areas to the north and west. The proposed building location and envelope do not give rise to significant overshadowing or other impacts on areas to the west or north. The proposed built form is consistent with those sites which are east and south of the subject site which have been rezoned and are undergoing a substantial transformation.*

*The subject site is not within proximity of a heritage conservation area or other sensitive area. The proposed increase in FSR has been situated generally with the building envelope established by the as-lodged DA. The pushing of the glassline outward to increase the internal areas of units has not reduced façade articulation, stepped façade is maintained.*

*The proposed modest increase in FSR in an accessible location is particularly appropriate for the subject site as this increase in FSR will not impact on areas outside of the town centre precinct. In addition the proposed increase in FSR gives rise to no further impacts on sites to the south and east within the precinct as the increase in FSR is largely achieved at the northern side of the building.*

- (d) *to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public areas such as parks, and community facilities;*

*The proposed development includes significant improvements to the streetscape and landscape quality of the area. The development includes the addition of a ground level publicly accessible open space between Building B and C which also acts as a terminus of a proposed new road south of the subject site.*

*The proposed increase in FSR decreases northern setbacks by a small degree at upper levels but does not impact on the proposed landscaped open space within the northern setback. This includes the protection of the significant mature trees along the road frontages. The proposed FSR non-compliance does not encroach into the TPZ's of the trees.*

*The proposed increase in FSR does not increase overshadowing to the south including the public domain. Building separation between buildings B and C is maintained so as to allow daylight access to the public domain formed around planned road which terminates at the southern boundary. This street will form the key public domain and streetscape for the town centre in this western portion of the precinct. The proposed FSR does not affect the scale of the proposed buildings nor the bulk of the proposed buildings when viewed from the south along this important new corridor.*

- (e) *to minimize adverse environmental effects on the use or enjoyment of adjoining properties and the public domain;*

*The proposed development includes significant improvements to the public domain by providing large areas of landscape open space within the northern setback and between Buildings B and C. The proposed variation to FSR has been done in a discrete manner and generally within the FSR compliant envelope of the as-lodged DA. In most cases, the increased floor area has resulted in minor decreases in balcony size rather than by increase in the size of the building envelope. Where balcony sizes have been increased along with the larger internal apartment sizes is at the northern portion of building B and a small area of Building C, where there is minimal impact.*

*As the FSR increase has been achieved along the northern façade, there is no perceptible increase in overshadowing on the public domain. Because generous setbacks are still maintained to the north, significantly greater than the minimum set out in the masterplan, the visual impact is negligible.*

*The proposed non-compliance in FSR does not give rise to any additional impact in comparison to an FSR compliant development. The increase in internal areas has been achieved in such a manner that the increases are almost imperceptible when compared to the as-lodged, FSR compliant development.*

- (f) *to provide an appropriate correlation between the size of a site and the extent of any development on that site;*

*The subject site is very large with an area of 7,176sqm. The permissible FSR on the site is 3.2:1, indicating that the desired future built form on the site*

*will be significant. The proposed FSR non-compliance is 4% and is achieved by imperceptible changes to the setback of the glassline of the façade by a minor degree in most cases resulting in slightly smaller balcony areas for instance within Building A and a very small decrease in the northern setback of Building B to maintain balcony sizes which are compatible with the internal area of the corresponding units. Therefore, the FSR non-compliance does not result in a building envelope which is inconsistent with the building envelope of a complying development. The proposal with its minor FSR non-compliance is consistent with the size and extent of development on that site which is permissible under BBLEP 2013. It is also consistent in bulk and scale with other developments in the precinct.*

- (g) *to facilitate development that contributes to the economic growth of Botany Bay.*

*The proposed FSR non-compliance arises from a minor increase in the internal area of the proposed units. This represents better amenity for future residents of the building which by virtue of being provided with more internal area, will have a more generous living space and a larger internal area which can be insulated from the major noise sources. The proposed increase in FSR is consistent with Mascot as a special mixed use town centre and a key example of transit oriented design in Sydney. The minor increase in FSR is fully consistent with achieving economic growth in the area by creating a higher amenity and desirable residential stock in the area. The proposed units will be attractive to a diverse range of people and the proposed increased residential density on the site will contribute to the critical mass which is necessary in supporting major infrastructure improvements and a vibrant mixed use town centre where the economy is driven by demand for diverse retail, commercial residential and community facilities. The proposed FSR non-compliance provides a benefit by increasing the amenity of the residences proposed. The FSR does not increase residential density on the site of 1 unit per 25sqm of site area and is consistent with the accessible town centre location and the size and intensity of development envisaged in the area. The proposed increased in FSR does not give rise to any additional car parking requirements.*

**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?***

**Comment:**

The Applicant has identified each objective of FSR under Clause 4.4 in 2 above. The applicant's justification is generally agreed with. The proposal is considered to be of an appropriate bulk, scale and height for the subject site which has been amended to accommodate additional carparking for the



proposed residential units and had increase the internal areas of residential units to comply with the requirements of Botany Bay Development Control Plan 2013.

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

The development will enhance economic growth in the local precinct and significantly improve both the pedestrian environment through the creation of the link from Gardeners Road through to the new street at the southern boundary.

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

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

The underlying objectives and purposes of the FSR control remain relevant to the proposed development. The proposed development is consistent with the objectives of the FSR control in the BBLEP 2013 as detailed above.

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

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

*The floor space ratio control within the Botany Bay Local Environmental Plan 2013 has been consistently varied over time by Council in recognition of a need to meet the demands for housing in the area. The proposed floor space ratio is not inconsistent with the extent of variations to which consent has previously been provided. The following table provides a list of those variations approved by Council, the JRPP and the NSW Land & Environment Court.*

<b>Address</b>	<b>FSR Control under BBLEP 2013</b>	<b>Approved FSR calculated under BBLEP 2013</b>	<b>Approval Date</b>
214 Coward Street (JRPP Application)	3.2:1	4.05:1	16 December 2010
230 Coward Street (aka 25 John Street)	3.2:1	3.6:1	23 August 2006
3-9 Church Avenue	3.2:1	1.9:1	21 May 2008
13A Church Avenue	3.2:1	2.12:1	30 June 2009
10-14 Church Avenue & 619-629 Gardeners Road (JRPP Application)	3.2:1	2.27:1	3 August 2011
1-5 Bourke Street	3:1	3:1	11 August 2004

Address	FSR Control under BBLEP 2013	Approved FSR calculated under BBLEP 2013	Approval Date
7 Bourke Street & 30-32 John Street	3.2:1	3.75:1	13 January 2011
24-26 John Street	3.2:1	3.1:1	6 September 2009
8 Bourke Road & 37 Church Avenue	3.2:1	3.82:1	13 May 2009
208-210 Coward Street (JRPP Application)	3.2:1	4:1	5 December 2011
103-105 O’Riordan Street (JRPP Application)	3.2:1	3.1:1	20 June 2012
5 Haran Street (Court Approved)	3.2:1	3.1:1	June 2013
2-4 Haran Street (JRPP Application)	3.2:1	4:1	August 2013
19-33 Kent Road (JRPP Application)	3.2:1	3.72:1	March 2014

### Comparison of FSR throughout the Precinct

#### Comment:

The applicant’s justification is generally agreed with. The application has undergone assessment and it is considered that strict compliance with the 3.2:1 FSR would hinder attainment of the underlying objectives identified by the applicant in Item 2 above.

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

The applicant’s rationale, being that the development standard has been virtually abandoned or destroyed by Council’s own actions, is generally agreed with. Other sites within the precinct have benefited from additional FSR, by way of a site by site assessment and SEPP 1 Objections subject to individual consideration. Their key rationale includes:

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

### ***4. Is the variation well founded?***

It is considered that the proposal is generally consistent with the underlying objectives of the standard identified in 2 above. The Clause 4.6 variation contends that compliance with the 3.2:1 FSR development standard is unreasonable and unnecessary in the circumstances of the case with respect of the aims and objectives of BBLEP 2013 and the relevant matters of consideration.

The proposed development provides a high quality residential development that facilitates the orderly and economic development of land in a manner that is appropriate in the Precinct. The dwelling sizes are compliant with Council's BBDCP 2013 comparatively high minimum unit sizes (compared to those set out in the Residential Flat Design Code). Due to past industrial uses, the land is susceptible to contamination and remediation. In addition, the site is affected by high water table issues. These two factors alone contribute to the high cost of development within the precinct.

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

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

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

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

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

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

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

Clause 4.6(4) states the following:

**(4) *Development consent must not be granted for development that contravenes a development standard unless:***

**(a) *the consent authority is satisfied that:***

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Director-General has been obtained.*

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

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

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

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

As detailed above, the development application involves public benefits required by BBDCP 2013 and will provide public benefits over what is required under the DCP which will result increased accessibility through the precinct, a contribution to reducing vehicle reliance and increased amenity for future residents.

**Conclusion**

The proposal is not inconsistent with Council's expectations for development and the desired future character of this locality. It also assists Council in achieving its residential and employment targets as identified in the Draft East Sub Regional Strategy. It is considered that the proposed development is a well-conceived response to all the relevant planning controls and strategies, and addresses the constraints and opportunities presented by the site.

The Clause 4.6 Variation submitted by the applicant in respect of the non-compliance with the 3.2:1 FSR standard in Botany Bay Local Environmental Plan 2013 is considered to be well founded.

Accordingly, it is considered that the development standard relating to the maximum FSR development for the site as contained within Clause 4.4 of BBLEP 2013, should be varied in the circumstances to allow the development to attain a floor space ratio of 3.34:1.

### **3.0 Other Matters**

The Panel should note that no submissions were received during the assessment of the initial application, however Council has been concurrently assessing Development Application No. 13/135 for the adjoining site to the immediate east at 661-665 Gardeners Road, which was detailed in the initial assessment report. The Applicant for that application has made a submission to Council in respect of the initial report to the JRPP and the difficulty faced by them in achieving 60% solar access to the proposed development at 665 Gardeners Road. In addition to discussions with Council, the Applicant for DA13/135 has also met on occasion with their adjoining land owner to the east at 653-659 Gardeners Road, which is a site constrained by the widening of Bourke Street under BBLEP 2013 resulting in a narrow site which straddles Bourke Street (after widening). To establish a suitable setback to Bourke Street (after widening), this site is required to position its buildings on its western boundary to 661-665 Gardeners Road.

Council has received a written submission from the Applicant of DA13/135 on the 10 April 2014, being a solar access analysis for proposed DA13/135. The submitted analysis identifies that the shadow impact from proposed Building C under this DA (DA13/172) creates a 2.3% impact on achieving compliance at 661-665 Gardeners Road, being an impact between 12 noon and 2:00pm on June 21. The analysis compares a compliant setback for Building C at 21 metres from the eastern boundary and the proposed setback of Building C at 12 metres, and the difference is a 2.3% impact at 57.3% under the proposed 12 metre setback.

It is considered that the proposed setback of Building C at 12 metres from the eastern boundary is acceptable and that to insist on increasing the setback to 21 is unreasonable to create a 2.3% reduction in impact. The 2.3% equates to a total of approximately 7-8 apartments at 661-665 Gardeners Road, being confined to the lower levels of the proposed rear building, which wraps around the southern boundary of 671 Gardeners Road. In addition, it should be noted that based on an assessment of the original plans for DA13/135, that between 40-50% of apartments proposed are south facing. The 2.3 % impact could easily be gained by amending the design of the proposed northern building at 661 Gardeners Road, by further stepping back the southern setback of the upper levels and deletion of the rooftop terrace. This may also assist in gaining solar access to the communal open space area between the two buildings proposed at 661 Gardeners Road.

On this basis, it is unreasonable to impose an increased setback of Building C under this development application.

#### ***Public Land Dedication***

The Panel should note that Council adopted Botany Bay Development Control Plan 2013 in December 2013. Part 9A of the DCP requires public open space dedication between Buildings B & C. The development application proposes basement car parking (now with an additional level as per the amended plans received) with a common party wall transecting the public open space area and separating the development into two distinct stages.

The public land dedication is intended as a through site link as identified in the Mascot Station Town Centre Precinct Masterplan, linking Gardeners Road through to New Street at the south and across 3-5 Kent Road and 7-9 Kent Road to the south aligning with the approved public open space area fronting Church Avenue at 19-33 Kent Road, Mascot.

BBDGP 2013, identifies the land as being a shareway at its southern portion, where it adjoins proposed New Street to the south to facilitate vehicular access to the site from New Street in the future.

Council received a Proposed New Street Alignment Plan on the 2 May 2014.

In a letter dated 8 May 2014, the Applicants Solicitor advises that the Applicant does not propose to dedicate any portion of the site for the future creation of a right of way for public access across or open space across the site. Further stating that the plan submitted should not be construed as an offer to dedicate any land.

In Council's view, the dedication of land is necessary and in the public interest, being consistent with approvals given by Council and the JRPP for other sites in Mascot Station Precinct, an area in which there is a significant demand for public open space. As such, the Panel should note that **Condition No. 73 of Stage 1** and Condition No. 72 of Stage 2 requires the dedication of land prior to the respective Occupation Certificate.

#### **4.0 Conclusion**

In accordance with Point 2 and 3 of the JRPP resolution of the 5 March 2014, the Application is referred to the The Joint Regional Planning Panel Sydney East Region (JRPP) for determination.

The proposed development has been amended to address issues raised during the Panel meeting, including the provision of an additional basement car parking level and the increase of the internal areas of the residential units proposed within the development, so that the majority of units now comply with the requirements of BBDGP 2013.

The changes now seek to further increase the FSR of the proposed development from 3.2:1 to 3.34:1. The building envelopes largely remain unaltered and the height of the buildings have not been increased.

The amended proposal now requests approval for the following:

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 450 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 proposal has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979*, the *Botany Local Environmental Plan 1995* and the *Botany Bay Local Environmental Plan 2013*. The proposal is permissible in the B4 Mixed Use zone, and is considered to result in a development which is suitable in the context. It is therefore recommended that the Panel grant approval to the application subject to the conditions in the attached schedule.

#### **4.0 RECOMMENDATION**

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

- (a) Grant consent to the Clause 4.6 variation requests under Botany Bay Local Environmental Plan 2013 to permit a maximum FSR of 3.34:1 and a maximum building height of 49.1 metres AHD; and
- (b) Approve, subject to the conditions in the attached schedule, Development Application No. 13/172 for the 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 450 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.