

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

JRPP No	2013SYE087
DA Number	DA 13/200
Local Government Area	City of Botany Bay
Proposed Development	<p>Integrated Development Application (as amended) for a mixed use development comprising the following:</p> <ul style="list-style-type: none"> ▪ A total of 899 residential apartments; 262 serviced apartments; three levels of basement car parking for 1,666 vehicles; 5,666sqm retail floor space including retail tenancies, a supermarket and a childcare centre; ▪ Dedication and embellishment of new public land with a total area of 9,435sqm including a new east-west pedestrian link, new north-south road, extension of John Street from Kent Road and land dedication along Church Avenue and Kent Road for road widening.
Street Address	19-33 Kent Road, Mascot
Applicant	Karimbla Constructions Services (NSW) Pty Ltd
Capital Investment Value (CIV)	\$250,066,126
Number of Submissions	Three (3) submissions
Recommendation	Conditional Consent
Report by	Rodger Dowsett, Director Planning and Development

THE DIRECTOR OF PLANNING AND DEVELOPMENT REPORTS:

PRECIS

Background

Council received Development Application No. 13/200 on the 27 September 2013, which initially sought consent for the redevelopment of the site for a mixed use development comprising the following:

- A total of 985 residential apartments; 255 serviced apartments; three levels of basement car parking for 1,598 vehicles; 5,300sqm retail floor space including retail tenancies, a supermarket and a childcare centre;
- Dedication and embellishment of new public land with a total area of 9,435sqm including a new east-west pedestrian link, new north-south road, extension of John Street from Kent Road and land dedication along Church Avenue and Kent Road for road widening;

The development application is required to be referred to the Joint Regional Planning Panel pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as the Capital Investment Value of the proposal exceeds \$20 million.

The Development Application is also Integrated Development, pursuant to Section 91 of the EP&A Act as the development involves temporary construction dewatering and therefore requires approval from the NSW Office of Water. In a letter dated 18 December 2013, the NSW Office of Water has granted General Terms of Approval to the proposed development.

The development application was notified for a period of 30 days from 9 October 2013 to 8 November 2013. Three (3) submission were received which raise the issue of traffic impact, unit mix, bulk, scale, density, FSR, overshadowing and view loss. The issues raised in the submissions are addressed detailed further in this report.

Council received the following additional information:

- 20 November 2013, being a supplementary letter from Transport and Traffic Planning Associates in respect of traffic generation data;
- 29 January 2014, being a response from the Applicant in respect of the proposed unit mix. Typical apartment layouts were submitted in anticipation of amended plans;
- 10 February 2014, being an Assessment of Residential Demand for Mascot prepared by Hill PDA, dated February 2014;
- Council engaged SMEC as an Independent Traffic Consultant to review the traffic generation rates contained in the TTPA initial report and supplementary letter. Council then received a response from SMEC on the 14 February 2014;
- 17 February 2014, being a further letter from the Applicants Traffic Consultant in respect of comments received from SMEC. SMEC in an email dated 19 February 2014 have advised that the response from TTPA is considered acceptable;
- 21 February 2014, being a response to the additional information request. The response includes a Clause 4.6 Variation to the 44m height limit for plant areas to each quadrant, a response in respect of communal open space, landscaping, separation distances and setbacks, contamination and a response to the issues raised in the submissions.

Council received by reason of site consideration, amended architectural plans for the proposed development on the 21 February 2014. The changes largely relate to unit mix and the reshaping of Q2 located at the south-eastern part of the subject site and incorporates the following:

- Increase the southern boundary setback of Q2 from 9m to 12 metres to increase building separation distances and reduce overshadowing to the south;
- Reduce the massing of Buildings E & F in Q2 (renamed as Building E), by increasing the podium from Level 4 to Level 6, transferring the rooftop communal open space area from Level 4 to Level 6 and increasing the opening between Buildings E and G;
- Embellish landscaping to the entire southern boundary;
- Reduction in the height of the eastern part of Building J in Q3 along the southern boundary from 14 storeys to 11 storeys with a communal rooftop terrace to assist in increased solar access to the adjoining property to the south.
- Introduce landscape garden beds to the Kent Road and Church Avenue frontage of ground floor units in Buildings K & N of Q4;
- Change the configuration of the ground floor lobby/lifts and fire stair fronting Church Avenue to Q1 and change some ground floor studio units fronting Church Avenue to 2 bedroom units;
- Reduce the overall number of residential apartments from 985 residential units down to 899, and increase the number of serviced apartments from 255 to 262;
- Change in the proposed unit mix from 90% studio/1 bedroom apartments down to 64% studio/1 bedroom apartments;
- Reduce the overall FSR from 3.87:1 down to 3.72:1;
- Minor changes to the external colours of the various elevations to soften the development and redefine the podium at street level;
- Reallocation of off street car parking for the various uses, with an overall increase in off street car parking from 1598 spaces to 1666 spaces;

Therefore, the development application (as amended) seeks consent for a mixed use development comprising the following:

- Total floor space ratio of 3.67:1 and a maximum building height of 47.1 metres (51m AHD) providing a total of 899 residential apartments; 262 serviced apartments; Three levels of basement car parking for 1,666 vehicles; 5,666sqm retail floor space including retail tenancies, a supermarket and a childcare centre;
- Dedication and embellishment of new public land with a total area of 9,435sqm including a new east-west pedestrian link, new north-south road, extension of John Street from Kent Road and land dedication along Church Avenue and Kent Road for road widening.

There are four (4) main issues for consideration with the amended proposal. These include floor space ratio (FSR), height, unit mix and design considerations (building separation and solar access to the southern adjoining property), as discussed below.

Floor Space Ratio

The maximum FSR permitted by BBLEP 2013 for the subject site is 3.2:1.

The development application seeks an FSR of 3.72:1 (117,296m² with wintergardens), which does not comply with Part 4.4(2) of BBLEP 2013. The initial design submitted to Council sought an FSR of 3.87:1 (with wintergardens). Design amendments to accommodate additional solar access to the adjoining site to the immediate south have resulted in massing reductions and a reduction in units.

The Applicant has submitted a Clause 4.6 variation to the 3.2:1 FSR applying to the subject site and the variation is supported in this instance.

Height

Clause 4.3(2) of BBLEP 2013 states that the maximum building height for the subject site is 44m. The proposal exceeds the maximum building height as follows:

- Quadrant 1 = 44.5 - 45.1m
- Quadrant 2 = 44.7 - 46.1m
- Quadrant 3 = 44.4 - 47.1m
- Quadrant 4 = 44.4 - 46.6m

The Applicant has submitted a Clause 4.6 Variation to the maximum height limit on the 21 February 2014. The height exceedance for each quadrant relates only to lift overruns and plant rooms. The maximum height of 47.1m is 51m AHD. The development application has been referred to Sydney Airport Corporation Limited (SACL) and in a letter dated 28 November 2013, SACL has advised that there is no objection to the proposed development to a maximum height of 51m AHD. On this basis, the Clause 4.6 variation to the height of buildings, on technical grounds is supported.

Unit Mix

Part 9A 4.4.7 of Botany Bay Development Control Plan 2013 applies to the subject site. Part 9A 4.4.7 states that the combined total number of studio units and one bedroom apartments/dwellings must not exceed 35% of the total number of apartments/dwellings in any single site area. The initial unit mix was 90% studio/1 bedroom apartments.

The development application (in its amended form) proposes the following unit mix:

	TOTAL	Unit Mix
Studio	239	27%
1 bedroom	336	37%
2 bedroom	324	36%
	899	100%

Table 1 – Unit Mix

As indicated in the table above, the total number of studio and one bedroom apartments for the proposed development is 64%, which does not comply with Part 9A 4.4.7. In support of the proposed unit mix, the Applicant has submitted a Residential Demand Assessment Report for Mascot, prepared by Hill PDA, dated February 2014. The findings of the report indicates

that two (2) bedroom dwellings make up the greatest proportion of dwellings in Mascot with studio and one (1) bedroom dwellings making up only 10% of stock in 2011.

The findings of this report are considered in detail under the DCP assessment section of this report, which are supported.

Design Considerations

The design of the subject development was referred to the Design Review Panel on the 29 May 2013 and the 7 November 2013. The recommendations of the DRP in respect of the relationship to the adjoining site to the south have been incorporated into the amended design. A detailed discussion on the design amendments with respect to the DRP recommendations are provided in this report and are considered acceptable.

Public Exhibition

The development application in its original form was publicly exhibited for a period of thirty (30) days from 9 October 2013 to 8 November 2013. Three (3) submission were received which raise the issue of traffic impact, unit mix, bulk, scale, density, FSR, overshadowing and view loss. The issues raised in the submissions are addressed detailed further in this report.

The amended design has not been placed on public exhibition as it is considered that the amendments made result in a reduction of the density of development from that originally notified respond in the main to the lessening of the overshadowing impact to the adjoining property to the south.

Officer Recommendation

The application is referred to the Joint Regional Planning Panel (JRPP) for determination pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act as the Capital Investment Value of the proposed development is \$250,066,126 million.

The recommendation is for approval, as stated below:

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

- (a) Grant consent to the Clause 4.6 variation requests under Botany Bay Local Environmental Plan 2013 to permit a maximum FSR of 3.72:1 and a maximum building height of 47.1 metres (51m AHD); and*
- (b) Approve Development Application No. 13/200 for the mixed use development comprising the following; 899 residential apartments; 262 serviced apartments; Three levels of basement car parking for 1,666 vehicles; 5,666sqm retail floor space including retail tenancies, a supermarket and a childcare centre; the dedication and embellishment of new public land with a total area of 9,435sqm including a new east-west pedestrian link, new north-south road, extension of John Street from Kent Road and land dedication along Church Avenue and Kent Road for road widening.*

1.0 BACKGROUND

1.1 Site Description

The subject site is located on the south-eastern side of the intersection of Kent Road and Church Avenue, Mascot. The site also bounds John Street in the south-eastern corner. The site is irregular in shape and has a 146 metre frontage to Kent Road, a 203 metre frontage to Church Avenue and a site area of approximately 3.15 hectares. The site falls from the east to west with a total fall of approximately 2.6m. Vehicular access to the site for demolition and excavation is from Church Avenue.

The site has been cleared and works approved under DA13/213, have commenced.

Locality Map



Site Photographs



Photograph taken from the corner of Kent Road and Church Avenue looking south-east.

1.2 Description of the Locality

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

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

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

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

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

Land to the west of Kent Road comprises of industrial and warehouse buildings predominantly used for airport related land use and freight forwarding. Directly to the east is located No. 8 Bourke Road, Mascot (also known as 37 Church Avenue), which accommodates a recently completed mixed use development comprising of ten storey building with retail/commercial uses to the ground floor and 209 residential units, basement car parking. This site also has a frontage to Church Avenue which has been widened by the developer together with the provision of a pedestrian through link from Bourke Street to the subject site at 19-33 Kent Road.

To the immediate north west of the site is located No. 9 Kent Road with a secondary frontage to Church Avenue, which comprises of multiple warehouse units and at grade car parking. No. 56 Church Avenue is located to the immediate north and comprises of a five storey commercial building with basement car parking, whilst to the north east is located 42 Church Avenue, which comprises of a warehouse complex with two storey commercial offices and at grade manoeuvring and car parking.

To the south west of the subject site is located No. 39 Kent Road, Mascot. This site currently accommodates an at grade car park. Council has received Development Application No. 13/227 for the construction of a 15 storey mixed use building comprising of 451sqm of retail space, 167 apartments and three half levels of basement car parking for 344 vehicles and 4 loading bays. Council has received amended plans relating to DA13/227, which alters the

built form proposed, to achieve compliance with SEPP 65 solar access requirements. This application is to be referred to the Joint Regional Planning Panel in the near future.

To the immediate south is located No. 280 Coward Street, which comprises of a large warehouse building, whilst No. 246-248 Cowards Street is located to the south east. Council is currently assessing Development Application No. 13/173 for the construction of a 13 storey residential flat building comprising of 88 apartment being 22 x 1 bedroom and 66 x 2 bedroom units with three split levels of basement car parking to accommodate 177 vehicles and 353sqm of commercial space to Coward Street. The application is still under assessment and is to be referred to the JRPP for determination.

1.3 Site and Development History

Site History

Numerous determinations have been issued for the subject site. The determinations most of note are listed as follows;

- On 20 July 1981, Council granted Development Consent No. 192/81 for the use of the premises at 19-33 Kent Road, Mascot, as a road freight terminal;
- On 17 August 1988, Council granted Development Consent No. 279/88 for the construction of a loading dock at 19-33 Kent Road, Mascot;
- On 10 April 1996, Council 'Deferred' Commencement Consent No. 96/552 for modifications to essential services at 19-21 Kent Road, Mascot. An operational consent for this application cannot be located;
- On 19 December 2000, Council granted 'Deferred' Commencement Consent 01/116 for the refurbishment of the following buildings on the site: the existing warehouse buildings which include a two storey contained office section, the gatehouse and a separate building at the rear of the site adjacent to John Street. The operational consent was issued on 23 February 2001;
- On 20 March 2001, Council granted 'Deferred' Commencement Consent 01/227 for the construction of a new two (2) storey office with on ground car parking fronting Church Avenue, and connected to warehouse building at its south eastern corner (Stage 1B). An operational consent for this application cannot be located;
- On 17 September 2003, Council granted Development Consent No. 03/589 for a Masterplan for the development of four commercial buildings predominately office space including car parking and landscaping in the Mascot Station Precinct (Stage 1) at 19-33 Kent Road, Mascot;
- On 29 August 2003, Council granted Development Consent No. 04/038 for use of part of the premises as an office with minor internal and external alterations and landscaping works;

- On 27 April 2006, 06/114 for use of part of the site for warehouse and distribution facility;
- On 31 October 2006, Council granted Development Consent No. 06/444 for alterations and construction of a new awning to the existing warehouse/distribution building;
- On 2 December 2008 approved S96(1A) to modify Development Consent No. 06/444 by constructing a new access ramp along the western elevation of the existing building;
- On 5 March 2008, Council granted Development Consent No. DA 07/381 for road widening, footpath works together with associated landscaping works and drainage to Church Avenue and Kent Road, fronting the property known as No. 19 Kent Road, Mascot;
- On 23 June 2009, Council approved S96(1A) No. 06/114/01 to modify Development Consent No. 06/114 to amend Conditions 3 and 16 relating to the time period of the consent and B-Double access and movements;
- On 5 December 2008, Council granted Section 96(1A) Application No. 07/381/01 to modify Development Consent No. 07/381 to amend Condition No. 27 and 37;
- On 15 August 2013, Development Application No. 13/147 was lodged with Council for the demolition of an awning at 19-33 Kent Road, Mascot. This application is likely to be withdrawn as demolition works on the site are covered under the subject application;
- Council approved Development Application No. 13/095 on 24 September 2013 for the demolition of all site structures and remediation of the site including excavation to remove underground storage tanks (UST's) and wastewater pit;
- Council approved Development Application No. 13/213 on the 2 January 2014 the removal of all existing vegetation from the site, removal of existing street trees in the Kent Road nature strip, excavation of the site and construction of shoring walls in preparation for future redevelopment; and
- Public domain early works/civil works and site access arrangements were approved under Section 138 of the Roads Act 1993 on the 20 November 2013 (Phase 1) and the 11 December 2013 (Phase 2).

1.4 The Proposal

The development application (in its amended form) requests consent for the construction of a mixed use development comprising the following:

- A total of 899 residential apartments; 262 serviced apartments; three levels of basement car parking for 1,666 vehicles; 5,666sqm retail floor space including retail tenancies, a supermarket and a childcare centre;
- Dedication and embellishment of new public land with a total area of 9,435sqm including a new east-west pedestrian link, new north-south road, extension of John Street from Kent Road and land dedication along Church Avenue and Kent Road for road widening.

The proposed development site is divided into four separate Quadrants Q1-Q4, as follows:

Q1

- Q1 is located at the north-eastern part of the site, with a frontage to Church Avenue and an eastern boundary with 8 Bourke Street. Q1 comprises of Buildings A, B and C with a total of 299 apartments, comprising of 81 x studio, 130 x 1 bedroom and 88 x 2 bedroom apartments;
- Three (3) separate lobbies are provided, one off Church Avenue and two (2) off the internal New Street with separate stair and disabled access ramps for two (2) of the three (3) lobbies.
- Ground floor and first floor studio and two bedroom units are two storey in height with direct access to Church Avenue. These apartments adjoin the basement car park and loading area for the proposed supermarket.
- Retail customer vehicular entry and exit driveways are located adjacent to the eastern boundary at the north-eastern part of the site from Church Avenue, with one (1) lane entering the site and two lanes exiting the basement car park. Retail basement parking is physically separated from residential parking areas by wire fencing and there is no connecting internal ramp to the lower basement levels;
- Separate entry and exit driveways to the loading dock for the supermarket delivery vehicles is proposed from Church Avenue;
- Separate storage, plant and service rooms together with a travelators are located at the south-western part of the retail parking area to service the supermarket and retail shops above;
- 3,238m² supermarket with dedicated loading dock, plant rooms and pedestrian entry directly from the new east/west pedestrian link;
- Five (5) retail shops fronting the new pedestrian link with attached awnings;
- A resident swimming pool and gymnasium and communal garden terrace is located on Level 4 with connecting walkway to Building D to the south in Q2; and
- Above Level 4 which forms a podium to Church Avenue, Buildings B & C rises as two north/south towers to 13 storeys.

Q2

- Q2 is located at the south-eastern part of the site containing Buildings D, E and G with a total of 205 apartments comprising of 53 studios, 68 x 1 bedroom and 84 x 2 bedroom apartments;

- Two (2) lobbies are proposed, one from the new north/south street and the second from the new pedestrian link;
- Basement car parking for residents and child care centre patrons is provided at Basement Level 1 with two (2) lift lobbies and vehicle entry and exit lanes directly from John Street. This car basement car park is connected to the main part of the basement parking area.
- Ten (10) retail shops are provided to the ground floor pedestrian mall area with attached awnings. Two 2 x bedroom units and one (1) studio unit are proposed from the central residential lobby. Retail shops are 2 storeys in height and include storage areas;
- A child care centre located at the western end of Building G with a total area of 424m² internal area and an adjacent outdoor area;
- Two (2) separate roof top terraces are proposed for resident enjoyment on Level 7; and
- Building D has a height of 6 storeys and Buildings E and G rise to 13 storeys as two separate towers.

Q3

- Q3 is located at the south-western part of the site with a frontage to Kent Road, comprising of Building SA (serviced apartments) and Building J;
- A total of 262 (studio or 1 bedroom) serviced apartments are proposed within Building SA and serviced apartment parking is provided on Level 1 (back of house) accessible via new John Street at the south, east of the lobby;
- The serviced apartment lobby is located at the south-western corner of the building facing Kent Road and is a double height space. Back of house facilities are located internally with lift area and fire stair from the basement/lobby;
- A chamber substation is proposed adjacent to the lobby fronting Kent Road, where it adjoins the pedestrian access to the site via a stairwell and lift to the upper level. A retail space is proposed fronting Kent Road, to mark the “gateway” to the site;
- Buildings SA & J are separate at the upper levels with Building J having its lobby via the new east/west pedestrian link and a separate lift to the basement. A total of 88 apartments comprising of 12 studios, 50 x 1 bedroom and 26 x 2 bedroom apartments;
- The majority of apartments will have generous layouts with a separate study/media room and private open space balconies;
- Building J rises to 13 storeys with a communal terrace at Level 11 and its Levels beyond being stepped in at the eastern elevation; and
- Building SA is 13 storey and is joined to Q4 to the north, with a communal terrace at Level 13.

Q4

- Q4 is located at the north-western part of the site at the intersection of Kent Road and Church Avenue and comprises of Buildings K, L, M and N with a total of 307 apartments, comprising of 93 x studio, 88 x 1 bedroom and 126 x 2 bedroom apartments;
- Four (4) separate lobbies are proposed one off Kent Road, two off Church Avenue and one located centrally at the park edge, each with separate fire stair and disabled access ramps and lifts;
- A community room, resident gymnasium and pool are located on Level 2 with its own lobby and access from the new pedestrian link;

- Storage and plants rooms front Kent Road at street level with two x 1 bedroom units ‘ and one studio unit with direct access to Kent Road;
- To the ground floor facing Church Avenue are one and two bedroom units with direct access to street level;
- Access to resident parking at basement level is via John Street (existing) driveway at the eastern part of the site and the new John Street extension to the south;
- The buildings rise to 13 storeys along Kent Road with 4 storey podium (Building K) along Church Avenue with Buildings L, M and N rising to 13 storeys;
- A large communal landscape are is located behind Level 2 for resident enjoyment; and
- Communal rooftop gardens are provided for residents on Level 4 with bridge access between the garden to Buildings L & N.

The proposal development as discussed above includes the provision of serviced apartments, supermarket, shops, gym, and child care centre, as this development application contains only limited information on the operation and the fit out of these uses, a separate development application will be required for each of these land uses.

Summary

- The unit sizes and private open space balconies proposed comply with the requirements of BBDCP 2013;
- Car parking is compliant with the car parking requirements of the BBDCP 2013;
- Access to sunlight and cross ventilation complies with the requirements of SEPP 65.

The following table provides a summary of compliance:

Control	Required	Proposal	Complies
FSR	3.2:1 (100,800m ²)	<i>Original Proposal including Wintergardens</i> 3.87:1 (121,836m ²) <i>Amended Proposal including Wintergardens</i> 3.72:1 (117,296m ²)	No – Clause 4.6 variation to FSR submitted.
Height	44 metres (under BBLEP 2013)	Quadrant 1 = 44.5 - 45.1m Quadrant 2 = 44.7 - 46.1m Quadrant 3 = 44.4 - 47.1m Quadrant 4 = 44.4 - 46.6m	No – See Clause 4.6 Variation No No No
Car Parking	<i>Residential</i> Studio = 1 space per unit 1 bedroom = 1 space per unit 2 bedroom = 2 spaces per unit Visitor = 1 space per 7 apartments <i>Serviced Apartments</i>	<u><i>Required Parking</i></u> <i>Residential</i> Studio = 239 x 1 = 239 1 bedroom = 336 x 1 = 336 2 bedroom = 324 x 2 = 648 Visitor space per 7 apartments = 128	Yes – A total of 1666 spaces are proposed.

	1 space per 2.5 units; plus 1 space per 2 employees; plus 1 taxi/pick up s/d area/ 300 rooms Retail 1 space/40sqm of GFLA Child Care Centre 1 space/2 employees plus a minimum of 2 spaces for set down/pick up; plus 1 space per 5 children; plus 1 pick up and set down area/20 children	Serviced Apartments 115 spaces Retail 88 spaces Child Care Centre 21 spaces Total Required = 1,575 spaces	
Unit Sizes	Studios 60m ² 1 Bedroom 75m ² 2 Bedroom 100m ²	Studios 60-75m ² 1 Bedroom 75m ² 2 Bedroom 100m ²	Yes Yes Yes
Unit Mix	Total number of studio/one bedroom = Maximum of 35 %	64%	No – Refer to discussion below
Communal Space	20% for residential flat buildings	40% (includes public parks dedications total of 13,940m ²)	Yes

Table 2 – Development Details

2.0 PLANNING CONSIDERATIONS

2.1 Section 79C(1) - Matters for Consideration

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

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

Environmental Planning and Assessment Act – Schedule 4A

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

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

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

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

Before granting development consent to an application, the consent authority must, in accordance with the regulations, obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development.

In this regard, the development application was referred to the NSW Office of Water. In a letter dated 18 December 2013, NSW Office of Water has provided its General Terms of Approval for the proposed development, which have been imposed upon the development in the Schedule of Consent Conditions section of this report.

State Environmental Planning Policy (Infrastructure) 2007

Clause 104 - Traffic Generating Development

The proposed development falls within the provisions of Schedule 3 of the SEPP – Traffic Generating Development that is required to be referred to the NSW RMS. The application was accompanied by a Traffic Impact Assessment Report prepared by Transport & Traffic Planning Associated, dated September 2013.

It was the opinion of Council Officers that the development as proposed will generate significant traffic within the local road network and as such Council engaged SMEC Australia to undertake a review of the submitted traffic generation rates, to be assessed against those rates identified in the Mascot Station Precinct TMAP 2012 (which was prepared by SMEC). In an email dated 19 February 2014, SMEC has advised that the traffic generation rates detailed by the Applicants Traffic Consultant are acceptable.

Plans and documentation were also referred to the NSW RMS for consideration and comment under the provisions of the SEPP. RMS has raised no objection to the development application and has provided conditions on the 6 March 2014.

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, as the proposed development involves excavation up to eight (8) metres below ground level.

The matter of contamination has been previously considered under the assessment of the demolition application, DA13/095. Condition Nos. 39, 40 and 41 of Development Consent No. 13/95 are considered appropriate in respect of contamination. Council also imposed a condition on Development Consent No. 13/213 requiring compliance with Condition Nos. 39, 40 and 41 of Development Consent No. 13/095.

On the 21 February 2014, the Applicant has provided written confirmation that excavation has commenced on site and that at the completion of all works under Development Consent Nos. 13/095 and 13/213, the existing underground storage tanks will be removed, the site will then be fully excavated and remediated in preparation for the proposed development. Condition No. 41 of Development Consent 13/095 requires the submission of a Site Audit Report prior to redevelopment of the site or the proposed future uses. In this regard, should the Panel resolve to approve the proposed development, it is recommended that a further condition be imposed on any consent to require the submission of the SAR prior to the issue of any Occupation Certificates.

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

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

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

- (a) to ensure that it contributes to the sustainable development of New South Wales:*
 - (i) by providing sustainable housing in social and environmental terms, and*
 - (ii) by being a long-term asset to its neighbourhood, and*
 - (iii) by achieving the urban planning policies for its regional and local contexts, and*
- (b) to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
- (c) to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
- (d) to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- (e) to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions.*

The provisions of SEPP No. 65 have been considered in the assessment of the development application. The applicant has submitted a SEPP 65 assessment of the proposed development along with a architectural design report prepared by PTW Architects, dated September 2013 (Revision B), to verify that the plans submitted were drawn by a Registered Architect and achieve the design quality principles set out in Part 2 of SEPP No. 65.

Council's Design Review Panel has considered the proposed development prior to the lodgment of the application on two occasions, on 29 May 2013 and on 7 November

2013. The current plans before the Panel and the subject of this assessment, have in their amended form, addressed the concerns raised by the Design Review Panel and present a reduction in FSR from 3.87:1 down to 3.72:1 (with wintergardens), along with other significant design changes to accommodate the concerns of the DRP and Council in respect of setbacks, building separation to the south and subsequent solar access opportunities to the southern adjoining sites.

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

The ten design principles are addressed as follows:

Principle 1: Context

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.

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 to the west and south consists of mixed industrial/commercial development. Further to the 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 use of the subject site for the purposes of residential flat development, serviced apartment complex located outside the 25-30 ANEF together with retail premises, a supermarket, child care centre, community room and generous public spaces is consistent with its 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, particularly on Bourke Street, Church Avenue and Coward Street (some of these are yet to be constructed or are under construction). Recently constructed developments attain a height of 6 to 13 storeys with podium level commercial premises upon which is erected residential towers.

To the immediate north at 5-9 Kent Road and 56 Church Avenue are located commercial and warehouse buildings of up to 5 storeys in height.

To the east at No. 8 Bourke Street is the “Tempo” development located at the corner of Church Avenue and Bourke Street, comprising of a 10 storey residential development of up to 200 apartments.

To the south east at No. 246 Coward Street, Council has received a JRPP application on 6 September 2013, for the construction of a 13 storey residential flat building comprising of 88 apartment being 22 x 1 bedroom and 66 x 2 bedroom units with three split levels of basement car parking to accommodate 177 vehicles and 353sqm of commercial space to Coward Street. The application is still under assessment.

To the south are also located 39 Kent Road for which Council is currently assessing a development application for 15 storey residential flat building. 280 Coward Street is east of 29 Kent Rd and adjoins the subject site to the immediate south. It is likely that this site will be developed in the future for buildings to a height of 13 storeys.

The height and scale of the proposed development is considered acceptable given that the subject site is unique in that it has a frontage to both Church Avenue and Kent Road. The height of the proposed development is 47.1 metres, and the FSR proposed is 3.72:1 (with wintergardens), which both exceed the standards contained in BBLEP 2013. Notwithstanding these exceedences, the proposed development achieves a high quality architectural design and results in the redevelopment of a large part of the Mascot Station Town Centre Precinct. It will embellish the diverse range of services for its local population through the provision of retail spaces, a supermarket, child care centre and community room.

The extension of the pedestrian environment from Mascot Station through the site to Kent Road is seen as a significant public benefit. The provision of a deep soil public open space fronting Church Avenue for the enjoyment of residents in the future also benefits the surrounding population.

Internally, the buildings are compliant with the unit and balcony size requirements of Part 9A of BBDCP 2013. The layout of the sites buildings achieves adequate solar access to the proposed units and natural ventilation is maximised.

The scale of the proposed development does not result in any unreasonable impacts on the adjoining properties in terms of overshadowing, visual impact or privacy. Therefore, the proposed scale is considered acceptable in this instance. The amended plans received on the 21 February 2014 have incorporated significant changes to the southern boundary setback of Q2 from 9m to 12m, reduced the massing of Buildings E & F (renamed as Building E) by increasing the podium from 4 storey to 6 storey, transferring the rooftop communal terrace from Level 4 to Level 6 and increasing the opening between Buildings E & G. A further reduction in the height of Building J (in Q3) from 14 storeys to 11 storeys allows greater solar access to the adjoining properties to the south.

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 residential towers of up to 14 storey separated by 4 storey podiums. A 14 storey component runs north/south along the Kent Road frontage returning east along the southern edge of the John Street extension. The remaining towers run north/south and are designed around the central park which has a northerly aspect. The building configuration responds directly to the pedestrian environment which is envisaged as an east/west mall connecting Mascot Station to Kent Road.

The buildings are delineated in scale providing articulated facades in varied form and colours/materials. The overall built form is compatible emerging character of the area as it undergoes redevelopment. The proposed modern architectural form will contribute to the public domain, which is further enhanced by the proposed land dedications for road widening and public park.

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.

Council's Design Review Panel has considered the proposed development both prior to and following the lodgment of the application. The Design Review Panel has no objection to the proposed FSR of 3.87:1 (now 3.72:1 with wintergardens), subject to the development complying with Council's unit and balcony sizes under BBDCP 2013. Further, the DRP advise that Council is to be satisfied in respect of demonstrated public benefit works.

The proposal has been amended to incorporate changes to its southern edge. This achieves greater solar access visual amenity to the adjoining properties to the south. In addition, the Applicant has been requested to address the 35% unit mix control of BBDCP 2013, where the original design proposed 90% studio/1 bedroom apartments. The changes have resulted in a reduction of the unit mix from 90% down to 64%, which has reduced the overall number of apartments proposed from 985 down to 899 and a reduced the overall FSR from 3.87:1 down to 3.72:1 (with wintergardens).

The public benefits, detailed in this report include the dedication of land for widening of Church Avenue and Kent Road, the dedication of land for a public park fronting Church Avenue, the creation of a pedestrian through link from Bourke Street to Kent Road, a New Street running north/south through the site and the extension of John Street along the sites southern boundary. In particular, the new Park is considered to have significant public benefit, not just for future residents of the development, but for future residents throughout the precinct. In addition, the east/west pedestrian through link provides access to and from Mascot Station directly to employment land west of Kent Road, which will encourage the redevelopment of these identified employment lands. On this basis, the proposed density is considered acceptable in this instance.

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 69% of proposed units able to achieve cross flow ventilation. The applicant has confirmed that all habitable spaces are adequately ventilated.

The RFDC recommends that at least 70% of all proposed units and balconies shall achieve 2 hours of direct sunlight during the period 9.00am and 3.00pm at mid-winter in dense urban areas. The development application has been accompanied by a Solar Access Report prepared by SLR and dated September 2013. The report finds that 71.2% of units proposed will receive at least 2 hours sunlight during the winter solstice. In addition, the development can meet the requirements of BASIX.

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

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.

There are three distinct types of landscape open space provided to the development. This includes private open space balconies, communal (trafficable) open space terraces to each building and deep soil zones at the sites western and northern. A detailed landscape masterplan and design have 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 site users, with street planting to enhance the streetscape.

The public domain is to be enhanced permanently with the establishment of a new public park fronting Church Avenue. This will be dedicated in addition to land proposed to be dedicated for road widening of Church Avenue and other significant public domain works including the replacement of street trees and footpaths to both street frontages and the pedestrian through link from Bourke Street to Kent Road.

Council's Landscape Officer has reviewed the proposal and provided conditions. The proposed landscape planting is commensurate with the built form proposed, and is therefore 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.

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

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

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

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

Principle 8: Safety and Security

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 Bourke Street through to Kent Road and from Church Avenue to the south through the subject site.

Casual surveillance to the public domain area fronting Church Avenue is available from the street and from apartments surrounding the development both at this site and from the north. Casual surveillance is also available to the pedestrian through link from Mascot Station to Kent Road from the upper level apartments and serviced apartments. 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 amended development provides a more balanced mix of apartment apartments to a site that is located within close proximity to public transport, recreation facilities, and shopping facilities. Whilst the proportion of studio and one bedroom apartments exceeds the 35% suggested in the Part 9A of BBDCP 2013, the amended mix is considered appropriate as it reflects current market demand and future projections for increased demand for smaller apartments. The Applicant has supported the amended unit mix with a Mascot Residential Demand Assessment Report prepared by Hill PDA dated February 2014. The findings of the report are supported and are discussed under the DCP assessment.

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

Principle 10: Aesthetics

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.

Aesthetically and functionally, the development proposes quality internal and external design, having regard to built form, landscaping, setbacks, internal layouts and provision of underground parking. Particular emphasis has been placed on external appearance to enhance the streetscape and create visual interest in the architecture of

the building for all elevations, along with a selection of appropriate materials, colours and finishes. The contemporary design of the buildings are compatible with the design and scale of the urban form envisaged for the Mascot Station Town Centre Precinct. Therefore the proposed development is considered to be consistent with this design quality principle.

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

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 heights are as follows: Q1 = 45.1m Q2 = 46.1m Q3 = 47.1m Q4 = 46.6m	Yes
Allow reasonable daylight access to all developments and the public domain	The proposal responds to the site topography. The proposed building scale and height are arranged to allow adequate daylight access to existing and proposed public domain areas.	Yes
<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	Generally 14-18m, except Buildings G & E at 26m. However this is acceptable, given that the majority of units will achieve adequate daylight access	Yes
<i>Building Separation</i>		
Development scaled to support desired area character with appropriate massing/spacing between buildings	Massing and scale has been designed to optimise visual amenity, daylight access and ventilation	Yes

<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>Building C = 26m to the eastern boundary</p> <p>Buildings G & E = 12 m to the southern boundary (half of the required separation distance.</p> <p>Internal separation is generally 24m balcony to balcony, except only 12m between the ends of Buildings B & C to G & E. However the ends of the Buildings B & C accommodate two apartments each, which have privacy screens fixed to the exterior.</p>	<p>Yes</p> <p>Yes</p> <p>Yes – Levels 4 and 5 (Building E & G) to be provided with adjustable balcony screens</p>
Zero building separation only in appropriate context (between street wall building types – party walls)	Zero building separation is proposed between Building SA & N and this is considered acceptable in this instance.	Yes
Where building step creates terrace, the building separation distance for floor below applicable	Separation distance at the upper levels are adequate	Yes
Street Setbacks		
Minimise overshadowing of the street and/or other buildings	<p>Buildings A, B, C, K, M and N are 3m to Church Avenue, after land dedication and new street boundary</p> <p>Buildings SA & N are street edge design to Kent Road which will be overshadowed until 11:00am, however this is considered acceptable given the 3m setback to Church Avenue in addition to the land dedication for road widening to Church Avenue.</p>	<p>Yes</p> <p>Yes</p>
Side and Rear Setbacks		
Side setbacks minimise impact of development on light, air, sun, privacy, views and outlook for neighbouring properties (including future buildings)	<p><i>Rear Setback to the south</i></p> <p>Buildings E & G = 12 metres</p> <p>Building J = 15m;</p>	<p>Yes</p> <p>Yes</p>
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 of Building J & SA incorporates the extension on John Street along the southern boundary.	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
Floor Space Ratio		
Development in keeping with optimum capacity of site and local area	The proposal seeks an FSR of 3.72:1 which is considered acceptable for the subject site.	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	4% of site area (1,236sqm) is deep soil area, which is considered acceptable due to the shallow groundwater and the need to provide basement carpark which is not visible from public domain areas. 42% of the total site area (13,336sqm) is communal open space	No – Considered acceptable
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	As stated above, deeps soil perimeter beds are limited due to the level of excavation for basement car parking, which is required to a suitable depth to be screened from public view due to the size of the subject site and its public domain perimeters. Street tree planting is proposed under the detailed landscape masterplan for the site	No – Considered acceptable
Increase permeability of paved areas by limiting paved area and/or using pervious paving materials	Communal open space areas are turfed over basement.	Yes
<i>Fences and Walls</i>		
Respond to identified architectural character for the street/area	Clear glass balustrades proposed to the apartments. Kent Road and Church Avenue street level apartments will be provided with appropriate landscaping and retaining walls for screening and softening of the facades.	Yes
Delineate public and private domain without compromising safety or privacy	Delineation is adequate through bollards, low planting bed walls, lighting and paving treatments.	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 terraces and for the new public park.	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 masterplan and design submitted with the application, which details high quality treatments at grade and to the communal garden terraces.	Yes
Contribute to streetscape character and amenity of the public domain	Amended plans incorporated landscape garden beds to the Church Avenue and Kent Road setbacks. Street tree planting is proposed to both Kent Road and Church Avenue.	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 balconies 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	42% of site area (13,336m ²)	Yes
<i>Orientation</i>		
Position and orient buildings to maximise north facing walls – within 30° east and 20° west of north	The buildings are sited to maximise north facing walls.	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 Church Avenue (after road widening). Due to the basement excavation and shallow groundwater, the Kent Road setback is minimised.	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 units.	Yes
Building elements used to modify environmental conditions to maximise sun access in winter and sun shading in summer	Louvre elements are proposed to some balconies.	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>	The proposed park will be over deep soil area 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 on site stormwater detention system at the low point in the basement.	Yes
Landscape design to incorporate appropriate vegetation	The proposed landscape plan includes species which promote water minimisation	Yes
<i>Safety</i>		
Reinforce development boundary to distinguish between public and private space	Ground floor apartments are well defined. Landscape plan identifies appropriate elements to delineate between public and private domain.	Yes
Orient building entrances to public street	The building entrances are orientated towards Church Ave, Kent Road and internally from the pedestrian link/new streets.	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 recessed in parts to provide a wider angle of vision.	Yes
Use corner windows to provide oblique views	There is some stepping within the buildings to create oblique views.	Yes
Casual views available to common internal areas	Internally, apartments overlook the public domain areas adequately.	Yes
No blind/dark alcoves in design/layout	Corridors are wide and have windows where possible.	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 separate from residential parking.	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
<i>Visual Privacy</i>		
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 to the south.	Yes

Layout to minimise direct overlooking of rooms/ private open spaces	Visual privacy is maximised and fixed privacy screens where separation distances are not met.	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.	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.	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	Separate entrances proposed.	Yes
Entries and circulation space of adequate size to allow movement of furniture	Corridor width of 1.8m.	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	Parking is considered adequate and addressed in detail under the DCP assessment	Yes
Limit visitor parking on small sites where impact on landscape/open space is significant	123 visitor spaces are proposed.	Yes
Preference to underground parking – where above ground parking is proposed the design must mitigate impacts on streetscape/amenity	Resident parking is located across three levels of basement parking.	Yes
Pedestrian Access		
Main building entrance accessible for all from the street – ramps to be integrated into overall building design	Lobbies are integrated into the design with access to lift and disabled access ramps.	Yes
Ground floor apartments and associated private open space to be accessible from street	All ground floor apartments are accessible from the street.	Yes
Maximise accessible, visitable and adaptable apartments – min. AS1428 requirements	31 units are adaptable. There are a number of adaptable designs incorporated into the proposal.	Yes
Separate and clearly delineated pedestrian and vehicle entries	Vehicular access to the site is separated and clearly defined, being located away from pedestrian entrances.	Yes
Provision of public through-site	The design focus is centred around the	Yes

pedestrian accessways in large developments	pedestrian through link and new streets.	
Vehicle Access		
Max. driveway width = 6m	The driveway width at the Church Avenue 10m.	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 Church Ave for retail customers and residential access is via John St and the John Street extension off Kent Road.	Yes
Car park entry/access located to secondary frontages/lanes	As above	Yes
PART 03: BUILDING DESIGN		
Apartment Layout		
<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</p>	<p>All units achieve the minimum internal areas.</p> <p>Single aspect apartments are predominant. Where the 8m is exceeded this is minor, daylight access is not compromised and windows are large and numerous. The majority of single aspect apartments have generous widths ranging from 8m up to 11m and have a range of layouts which results in a number of depths per apartment.</p>	Yes
Single aspect apartments max 8m depth from window	As stated above, the majority of apartments are single aspect and exceed the 8m. However this does not compromise internal amenity as layouts and widths are generous and adequate daylight access is achieved.	No – considered acceptable due to depths and layouts
Back of a kitchen max. 8m from window	The back wall to all kitchens are generally 10m 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 with flexible floor plans	Yes
Unit layout to respond to natural and built environment/ optimise site opportunities	Units layouts maximise solar access to living space.	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 64% 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.	Conditional
<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 2.7 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 2.7m. The commercial floor space premises and lobby levels have a greater ceiling height of 5-6m.	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	31 apartments are adaptable with flexible layouts to accommodate changing households.	Yes

Structural system to support a degree of future change in building use or configuration	The structure supports flexibility for alteration to internal unit configuration and changes in use.	Yes
<i>Ground Floor Apartments</i>		
Front gardens and terraces contribute to spatial/visual structure of street whilst maintaining privacy	Ground floor apartments have direct access to street level with balconies	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	Privacy is achieved through balustrades and higher finished floor levels above street level.	Yes
Provision of private gardens accessible from living areas	Garden areas are directly accessible from the living room.	Yes
High number of accessible and visitable units	Where possible, ground floor apartments are provided.	Yes
<i>Internal Circulation</i>		
Solar access increased through higher ceilings/ taller windows and appropriate landscape selection	All ground floor level apartments have a minimum ceiling height of approximately 2.7m.	Yes
Maximum number of units accessible from single core/corridor = 8	All buildings comply except Building D, E and G which has up to 13 units at the lower levels. In these cases, lobbies are provided with a number of windows for additional daylight access.	No – Considered acceptable
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 retail shops, supermarket and child care centre are highly appropriate for the subject site and locality.	Yes
Office = min. 3.3m ceiling height Retail = min. 3.3-4m ceiling height	The commercial/retail premises have a minimum ceiling height of 5-6m.	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 supermarket.	Yes
Separate, clearly identified residential entry and commercial entry from street	Yes	Yes
Active uses front major streets	Active use face internally to the new pedestrian link, which is supported as it will encourage safety and surveillance of the pedestrian environment.	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)	Internal corridors and plant areas separate supermarket loading from residential apartment at ground level.	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	All units have adequate storage both internally and within basement areas. The majority of units have additional wardrobe areas for additional storage and in each unit, layouts are flexible with generous sizes for additional storage.	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 storage areas are located near the lifts.	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 sites to the east and south. The eastern building separation of 26m provides acoustic amenity for both sites.	Yes
Like uses of adjoining units located together ie living rooms with living rooms, bedrooms with bedrooms	Adjoining apartments have like room uses, as are units above and below.	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
<i>Daylight Access</i>		
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)	Approximately 10% of the total number of apartments have a southerly aspect. In all other case, 70% of apartments achieve in excess of 3 hours direct sunlight	Yes
Max. 10% single aspect units with southerly aspect (SW-SE)	Approximately 10% have a sole aspect to the south.	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 at grade and to the various rooftop terraces achieve 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
<i>Natural Ventilation</i>		
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	60% of all apartments have natural ventilation.	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
<i>Awnings and Signage</i>		
Awnings provided to retail strips giving continuous cover and complementary to existing awnings	Awnings are proposed to the frontages of the retail shops.	Yes
Signage integrated with design of development	No details provided at this stage for the retail tenancies, child care centre or supermarket. The proposed elevations indicate three (3) "Meriton" signs. One (1) on top of Buildings C and two (2) on top of Building SA. The signs are within the OLS of 51m AHD, which was approved by SACL.	Yes

<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 Church Avenue and Kent Road streetscape. Internally, there is still a relationship with the future pedestrian link and public park.	Yes
Important corners provided with visual prominence	Corners are provided with interest through the use of strong horizontal elements and selective use of materials and colours.	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 where is a break in form. Plant rooms/lift overruns appear on the roof of each building at its upper level roofs.	Yes
In dense areas roof area utilised for open space	Yes, at the lower level roof terraces only.	Yes
Design facilitates roof area to be utilised (now or in future) for sustainable functions	Yes	Yes

Table 3 - RFDC Compliance

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
Land use Zone	N/A	The site is zoned B2 – Local Centre under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed residential flat building, supermarket, retail shops, serviced apartments and child care centre are all 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 range of retail, business, entertainment and community uses that serve the needs of the people who live in, work in and visit the local area;</i> ▪ <i>To encourage employment opportunities in accessible locations;</i> ▪ <i>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?	No – Refer to Clause 4.6 Variation	The proposed building heights are as follows: Q1 = 45.1m Q2 = 46.1m Q3 = 47.1m Q4 = 46.6m
What is the proposed FSR?	No- Refer to Clause 4.6 Variation	The proposed FSR is 3.72:1 (117,296m ²) which exceeds the maximum FSR of 3.2:1 permitted under Clause 4.4 of BBLEP 2013. This represents a variation of 16,495m ² of which, 1,686 m ² is the wintergardens
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 affected by the widening of Church Avenue, which has been addressed by the Applicant. Widening to Kent Road is also required under BBDCP 2013 and this is acknowledged in the DA submission.
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	Yes	

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
<p>6 of the LEP apply to the development:</p> <p>6.1 – Acid sulfate soils</p> <p>6.2 – Earthworks</p> <p>6.3 – Stormwater management</p> <p>6.8 - Airspace operations</p> <p>6.9 – Development in areas</p>		<p>Clause 6.1 – Acid Sulfate Soils. The subject site is affected by Class 2 Acid Sulfate Soils. Development Consent 13/213 has been conditioned so that excavation ceases on site at RL0.4m, upon which an ASS Assessment is to be undertaken and submitted to Council, together with any necessary measures recommended by the report. The development is considered to be consistent with Clause 6.1 of BBLEP 2013.</p> <p>Clause 6.2 – Earthworks. The earthworks associated with the development have been approved under Development Consent No. 13/213 for excavation and shoring walls. The development application is Integrated Development and as such, the NSW Office of Water has provided its General Terms of Approval for the proposed development. These conditions are included in the draft Schedule of Conditions. The development is considered to be consistent with Clause 6.2 of BBLEP 2013.</p> <p>Clause 6.3 – Stormwater. The development application involves an underground On Site Detention system/rainwater tank for collection and reuse of rainwater for landscaping on site. The development is considered to be consistent with Clause 6.3 of BBLEP 2013.</p> <p>Clause 6.8 – Airspace Operations. The subject site lies within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority. The application proposed buildings to this maximum height and was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration. SACL raised no objections to the proposed maximum height of 51 metres AHD, subject to conditions to be imposed on any consent. The development is considered to be consistent with Clause 6.8 of BBLEP 2013.</p> <p>Clause 6.9 – Aircraft Noise. The 25 ANEF contour transects the subject site at its south-western corner, running north-west to south-</p>

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
<p>subject to aircraft noise</p> <p>6.16 – Design excellence</p>		<p>east. The majority of residential apartments are located within the 20-25 contour and the serviced apartments are located within the 25-30 ANEF. An acoustic report has been submitted with the development application, which indicates that the development has been designed to comply with the requirements of AS2021-2000. The development is considered to be consistent with Clause 6.9 of BBLEP 2013.</p> <p>Clause 6.16 Design Excellence. The proposed design has been the subject of consideration by Council's Design Review Panel on two separate occasions.</p> <p>Council received amended plans on the 21 February 2014, which reduced the FSR to 3.72:1, reduced the number of apartments to 899 and incorporate an increased setback /building separation to the southern boundary, which was raised by the DRP as an issue.</p> <p>Given the existing site constraints including, the shallow groundwater, the level of excavation required to accommodate car parking for the development and the significant level of public benefits proposed, the density proposed is considered acceptable.</p> <p>The bulk, scale and height of the proposed development is appropriate as the development will not create any unreasonable impacts on the amenity of adjoining sites. The built form as proposed is contemporary in nature and presents an articulated façade providing enhanced interest to the streetscape and the precinct generally.</p> <p>On this basis, it is considered that the Applicant has adequately addressed the recommendations of the Design Review Panel and the proposed development is considered to be consistent with Clause 6.16 of BBLEP 2013.</p>

Table 4 – BBLEP 2013 Compliance

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

Clause 4.6 Variation to Floor Space Ratio (FSR)

The FSR for the proposed development is 3.72:1 (with wintergardens) which exceeds the maximum 3.2:1 permitted under BBLEP 2013. A summary of the FSR pursuant to the BBLEP 2013 is provided in the table below:

Botany Bay LEP 2013	
Permitted FSR under Clause 4.4	Proposed FSR
3.2:1 (100,800m ²)	3.72:1 (117,296m ²)

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 by the applicant below:

- “(a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,*
- (b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,*
- (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,*
- (d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.”*

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

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

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

The Applicant claims that compliance with the maximum FSR development standard of 3.2:1 is unreasonable and unnecessary in the circumstances of the case on the following grounds:

- *The site is ideally located to accommodate additional density as it has excellent access to public transport and areas of employment, educational facilities, entertainment and open space. These characteristics are consistent with the aims and objectives for additional housing and population density as outlined under the NSW Draft Metropolitan Strategy for Sydney to 2036. In fact, on 16 March 2013 the NSW Premier announced the Urban Activation Precincts program and the Mascot Station Precinct was included in the precincts identified. The MSP was selected for higher density housing and the NSW Growth Infrastructure Plans will ensure that State Infrastructure is delivered to support growth in the MSP community. Funding will also be available for Council to deliver improvements to public spaces through the Precinct Support Scheme;*
- *The DCP required apartment sizes are 20% to 50% larger than the apartment sizes that are specified by the RFDC, which has a direct and negative impact on dwelling yield. To retain the financial feasibility of the project, additional GFA is required to achieve a dwelling yield that is economically viable and allows for the site to be developed in accordance with the objects of the EP&A Act, 1979;*
- *Despite the additional GFA, the proposal is less than the maximum 44m building height and offers generous areas of communal open space in the form of rooftop gardens, podium terraces and through facilities such as the leisure centre, pool and gym. In terms of bulk and scale, the proposal will be entirely consistent with the evolving built form character of the locality and the proposed building height, density and arrangement on the site was given favourable support by Council's DRP at the pre-DA stage;*
- *In terms of building design and apartment layout, the proposal is considered to set an explanatory standard as it maximises solar access to apartments where possible, has generous building separation within the site and to the adjacent properties and takes advantage of district views. Combined with the internal layout of apartments and connected balconies that serve as an extension of each apartment's living area, all dwellings will offer high levels of occupant amenity;*
- *As detailed in Section 4.3.6 of this report, the proposal will not create an adverse amenity impact on any surrounding property (in terms of view loss, privacy impacts or overshadowing) as the scale of the building is consistent with the maximum permitted height limit, and on this basis, associated impacts are within expected limits;*

- *The Traffic Report submitted with the development application demonstrates an acceptable outcome for traffic generation and parking provisions and that the proposal will not unreasonably impact on the functionality of the road network or intersections; and*
- *Development within close proximity to Mascot Station has been widely approved by Council and the JRPP with FSRs that easily exceed the previous and current LEP controls; and*
- *In terms of the strategic location of the site, the proposal will mark the western edge of the MSP and will provide a layout which maximises pedestrian connectivity within a dense urban setting.*

Comment:

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

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

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

The development will enhance economic growth in the local precinct and significantly improve both the pedestrian environment through the creation of the link to Kent Road from Bourke Street and will enhance the streetscape of Kent Road and Church Avenue.

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

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

The underlying objectives and purposes of the FSR control remain relevant to the proposed development. The proposed development is consistent with the objectives of the FSR control in the 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.

Address	FSR Control under BBLEP 2013	Approved FSR calculated under BBLEP 2013	Approval Date
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
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

Table 6 – Comparison of FSR throughout the Precinct

The amended FSR of 3.72:1 is less than several other developments (such as No. 8 Bourke which directly adjoins the site to the east).

Public Contributions

The proposal provides a substantial amount of public contributions. The following public benefits include those identified under BBDCP 2013 and are also in addition to the DCP requirements:

- *Land dedication into public ownership with a total area of 9,435m², which comprises:*
 - *1,483m² – new public park;*
 - *2,327m² – new east-west pedestrian link through the site;*
 - *2,360m² – new north-south road through the site;*

- 1,435m² – new section of John Street extending from Kent Road; and
- 1,830m² – land dedication along the Kent Road and Church Avenue site frontages.

- Creation and embellishment of new public park;
- Church Avenue and Kent Road embellishment;
- Creation and completion of new streets through the site;
- Creation and embellishment of the proposed east-west pedestrian link through the site.

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 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 3.72:1.

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 3.72:1.

Clause 4.6 Variation to Maximum Height of Buildings

The maximum building height as required under the Clause 4.3 of BBLEP 2013 is 44m. The proposed buildings will have a height of 13 storeys as follows:

- Q1 = 45.1m*
- Q2 = 46.1m*
- Q3 = 47.1m*
- Q4 = 46.6m*

The Applicant has submitted a Clause 4.6 Variation to the maximum height of buildings on 21 February 2014.

1. Is the requirement a development standard?

The 44m maximum height of buildings requirement 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?

The applicant has identified the objectives for height under Clause 4.3 of BBLEP 2013 as follows:

- (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 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. SACL have no objection to the proposed height of 47.1m (51m AHD).

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

“The scale of the tower blocks has been addressed particularly by way of the detailed articulation of the balconies. This in combination with variations in their height, plan-form, colours and finishes should successfully avoid them being over assertive when viewed from ground level.”

“On the John Street frontage, the scale as proposed is over-dominant, with 13 storey buildings replacing the Masterplan 4 storey and 13 storey with podium forms”

The design (in its amended form) incorporates changes to the southern tower setbacks and separation between the southern property and between Buildings E and G. A further reduction in height to the eastern part of Building J has also been incorporated. The 13 storey component fronting John Street extension at the south-western part of the site is affected by the 25-30 ANEF contour. Under the 25-30 ANEF, residential development is prohibited, therefore the Applicant has chosen to locate the serviced apartments within this contour. This is supported by Council as serviced apartments are considered as transient short term

accommodation and commercial in nature, similar to hotel uses. Therefore, the need to maximise height at this part of the site to accommodate a viable commercial use in close proximity to Sydney Airport is supported.

The height of the 13 storey towers is RL51m. The building height has been designed to provide an appropriate visual relationship and transition in line with the existing developments to the east and those envisaged for the sites adjoining to the north and south.

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

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

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

The proposal is consistent with the above objectives, in that:

- *The proposed development has been endorsed by Council's design review panel, which will ensure that the development forms part of a coordinated redevelopment of this part of Mascot.*
- *The proposed buildings have been sited to accord with the design review panel endorsed scheme. The merit of these building locations on site is discussed in the matrix response to Council.*
- *Given the minor height variations, the proposed development will not appear incongruous with the height and built form of the emerging redevelopment of the Mascot Station precinct.*
- *The proposal will have a positive relationship with the public domain and, therefore, will not have any adverse visual impacts. The proposal will also not result in any adverse privacy issues or unreasonable overshadowing issues. Further, the minor variation to the height will only result in marginal additional overshadowing above a fully compliant height.*
- *The proposal will have an acceptable and compatible appearance in its context. The additional height will be undiscernible, with much of it being located towards the centre of the roofs in the form of lift overruns and fire escape stairs. There are currently no public parks in the vicinity of the site. The site includes a new public park but the additional height being sought will not have any adverse impact.*

The objectives of the zoning of the subject site (Local Centre B2) are as follows:

- (a) *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- (b) *To encourage employment opportunities in accessible locations.*
- (c) *To maximise public transport patronage and encourage walking and cycling.*

The proposed development is consistent with the above objectives, in that:

- *The proposed development includes residential apartments, serviced apartments, retail shops, a supermarket and a childcare centre all of which will contribute to a live/work locale.*
- *The proposal includes retail activities and a childcare centre and the site is situated in close proximity to the Mascot Station, which contributes to employment opportunities in accessible locations.*
- *The site is located in close proximity to Mascot Station and bus transport options. The site is being designed with a pedestrian environment including a through site link that will promote accessibility through and around the site, making walking and cycling a viable and attractive means of transport.*

Comment: The Applicant has demonstrated that the proposed height variation meets the objectives of the LEP. The height variation is considered minor and is limited to plant area/lift overruns.

(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:

Compliance with the height control on this occasion is considered unreasonable and unnecessary, and there are sufficient planning grounds to justify the proposed variation. These reasons are set out below:

- *The degree of non-compliance is minimal at only 1% to 6% above the maximum height. This is negligible and is well below that recognised 10% rule.*
- *The proposed development is based entirely on the scheme endorsed by the Council's design review panel, including the number of storeys in the buildings.*
- *The proposed height variation is partially attributable to the flood planning levels on the site, making sure ground floor level are above the freeboard levels.*
- *The development will display minimal bulk and scale impacts. The roof structures that are noncompliant on the buildings in Quadrants 1 and 2 will generally not be visible from a public domain perspective. The additional height to the buildings in Quadrants 3 and 4 will be off-set by better siting of the buildings when compared with the DCP footprints – this is discussed in the matrix response to Council.*

- *The proposal will result in no adverse impacts such as unreasonable overlooking and overshadowing.*
- *The proposal is entirely consistent with the objectives of the land use zone and the height development standard, which are addressed below.*

Comment: The applicant's justification is supported in this instance. It is important to note that the amended plans received on the 21 February 2014, incorporate design changes to Q2 and Q3 along the southern edge of the site, which increases horizontal building separation, increases the podium height and increases the separation between Buildings E and G to improve solar access to the adjoining sites to the south.

(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 agreed with.

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

Site Address & DA No.	Approved Height	Approval Date
619-629 Gardeners Road (DA10/324)	51m AHD	3 August 2011
208 Coward Street (DA11/67)	51m AHD	5 December 2011
7 Bourke Street (30-34 John Street) (DA09/378)	49.1m AHD	November 2011
2-4 Haran Street (DA13/213)	51m AHD	June 2013
103 O'Riordan Street (DA11/135)	51m AHD	20 June 2012

Table 7 – Comparison of Height

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

4. *Is the height variation well founded?*

It is considered that the proposal is consistent with the objectives of the standard identified in 2 above. The proposed development provides a built form and massing arrangement for the site which is an improvement from that in the Masterplan and this has been acknowledged by the DRP. The variation to the height limit will not adversely impact on the amenity of adjoining sites and on this basis is acceptable.

Botany Bay Development Control Plan (BBDGP) 2013

BBLEP 2013 is the comprehensive development guideline for the City of Botany Bay. Council resolved on 11 December 2013 to adopt the BBDGP 2013 in accordance with the provisions of the *Environmental Planning & 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 25 ANEF contour transects the subject site, with the serviced apartment complex being located within the 25-30 and all other residential apartments being located in the 20-25 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
4C.6.1 Adaptable Housing	C3 - Disabled access to all common areas shall be provided even if the development has less than five (5) dwellings and does not contain an adaptable dwelling. C 4 - Where a development includes five (5) or more dwellings at least one (1) dwelling must be constructed to meet either Class A or B adaptable housing standards under AS 4299-1995 Adaptable Housing.	The SEE includes minimal information on this and states it will comply with Council's DCP.	Conditioned to Comply.
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.	<i>Q1 = 45.1m</i> <i>Q2 = 46.1m</i> <i>Q3 = 47.1m</i> <i>Q4 = 46.6m</i> As such a Clause 4.6 variation has been submitted.	No – Refer to Clause 4.6 variation above.
	C3 Development must conform to the maximum height of buildings in storeys for Urban Blocks 1, 3, and 4 as shown in Figures 16, 17, 19 and 20.	Building A = 4 storey Building B = 13 storey Building C = 13 storey Building D = 6 storey Building E = 13 storey Building G = 13 storey Building J = 11 storey Building K = 4 storey Building L = 13 storey Building M = 13 storey Building N = 13 storey Building SA = 13 storey Buildings range from 4 storey to 13 storey with 14 storey in parts due to the size of the site and change in natural ground level across the site.	On merit
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 3.72:1 (115,610m ²)	No – Refer to Clause 4.6 Variation to FSR
	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	The development does not comply with the storey limit form or the building block mass envisaged in the DCP.	No – Refer to Note 1

	not being achieved.		
9A.4.3.3 Site Amalgamation and Subdivision	C1 The redevelopment of lots within Urban Blocks 1, 3 and 4 must conform to the amalgamation pattern in Figures 21, 22, 24 and 25 .	The subject site is not required to be consolidated with any adjoining allotments.	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 complies with the indicated lots alignments, except that the John Street extension does not extend east toward Bourke Street as indicated. This is considered acceptable as it enables the pedestrian through link to be more aligned with Mascot Station further north.	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 .	3m setback to Church Avenue after road widening is achieved. Street edge design to the entire Kent Road frontage; Varied setback of zero to 3m from new internal street.	No – Refer to Note 2 No No
	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 .	Section AA in Figure 36 applies to the subject site. There is no defined podium when viewed from the south. The 16.6m distance between Building J & G is achieved; however the upper levels are not setback.	No – Refer to Note 2
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 A is 5m from the eastern boundary up to Level 4; Building C is setback 26m from the eastern boundary and 24m is achieved between Building C and B; Building B to Building L = 30m-47m; Buildings B, C and L to Buildings E, G & J = 13.5m between balcony and windows of habitable rooms with fixed privacy screens and enclosed north facing winter gardens to offset units in Buildings E and G to provide enclosed planting areas for additional privacy. Buildings B & C to Buildings G & E = 12m at Level 4 and 5 Building L and M to Building N = 19m increasing to 33m; Building J to Building G = 15m balcony to balcony, increasing to 35 from Levels 12 to 14. The lower	Yes Yes Yes Yes No – Refer to Note 3 Yes No, considered acceptable

		levels are corner apartments at the end of the towers, balconies are offset and	
9A.4.4.4 Active Street Frontages and Awnings	C1 All development within Urban Blocks 1, 3 and 4 must provide retail or commercial street frontages where shown in Figures 49, 50, 51 and 52.	<p>Commercial tenancies are provided only to the southern part of the Kent Road frontage and returning along the John Street extension. The child care centre front the new street.</p> <p>Retail frontages are provided to the central pedestrian through link on its northern and southern sides.</p> <p>Ground floor residential apartments from the new street on Building B and overlook the central public park which is considered more appropriate for the enhanced surveillance of the park at night and for improved amenity.</p>	<p>Yes</p> <p>Yes</p> <p>No – considered acceptable</p>
	C2 All development within Urban Blocks 1, 3 and 4 must provide awnings where shown in Figures 53, 54, 55 and 56.	<p>Figure 53 requires awnings for the retail tenancies along the John Street extension from New Street east towards John Street. However the site configuration differs to that in the DCP. Figure 53 also requires awning along the eastern side of the New Street.</p> <p>Awnings are provided to the retail and commercial tenancies centrally within the site. There are no awnings along the new street edge, which does not have a retail frontage.</p> <p>Building SA is cantilevered over the serviced apartment lobby entrance.</p>	<p>Yes</p> <p>Yes</p>
	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.	<p>Shadow diagrams have been amended to reflect the increased southern boundary setback. These indicate that future buildings to the south will achieve at least 3 hours direct solar access to at least 50% of dwellings.</p> <p>It is also noted that the Applicant has presented to the Design Review Panel, a DCP compliant concept for the site, which indicated a scheme with reduced solar access for adjoining properties, increased visual impact from bulk and scale and an illogical pedestrian destination configuration.</p>	Yes

		The current scheme before the Panel was preferred by the DRP and has been further refined in respect of building mass, setbacks and separation at its southern boundary.	
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 = 65-75m ² 1 Bedroom = minimum 75m ² 2 Bedroom = minimum 100m ²	Yes 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 64%	No – Refer to Note 4
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 areas that traverses the site. This entails a pedestrian through link from Bourke Street through to Kent Road, New Street running north/south through the site, extension of John Street off Kent Road connecting to New Street. The dedication of land on Church Avenue and Kent Road for road widening.	Yes
	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.	The majority of the central public park is on deep soil. The remaining non deep soil area is still of depth to accommodate shrubs and plants.	Yes
9A.4.4.9 Private Open Space and Communal Open Space	C2 The minimum private open space requirement per dwelling for multi dwellings and residential flats are as follows: Studio/1 bedroom= 12m ² ; 2 Bedrooms: 15m ² 3 bedrooms: 19m ²	Studio = 12m ² 1 bedrooms = 11- 17m ² 2 bedrooms = 15-25m ²	Yes
	C5 The minimum communal open space requirement for residential flats is 20% of the site area.	42% of site area (13,336m ²)	Yes
	C7 More than 70% of the communal open space area should be capable of growing plants, grasses and trees.	Only 4% of the site area (1,236 m ²) is deep soil at ground level.	No – Refer to Note 5
9A.4.4.11 Car Parking	C1 Car parking provision must comply with the following car	<u>Required Parking</u>	Yes – a total of 1666

	<p>parking rates:</p> <p>Residential</p> <p>Studio = 1 space per unit</p> <p>1 bedroom = 1 space per unit</p> <p>2 bedroom = 2 spaces per unit</p> <p>Visitor = 1 space per 7 apartments</p> <p>Serviced Apartments</p> <p>1 space per 2.5 units; plus</p> <p>1 space per 2 employees; plus</p> <p>1 taxi/pick up s/d area/ 300 rooms</p> <p>Retail</p> <p>1 space/60sqm of GFA</p> <p>Child Care Centre</p> <p>1 space/2 employees plus a minimum of 2 spaces for set down/pick up; plus</p> <p>1 space per 5 children; plus</p> <p>1 pick up and set down area/20 children</p>	<p>Residential</p> <p>Studio = $239 \times 1 = 239$</p> <p>1 bedroom = $336 \times 1 = 336$</p> <p>2 bedroom = $324 \times 2 = 648$</p> <p>Visitor space per 7 apartments = 128</p> <p>Serviced Apartments</p> <p>115 spaces</p> <p>Retail</p> <p>88 spaces</p> <p>Child Care Centre</p> <p>21 spaces</p> <p>Total Required = 1,575 spaces</p>	spaces proposed
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 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>To the south at 39 Kent Road Council has received amended plans for a proposed 15 storey residential flat building. The changes increase its setback to the common boundary with 19-33 Kent Road to 3m. Therefore a total of 18m separates the proposed apartments at 39 Kent Road from the proposed Building SA.</p> <p>The Applicant has indicated future massing for the remaining adjoining southern sites and these are consistent with the DCP envisaged built form, comprising of 6 storeys along the boundary to the John Street extension and 13 storeys to the Coward Street frontage.</p> <p>The shadow diagrams indicate that at least 50% of the private open space balconies and windows of habitable rooms to the southern future developments will obtain 3 hours of direct sunlight on June 21.</p>	Yes
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>A Pedestrian Wind Environment Statement has been submitted with the application prepared by SLR dated September 2013.</p> <p>The submitted report indicates that</p>	Yes, subject to design measures

	(ii) 13 metres/second along main pedestrian streets, parks and public places; and (iii) 16 metres/second in all other streets	<p>existing street level wind conditions are likely close to or exceeding 16 m/s walking comfort. The consultant states that this will be alleviated through the redevelopment of adjoining site to the north and south of the site in the future. The design of the proposed development will provide acceptable dining amenity for outdoor dining opportunities centrally within the site.</p> <p>Some balconies will occupationally experience stronger upper level winds that may exceed the dining criterion. SLR recommends providing movable screens or a suitable practical alternative to protect the relevant balcony areas.</p> <p>The Applicant has incorporated adjustable louvre balcony screens and enclosed wintergardens to those affected balconies.</p>	
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Table 8 – BBDCP 2013 Compliance Table

Note 1 – Floor Space Ratio (Layout and Built Form)

Control C3 of Section 4.3.2 of BBDCP 2013 states that *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 proposed configuration of buildings on site does not comply with that indicated in Figure 11. The Applicant has presented a DCP compliant model to the Design Review Panel. The DCP compliant concept resulted in additional and unacceptable shadow being cast internally from the east-west building alignments, a significant number of south facing units (ie. 20%), a monolithic mass from its east/west orientation and alienation of the public domain areas, increased unnecessary massing along the eastern and southern boundaries, reduced view sharing through the site due to the east/west orientation and a public domain/pedestrian environment which was disconnected from open space.

The Design Review Panel was in favour of the Applicants design concept in principle and this site configuration has been the subject of further review and design amendments which incorporate additional recommendations of the DRP. On this basis, it is considered that the proposed site configuration provides a development with a higher level of amenity for its future occupants and a higher level of amenity for adjoining sites than that envisaged in the DCP.

Note 2: Street Setbacks and Built Form

Control C1 of Section 9A.4.3.4 of BBDCP 2013 states that *all development within Urban Block 1 must comply with the street setbacks identified in Figures 30 and 31.*

The proposed development seeks to provide a 3m setback from Church Avenue after road widening is achieved, where Figure 30 requires an average of 6m (minimum of 5-7m) from the new alignment of Church Avenue after road widening. Levels 3 and 4 are podium encroachments, which then revert back to balcony only encroachments for Levels 5 and up. From Level 11 terraces, Building M balconies encroach to a lesser extent.

Following road widening, the separation achieved for any future building at No. 5-9 Kent Road, could be up to 30m. Therefore, the variation to the Church Avenue setback is considered acceptable. This will be sufficient area to maintain direct solar access to the north facing apartments proposed. Further, the northern elevation is provided with a podium to Level 4, beyond the podium, the façade is articulated and the balcony encroachments are varied in form and level of projection, therefore providing interest to the streetscape.

A zero lot setback is proposed to the entire Kent Road frontage, where Figure 30 of the DCP requires a 3m setback to the northern part of the Kent Road frontage, reducing to zero at the southern frontage to Kent Road. At ground level the setback is considered acceptable as it is varied with interest from the serviced apartment lobby through to the retail shop with garden beds and curved face. The setback is not particularly varied at the upper levels, other than the north-western part of Building N from Level 6 upwards, and a small part of Building SA has a minimal setback of 1.2m from Level 4 up.

The Applicant has submitted amended plans on the 21 February 2014 that incorporate a 1m setback for the basement shoring walls from the boundary. Amended landscape plans were also received that provide further embellishment of the Kent Road nature strip, with the inclusion of small landscape gardens beds along parts of the Kent Road setback at ground level. Therefore, the proposed zero setback to Kent Road is considered acceptable in this instance.

Varied setback of zero lot to 3m is proposed from the new internal street alignments, where Figure 30 requires a 3m setback and an average of 6m (minimum 5-7m) from the new public park. The internal setbacks are as follows;

Building E = zero lot (balconies);

Building D = 2.5m;

Building G = zero lot (balconies);

Building G to New Street = zero lot with some minor balcony encroachments;

Building J to New Street = zero lot (balconies);

Building SA to Pedestrian Link = 3m;

Building L & M to new park = zero lot (balconies);

Building B to new Street = zero lot (balconies);

Building B & A to Pedestrian Link = zero lot (retail shops at ground floor and 2.5m for the towers);

Control C4 of Section 4.3.4 of BBDCP 2013 states that *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*. Section AA in Figure 36 applies to the subject site, which envisages a 4 storey podium and a step in of approximately 2-3m and the tower then rising above. The

proposal does not have a defined podium when viewed from the south. The 16.6m distance between Building J & G is achieved; however the upper levels are not setback. The podium is present, but only in articulation of the facades up to Level 4 and this is considered acceptable as the additional upper level setback does not provide additional significant benefits in terms of overshadowing of adjoining properties or the public domain areas.

The proposed setbacks and built form configuration are considered acceptable. As has been discussed under Note 1 above, a DCP complying design was presented to Council and the Design Review Panel, which was not supported by the DRP. This indicated unacceptable solar access to the public domain areas and to dwellings within the site and to adjoining properties. The current design before the Panel has undergone further refinement of the massing and its resulting setbacks and built form configuration are supported.

Note 3 – Building Separation

Control C1 of Section 9A.4.3.6 of BBDCP 2013 states that residential flat buildings and mixed use developments containing residential units must comply with the principles and provisions of State Environmental Planning Policy No. 65 (SEPP65) and the Residential Flat Design Code in relation to building separation.

In respect of building separation, the proposed built form on site largely meets the minimum requirements under SEPP65. However, the proposed building separation between Building B & C and Buildings D & G is 12m between balconies at Level 4 and 5. Habitable rooms are accessible from the proposed balconies at Level 4 and 5 of each respective building.

The Applicant has provided on the 11 March 2014, indicative treatments of the balcony screening required to assist in maintaining privacy. The balcony treatments are proposed to the affected north facing balconies of units in Buildings E and G, with adjustable sliding screens. This is considered acceptable and will not adversely impact on the solar access or natural ventilation achieved for those units.

Note 4- Unit Mix

The following table indicates the proposed unit mix, which does not comply.

	TOTAL	Unit Mix
Studio	239	27%
1 bedroom	336	37%
2 bedroom	324	36%
	899	100%

Table 9 – Unit Mix

Control C2 of Section 4.4.7 of BBDCP 2013 states that *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 applicant has submitted additional information on the 21 February 2014, including amended architectural plans which result in a reduction in the number of apartments on site from 985 down to 899, a reduction in the overall FSR from 3.87:1 down to 3.72:1 and a reduction in the proposed unit mix of 90% studio/1 bedroom

units down to 64%. In support of the 64% unit mix, the Applicant has submitted a Mascot Residential Demand Assessment Report prepared by Hill PDA, dated February 2014.

The key findings of this report in respect of the demographic characteristics are:

- *The suburb of Mascot has experienced significant population growth between 2001 and 2011 and population projections indicate that this will continue;*
- *The age profile of residents in Mascot is getting younger with the median age falling from 37 years to 35 years between 2001 and 2011. This is contrary to broader trends for the Botany Bay LGA and Greater Sydney where the median age of residents has increased over the period;*
- *The proportion of flat-unit-apartments in Mascot has increased between 2001 and 2011 as has the proportion of households comprising lone persons and couples with no children. Mascot has experienced declining dwelling occupancy rates over the same period;*
- *Two bedroom dwellings represent the greatest proportion of homes in Mascot, compared to significantly fewer studios and 1 bedroom units, equivalent to 10% of the stock in 2011. This is despite these dwellings being the most affordable and in high demand by younger residents and families without children; and*
- *The improved accessibility and attraction of Mascot to a wider market has led to a changing socio-economic character with a growing share of residents employed in white collar occupations and a declining proportion employed in blue collar occupations.*

The key findings of the report in respect of market trends are:

- *Two (2) bedroom dwellings make up the greatest proportion of dwellings in Mascot with studio and one (1) bedroom dwellings making up only 10% of stock in 2011;*
- *Demand for studio and 1 bedroom dwellings in Mascot is particularly strong*
- *Demand for smaller units is likely to remain strong owing to declining household sizes in Mascot, a reduced fertility rate and increasing house prices;*
- *The market is observed as being price sensitive. Studio and 1 bedroom units are in particularly high demand from all components of the buyer market as these are more affordable and more aligned to the requirements of buyers;*
- *There is a shortage of studio and one bedroom units in Mascot. 79% of current dwellings for rent are 2 or more bedroom properties. This demonstrates the undersupply of studio and 1 bedroom units.*

- *The increased provision of studio and 1 bedroom units is a positive market response. The ability of development to “meet the market” underpins feasibility which is the key driver of residential supply;*
- *Constrained supply of smaller units results in an inability of the development industry to address the needs of the growing residential population;*
- *Housing affordability is a key demand driver for the purchase or rental of studios and 1 bedroom units in Mascot. A household with a median income for Greater Sydney (\$75,000p/a in 2011) could not afford to purchase a new 1 bedroom apartment in Mascot without being subject to mortgage stress;*
- *Increasing the supply of studio and 1 bedroom units in Mascot will positively support the needs of the community, which is increasingly single persons/couples;*
- *Mascot and the Botany LGA are under-represented with one bedroom apartments (8%) when benchmarked against Inner Sydney and Eastern Suburbs (22%);*
- *There is a strong relationship between the size of residential units and their price. A 25sqm increase in size of apartments in the Botany LGA was shown to lead to well over \$100,000 (over 20%) price increase; Strict enforcement of the unit mix/size control will lead to a fall in demand for apartments in the order of 30-40%.*

Comment: The findings of the submitted report are agreed with. The report identifies current rental and sales figures from the September Quarter 2013 and relies on these in forming the view that there is strong demand for more studio and one bedroom apartments and less demand for two and three bedroom apartments. The proposed units comply with the minimum units sizes stipulated under Section 4.4.7 of BBDCP 2013. The unit mix will be a positive contribution to the social mix of the precinct and will assist to some extent in supporting affordable housing in Mascot. The submitted report is therefore considered acceptable and therefore the proposed unit mix of 64% studio/one bedroom units is supported.

Note 5 – Communal Open Space

Control C7 of Section 4.4.9 of BBDCP 2013 states that *more than 70% of the communal open space area should be capable of growing plants, grasses and trees.*

The application only proposes 4% of the total site area (ie. 1,236m²) as deep soil area at ground level.

The Panel should note that the total communal open space area is 43% (ie. 13,336m²), which includes trafficable communal rooftop terraces throughout the development together with the new public park comprising of 6,915.10m². In addition, a softscape area of 1934m² is proposed where small shrubs and plants are still proposed to be planted.

Whilst the proposed development is non-complaint with the 70% control, the Applicant has provided a written undertaking of the proposed public benefit works outlined in this report, which are significant and beyond those required in the BBDCP

2013. On this basis, the proposed shortfall in deep soil communal open space is considered acceptable in this instance.

Note 6: Solar Amenity

In accordance with Section 9A.4.5.4 solar access to a minimum 50% of the primary private open space of adjoining property and 50% of windows to habitable rooms must obtain at least 3 hours of direct sunlight on June 21. The submitted shadow diagrams demonstrate that the proposal complies with relation to adjoining properties solar access.

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

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

Comment: The site is located within the Mascot Station Precinct, identified as a high density mixed use commercial/residential area and accordingly, it is unreasonable to expect that adjoining properties will retain existing sunlight. To the east of the subject site is No. 8 Bourke Street, which contains a 10 storey mixed use building, sited within 2 metres of the common boundary. To the south of the subject site is Nos. 246-248 (the subject of DA13/173 for the construction of a 13 storey residential flat building comprising of 88 apartment being 22 x 1 bedroom and 66 x 2 bedroom units with three split levels of basement car parking to accommodate 177 vehicles and 353sqm of commercial space to Coward Street. The application is still under assessment.

280 Coward Street is immediately south, currently comprising of warehouse buildings. This site is envisaged (under the DCP) for 6 storeys along the common boundary with the subject site and a 13 storey building form fronting Coward Street. No. 39 Kent Road lies to the immediate south-west of the site. It is the subject of Development Application No. 13/227 for the construction of a 15 storey mixed use building comprising of 451sqm of retail space, 167 apartments and three half levels of basement car parking for 344 vehicles and 4 loading bays.

Council met with the landowner for 280 Coward Street, 39 Kent Road and Meriton themselves to resolve the solar amenity issues and the SEPP 65 non-compliance as a result of the proposed development will have on their sites, which are directed to the south. As a result of this meeting Council received amended plans relating to which alters the built form proposed, to achieve compliance with SEPP 65 separation distance and solar access requirements to the building fronting Coward Street and Kent Rd.

Shadow diagrams have been submitted with the amended plans received on the 21 February 2014. These indicate that the adjoining developments to the south will be affected by overshadowing, however will continue to receive a minimum of 3 hours sunlight during winter solstice for 50% of its primary private open space balconies and 50% of its windows to habitable rooms. The shadow cast on No. 246 Coward Street is from 12 noon to 3:00pm. The shadow cast onto 280 Coward Street is longer in duration given its length. It will achieve 3 hours between 10:00am to 1:00pm. No. 39 Kent Road will be in shadow between 9:00am to 12 noon therefore achieving 3 hours from 12 noon onwards.

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

Comment: The proposal is of quality design and is appropriate in context given the primary location within the Mascot Station Precinct and dual street frontages. The width of the shadow, whilst excessive would not be significantly reduced should the development be required to fully comply with built form controls of BBDCP 2013, as was presented to Council and the Design Review Panel. That DCP complying concept produced a significantly worse overshadowing impact on the southern adjoining properties. The amended plans which incorporate an increased setback from 9m to 12m to the southern boundary for Buildings D, E & G and an increase in the podium (Building D) from 4 storeys to 6 storeys to allow a widening of the separation between Building E and G to increase solar access to the adjoining properties to the south. In addition, Building J has been lowered to 11 storeys.

- *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 perspective shadow analysis, the north facing and west facing glazed areas proposed under DA 13/227 at 39 Kent Road will be in direct sunlight after 12 noon, therefore achieving 3 hours of sunlight to 50% of its primary private open space balconies and 50% of its windows to habitable rooms. Window sizes and locations are not yet known for 280 Coward Street, however it is envisaged that there will be some overshadowing to the lower levels, which was an oversight within the DCP. The increased separation distance/setbacks indicated on the amended plans and the change to building mass at its podium and towers of Buildings D, E and G should assist in reducing overshadowing impact to the envisaged buildings.

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

to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.

Comment: The private open space areas to the adjoining properties are limited to any future north facing balconies and private courtyards at the southern properties. As stated above, the shadow cast from Building SA will move east away from the north facing balconies proposed at 39 Kent Road until after 3:00pm. Balcony size and orientation is not yet known for 256-280 Coward Street. At 246 Coward Street, its north facing private open space balconies are setback 20.5m from the northern boundary to John Street, which has a communal open space area at podium level. Any overshadowing of the communal open space area will be from No. 8 Bourke Street. As the private open space balconies are setback, they will obtain at least 3 hours direct sunlight from 12 noon onwards.

- *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 Station. The adjoining properties to the east have recently been redeveloped for residential development similar to that proposed under this development application and that envisaged under the controls of BBLEP 2013 and 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 Development Applications. It is considered that the proposed development will have no significant adverse environmental, social or economic impacts on the locality.

Consideration of traffic and parking impacts, privacy impacts, solar access and other matters raised by members of the community have been addressed below in response to the submissions received from the community (Refer to Section 79C(d)).

As the proposed development exceeds the height limit in parts of the development, the Applicant in the Statement of the Environment Effects has addressed the view loss as a result of the additional height, which varies between 0.5m to 2.6m. It is inevitable there would be some view loss, however the increase in height is considered quite minor and in some cases a result of the lift overrun, it is considered the Planning Principles within *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* in the case of the proposed development is considered reasonable and has been designed to provide a fair share of view retention and should be supported in this instance.

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

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

The proposed development, being for residential flat buildings, retail tenancies, supermarket and child care centre to a site located within the B2 – Local Centre zone, is considered a suitable development in the context of the site and locality.

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

These matters have been considered in the assessment of the development application. In accordance with Council's Notification Development Control Plan No.24 the proposed development was notified to surrounding property owners and advertised in the local newspaper for a thirty (30) day period from 9 October 2013 to 8 November 2013. Three (3) submissions were received in response to the proposed development, which raises the following issues:

- *The loading dock entry/exit should be moved further west along Church Avenue, or relocated to John Street.*
- *If this is not possible, then the exit be altered so that all vehicles must turn left on Church Avenue (heading west) on exit to Kent Road;*
- *That strict conditions be placed on the operating hours of the loading dock to prevent its use outside the hours of 7:00am to 5:00pm Monday to Friday and 8:00am to 1:00pm Saturday and that these conditions apply to waste collection vehicles also.*

Comment

The entry/exit driveway to basement parking for retail customers only is located directly on the eastern boundary adjacent to 8 Bourke Street. The loading dock entry/exit driveway is located further west along Church Avenue to separate customers from truck delivery areas. This is considered acceptable. Separate development applications will be required for the specific retail uses, for the child care centre and the supermarket. Hours of operation will be proposed by those respective applicants and can be assessed at that point in time, being subject to acoustic impact assessment and operational procedures. Notwithstanding, it is appropriate to restrict delivery hours to and from the loading dock and the size of vehicles access the loading dock to protect the aural amenity of existing and future residents in the immediate locality.

The relocation of the loading dock to John Street is not desirable as No. 8 Bourke Street already has its waste collection area off John Street, and the proposed development has a resident child care centre patron access driveway and also off John Street, so in order to maintain some level of amenity in John Street, this is not supported. There is no objection to the restriction in delivery/waste collection routes and therefore it is recommended that a condition be imposed on any consent granted restricting both the hours of use for the loading dock to 7:00am to

5:00pm Monday to Friday and 8:00am to 1:00pm Saturday with no deliveries on Sundays, and to restrict vehicle routes to Kent Road and Church Avenue only.

- ***The plan indicates 148 parking spaces for retail parking. This will create significant noise, which tends to travel upwards. It will also create significant cross-footpath traffic adjacent to the foyer at No. 8 Bourke Street on a well used pedestrian route. For these reasons, we ask that there be no entry/exit at this point and that the retail car park be serviced solely by the entry/exit in John Street. This will provide a safer solution for pedestrians and a better one for managing noise.***

Comment

BBDGP 2013 envisages a supermarket at the subject site. Its proposed location is considered to be the most suitable in terms of serving the existing resident population and surrounding area. The purpose of the supermarket is to serve the local residents of the Mascot Station Precinct. Its main pedestrian entrance will be from the central pedestrian through link. The proposed location of the retail basement parking access is ideally located as its use would be reduced after hours to minimise noise impacts on adjacent residents. The suggested relocation to the John Street access would exacerbate and centralise noise impacts to the dwellings at John Street. This is one of only two access driveways for residents, therefore any relocation of the retail access driveway to John Street is not supported.

- ***A supermarket of this size will draw significant numbers of customers into our area. We feel there should be a balance in retail activity and residential amenity. Therefore, we request that the supermarket and other retail areas be restricted in hours of operation. We suggest that hours of 8:00am to 10:00pm provides ample retail opportunity and protect our lifestyle and sanity.***

Comment

The proposed supermarket, child care centre and retail tenancies will be the subject of separate development applications. The proposed land uses are to serve the local community of the Mascot Station Precinct. The submitted acoustic report has not addressed the impact of the supermarket/retail spaces on the residential amenity of the proposed dwellings or existing nearby residents, as there are no specific users proposed at this point in time and operational procedures alter from user to user. Notwithstanding, it is recommended that a condition be imposed to require the submission of a separate development application at which time, acoustic impacts, hours of operation and operational procedures can be assessed in more detail.

- ***Permissibility within the B2 – Local Centre zone: The Gross Floor Area (GFA) percentage of 95% is dedicated to residential floor area. There is no B2 zone objective that contemplates or foreshadows residential development of this scale. If Council wanted the same development forms as those constructed more recently on nearby lands, then a more appropriate zone should have been selected.***

Comment:

Although the zone objectives do not explicitly refer to residential development, the objectives do not specifically preclude residential development of any scale. Residential flat buildings are permitted with consent in the B2 – Local Centre zone. The zone objectives do not state how much residential each site in the zone should accommodate. It is noted that Council wrote to each property owner in the Mascot Station Precinct advising them that the Draft LEP was being placed on public exhibition. Council did not receive any submissions in respect of the zone, zone objectives or development standards relating to the subject site during or after the extensive public exhibition of the Draft BBLEP.

- *Car Parking and Public Transport – The B2 zone objectives are to maximise public transport, which was envisaged in the LEP Standards and Urban Design Study and further re-iterated in the Mascot Town Centre Precinct Transport Management Accessibility Plan 2012 (TMAP) prepared by SMEC, which recommends:*

- *one car space for an apartment of one or two bedrooms, 2 spaces for 3 bedrooms and 0.5 spaces for studios;*
- *1 car space for every 80sqm of commercial /retail development within 800m of the railway station.*

By contrast, the proposal has elected to provide parking at a higher rate, claiming consistency with Council's DCP.

Comment

It is acknowledged that the B2 zone objectives seeks to maximise public transport and that the most logical means of achieving this is to permit a reduction in car parking requirements. However, following exhibition of the TMAP in 2012, the Council resolved at its meeting of the 1 August 2012, that it will not and has not endorsed the recommendations of the TMAP in respect of parking rates for commercial and residential development in Mascot Station Precinct. As such, the parking rates contained in the BBDCP 2013 applying to Mascot Station Precinct are consistent with that resolution and parking rates have remained unchanged.

The parking provision proposed is compliant and in fact exceeds that required under the DCP. The DCP requires much less car parking than that specified for supermarkets and retail floor area under the RMS Guide for Traffic Generating Development and this is supported by Council. The site is located adjacent to Mascot Station and the provision of compliant car parking does not equate to future residents owning cars. The physical means of restricting car ownership by enforcing a reduction in off street car parking is not realistic. Even though many of the future residents within the precinct may utilise public transport during the week, the choice of getting in the car and driving to regional or coastal NSW should be available to all residents. Therefore, the provision of compliant car parking does not discourage residents from utilising public transport and the proposed development is remains consistent with the zone objective.

- *Floor Space Ratio – It is evident that the variation to FSR is not being sought or requested to provide for additional floor space for retail or community activities as only 5% are given over to these uses.*
- *It is evident that the additional floor space sought is actually applied to provide more residential development, which as previously stated is already over-represented relative to the zone objectives.*
- *The additional floor space cannot be claimed as an offset for the provision of community benefits which go beyond normal requirements.*

Comment

The subject site falls within Urban Block 1 of BBDCP 2013. Urban Block 1 is almost half of the entire precinct. The proposed development is permissible with consent. The proposed development involves a new supermarket, serviced apartment complex, child care centre and retail shops. In total, the proportion of commercial/retail floor area is 20% of the total gross floor area of the development. Whilst the desired future character of Urban Block 1 is not strictly adhered to in this design, it is unreasonable to require this site alone to comply. There is opportunity within the precinct to develop other sites for uses which are permissible within the zone.

Land to the west of the subject site is identified as employment lands under BBLEP 2013, which will experience redevelopment in the future with higher FSR and building heights than presently exist on those sites. The subject site is ideally sited in close proximity to Mascot Station and the employment lands on the precinct periphery. The request to vary FSR is supported after careful consideration of site specific constraints to development such as contamination, remediation and high water table issues. Increasing the proportion of FSR given to retail and commercial floor area will not necessarily achieve the same character in the future. It should also be noted that the proposed development complies with Council's BBDCP 2013 unit sizes, which are larger than SEPP 65 unit sizes, were the development to comply with the FSR imposed on the site, it would achieve more smaller units on site together with an increase in unit numbers to that now proposed.

- *Traffic – It is noted that the TTPA report refers to trip generation rates of 0.85 and 0.66 trips per hour, however this incorrectly adopts the two-hour rates presented in Table 5.4 of the TMAP (Page 50). This has a fundamental impact on the assumptions and recommendations in the TMAP.*

The report adopts the latest average traffic generation rate from RMS, but does not describe why this rate is more applicable than the TMAP rates, which were based on HTS data collected in the Mascot area. There is no discussion or traffic analysis of the non-residential components of the development, no analysis of the traffic activity associated with the existing site, no traffic distribution analysis or localised impact analysis of the surrounding intersections, no analysis of the proposed access driveway locations and how they will operate/impact on the frontage road.

Comment

The Applicant has submitted a response to the traffic comments above on the 21 February 2014, as detailed below. In addition, the Applicant provided a Supplementary Assessment report on the 14 November 2013. Council engaged SMEC, the author of the TMAP to undertake a review of the traffic generation rates. SMEC provided its response on the 14 February 2014, which was then forwarded to the Applicant for further response from TTPA. TTPA then responded on the 17 February 2014. On the 19 February 2014, SMEC advised that the response from TTPA is acceptable.

The key points of the response dated 21 February 2014 are:

- *The TMAP was not endorsed by Council and therefore any criteria, projections or conclusions in it have no relevance;*
- *A meeting with Council and RMS in November 2013 resulted in an undertaking to provide supplementary assessment relating to:*
 - *The traffic implications of the proposed FSR/apartment yield compared to that envisaged in the Precinct Masterplan and provided for under the DCP;*
 - *Projected traffic generation and distribution of the various proposed development elements having regard to the RMS proposed site access constraints;*

This assessment was submitted to Council and RMS on the 14 November 2013.

- ***Traffic Analysis of the various development elements***

The gym/leisure centre, child care centre and retail elements will be entirely (or very largely) ancillary to the apartments. None the less, the Supplementary Assessment of the 13 November 2013 comprehensively addressed these elements;
- ***Recommendations of the TTPA report relevant to the TMAP***

There were no recommendations made.
- ***Adoption of the RMS Traffic Generation Rates***

The report did not adopt or assess the RMS rates, it simply commented that the TMAP rates were significantly higher;
- ***Relevance of HTS data***

The following comments are made

 - *This data dates from 2006 and there were no residential apartments development in the study area at that time which is anyway reflected nature of the proposed development;*
 - *The usage and cost of travel on the Airport Rail Link (Mascot Station) was quite different at that time;*
 - *There is no data in relation to serviced apartments in this data.*

It follows that the traffic generation data adopted for the TMAP was erroneous whilst the RMA data is far more relevant as it is based on high density development located near railway lines;

- ***Traffic Analysis of Non Residential Components***
These components are entirely or very largely ancillary, however they are addressed in the Supplementary Assessment provided to Council.
- ***Traffic Analysis of Non Residential Components***
These components are entirely or very largely ancillary, however they are addressed in the Supplementary Assessment provided to Council.
- ***Analysis of Existing Site Generated Traffic Activity***
The site has been vacant for quite some time.
- ***Traffic Distribution of Surrounding Intersections***
This is provided in the Supplementary Assessment.
- ***Analysis of Access Driveways***
The connections to John Street to Kent Road and Bourke Street will be constrained to left turn IN/OUT so analysis is not relevant. The traffic flows along John Street will be relatively minor, will not present any adverse traffic implications and will comply with the planning for the local road system and site access specifications.

In a letter dated 6 March 2014, RMS has advised that they have no objection to the proposed development and have provided conditions. These conditions are included in the draft schedule of conditions.

In addition to this Council has imposed conditions that Applicants Traffic Engineer must conduct a survey within one (1) month following the sale of at least 90% of the available apartments stock within the development, to validate the findings of the Assessment Traffic, Transport and Parking Implications dated September 2013 (Rev C) and Supplementary Reports dated 14 November 2013 prepared by Transport and Traffic Planning Associates. If the Traffic Assessment cannot be validated, the Applicant must undertake measures to ensure the local road network achieves a satisfactory level of service at the intersections at Church Avenue and Bourke Street.

(e) The public interest.

It is considered that the proposed development is in the public interest as it will provide much needed housing stock within the Mascot Station Town Centre Precinct. It will provide services and employment opportunities through the provision of the supermarket, retail tenancies, child care centre and serviced apartment complex, and provides community benefits in terms of its community room, and extensive public domain works. The draft schedule of conditions include a requirement to place any existing overhead cables underground and the provision of new footpaths to both Church Avenue and Kent Road. In addition, the applicant has provided a public pedestrian through link from Bourke Street through to Kent Road adjacent to the future public park fronting Church Street, will undertake dedication of land on Church Avenue and Kent Road for road widening together with the dedication of land fronting Church Avenue for a public reserve.

2.2 Other Matters

2.2.1 External Referrals

Ausgrid

Correspondence was received from Ausgrid dated 5 November 2013, and raises no objection to the proposed development, subject to a condition requiring provision for accommodation of an electricity substation within the premises. This will be required as a condition of consent.

NSW Police – Botany Bay Local Area Command

Correspondence received from Mascot Police Local Area Command dated 11 November 2013, raised no objection to the proposed development, subject to recommendations, which will be required as conditions of consent.

NSW Office of Water

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

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

Sydney Airports Corporation Limited (SACL)

The subject site lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority.

Correspondence received from Sydney Airports Corporation Limited (SACL) dated 18 December 2013, grants approval to a maximum height of the buildings to 51metres AHD. A condition is proposed on the consent, specifying this height restriction.

Roads and Maritime Services (RMS)

The Application is “Traffic Generating Development” and was referred to RMS. The proposal was considered by RMS and in a letter dated the 6 March 2014, RMS have advised that they have no objection to the proposed development and have provided conditions to be imposed on any consent granted.

2.2.2 Internal Referrals

The development application was referred to relevant internal departments within Council, including the Development Engineer, Traffic Engineer, Landscape Officer, Environmental Scientist and Environmental Health Officer for consideration. Relevant conditions have been included in the draft schedule of conditions.

Design Review Panel (DRP)

The design concept now forming part of this development application currently before the Panel was referred to the DRP, which met on 7 November 2013. The DRP made the following recommendations:

The proposal as submitted in the current DA has been developed and refined, and is considered to be generally of high quality, but there is one significant amendment in the site planning, which is of concern. In the south-eastern corner of the site, there are three tower blocks over a common podium form; these are located further to the south than was indicated in the pre DA design, and their form has been substantially changed. This has a number of consequences. At the south-western corner, the preliminary comments made in relation to building form have not been addressed.

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

	Issue	Officers Response
1	The Kent Road frontage should be further developed. With the westerly exposure of the tall buildings, future constant and heavy traffic, and the strong likelihood of the building forms causing unpleasant downdrafts from winds, continuous awnings are strongly recommended. These would have the additional benefit of protecting the large exposed areas of west facing street front commercial/retail glazing.	The majority of the retail frontage and or lobby frontage to Kent Road is setback from the street boundary, therefore being concealed by the upper level. There are no waning proposed adjacent to plant areas and these would need to be unobstructed. The Applicant has submitted detailed landscape masterplan and detailed landscape drawings which indicate street trees will be planted along the entire Kent Road frontage soften the scale of the development. Due to the extent of basement excavation required, there is minimal room available to increase the setback off Kent Road. The introduction of an awning along this frontage will inhibit the establishment of the street trees which is preferred to an awning.
2	At the south-western corner (Building SA and J), the DA proposes continuous 13 storey buildings without podium. The Masterplan envisaged a 4 storey building along 40% of the immediate frontage, and a 13 storey building along the rest of the frontage setback behind a 4 storey podium. This will result in an unacceptably assertive building form with significantly worse overshadowing impacts on the properties to the south.	The amended plans received 21 February remain unchanged in respect of the built form to the south-western corner. The Applicant has held discussions with Council and the architect/owner of 39 Kent Road to the south, in order to maintain a development on that site which achieves compliance with the solar access requirements of BBDCP 2013. As such, the amended plans need not incorporate any changes to the built form of Buildings SA and J. Building J has been reduced in height at its eastern elevation from 14 storey down to 11 storey to achieve compliance with solar access requirements to the proposed communal open space area at 39 Kent Road.
3	To the south east corner, the pre DA submission had three towers with separation distances of 24m and 18m	The amended plans received on the 21 February 2014, indicate changes to Q2 by increasing the setback to the southern

	Issue	Officers Response
	and were setback 6m from the southern boundary. This arrangement is compromised in the new design with the two eastern blocks now not separated but joined in a single U-plan and the setback of the now only two tower blocks to the southern boundary is slightly reduced. This will almost certainly result in worse impact than the pre DA form and worse than the Masterplan form.	boundary from 9m to 12m. The former two eastern U-plan blocks are now one complete mass (Building E) with an increase in separation between it and Building G. The podium between (Building D) is increased in height from 4 storey to 6 storey. The changes allow greater solar access to the southern adjoining property, which is an improvement on the building mass blocks envisaged in the DCP and the earlier DA design.
4	<p>The SEE states that the density if 3.78:1 (or 3.81:1 if those balconies with balustrades higher than 1.4m are included as required by the definition). The Applicants arguments for higher density are far from persuasive. It is considered that there are two valid arguments which could justify additional FSR;</p> <ul style="list-style-type: none"> ▪ The inclusion of apartments conforming to the Botany DCP and larger in size than the recommendations of the RFDC; ▪ The proposed dedication of land to Council for the public park, and funding of landscaping to the park, and dedication of land for road widening. 	<p>The amended plans received on the 21 February 2014 result in a reduction in the number of apartments from 985 down to 899 and reduction in FSR from 3.87:1 (with wintergardens) and 3.78:1 (without wintergardens) down to 3.72:1 (with wintergardens) and 3.67:1 (without wintergardens).</p> <p>The proposed development complies with the recommended unit sizes stipulated in BBDCP 2013.</p> <p>The proposal involves the following public benefit works:</p> <ul style="list-style-type: none"> ▪ Dedication and embellishment of a new public park with a total area of 9,435sqm; ▪ Creation of a embellishment of an east-west pedestrian through link from Bourke Street to Kent Road; ▪ A new north-south road, to be dissected by the pedestrian through link; ▪ Extension of John Street from Kent Road to connect with the new street; ▪ Dedication of land along Church Avenue for road widening; <p>The proposed FSR is acceptable. The amended plans have addressed the adverse overshadowing impacts to the southern property and the site configuration/massing was required to be revised from that envisaged in the Masterplan, as the Masterplan configuration resulted in significant adverse</p>

	Issue	Officers Response
		overshadowing to the southern adjoining properties and resulted in an excessive number (20%) of south facing apartments.
5	Many of the large balconies are cantilevered beyond the face of the building and would provide valuable amenity, however it will be critical to ensure that they have adequate protection from strong winds to which they will be exposed. Many are corner balconies, which are particularly vulnerable. Robust fixed and/or adjustable screening devised will be essential.	A condition can be imposed on any consent granted to require additional treatments to the exposed south-western corner balconies.

Table 10 – Design Review Panel comments

It is considered that the Applicant has addressed the concerns of the Design Review Panel in the design currently before the Panel. The current design will contribute to the commercial amenity of the precinct.

Section 94 Contributions

At Council Development Committee on 6 May 2009, Council was advised of the changes made to the Section 94 Contributions imposed by the State Government. The Minister for Planning issued a Section 94E Direction on 23 January 2009, which capped levies for residential development and residential subdivision to \$20,000.00. Council responded to the Direction by passing a resolution on the 18 March 2009 to comply with the cap. Therefore based on the cap the Section 94 Contributions may be applied to the proposed 899 residential units. As such, the calculations are as follows:

- 899 units @ \$20,000.00 each = \$17,980,000.00

The Section 94 Contributions for the commercial component (including supermarket, service apartments, shops and childcare) of the proposed development is not included in the above Directive and as such is subject to Council's Section 94 Contributions plan 2005-2010 and Mascot Station Section 94 Plan.

As such, the calculations as follows:

Section 94 Contributions Plan 2005-2010:

- Community Facilities \$ 92, 981
- Administration \$ 15, 078
- Shopping Centre Improvements \$ 67,492
- Open Space & Recreation \$ 91,186
- Drainage \$667, 170

Total \$933, 907

Section 94 Contributions Plan – Mascot Station Precinct:

- Public Road Land Dedications \$ 1, 721, 338

Therefore a total Section 94 Contribution of \$ **20,635,245.00** is required to be paid to Council in accordance with the draft schedule of Conditions attached to this report.

Land Dedications/Public Benefits

Road Widening - The development application involves the dedication of land to Council for the widening of Kent Road and Church Avenue, the reconstruction of Church Avenue road pavement, kerb and guttering together with associated public domain works in the nature strip.

Park and Through Site Link – The application involves the dedication of 9,435 sqm of land at the northern part of the site as a public park, together with a pedestrian site thru link from Kent Road to Bourke Street together with landscaping/paving of this land.

Additional Street – The application involves the creation of a new street through the site from north to south, together with the extension of John Street from Kent Road to connect to the new internal street.

It is recommended that a condition be imposed on any consent granted, which prohibits vehicular access across the east/west pedestrian through link, to ensure the ongoing safety of pedestrians at all times. This will also increase the public park area by 217m² and increase the provision of landscaping and improve the amenity to the public space. In addition, a condition will be imposed requiring the provision of convenience amenities in an easily accessible location for use by the general public.

3.0 Conclusion

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

The proposed development has been significantly amended to address issues raised during the assessment process, including the recommendations of Council's Design Review Panel, traffic generation rates and unit mix. Council received amended plans and supporting documents for the proposed development on the 21 February 2014. The changes now seek to further reduce the FSR from 3.87:1 down to 3.72:1 (with winter gardens), a reduction in the total number of apartments from 985 down to 899, increase southern boundary setback from 9m to 12m.

The amended proposal now requests approval for the following:

- Three levels of basement car parking for 1,666 vehicles;

- Provision of 5,666sqm retail floor space including retail tenancies, a supermarket and a childcare centre;
- Dedication and embellishment of new public land with a total area of 9,435sqm including a new east-west pedestrian link, new north-south road, extension of John Street from Kent Road and land dedication along Church Avenue and Kent Road for road widening;

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

The proposed development has an FSR of 3.72:1 (with wintergardens) which exceeds the maximum 3.2:1 FSR permitted under the Botany Bay LEP 2013, however the applicant has submitted a Clause 4.6 Variation which demonstrates that the proposal satisfies the underlying objectives of the FSR control and that the proposal will result in the orderly and economic development of the site. The Variation to the maximum FSR is considered to be well founded and the variation to the FSR control is supported by Council in this case.

In addition, the proposed development has a height exceeding the maximum height of buildings under Clause 4.3 of Botany Bay Local Environmental Plan 2013. The Applicant has submitted a Clause 4.6 Variation in respect of height, which related to plant rooms and lift overruns. The proposed development is permissible in the B2 – Local Centre Zone, and the development is considered to satisfy all requirements and the relevant objectives of BBLEP 2013 with the exception of the 3.2:1 FSR control and 44m height control. The applicant has demonstrated that, given the existing significant site constraints the proposed density, height, bulk and scale is appropriate for the site and will contribute to the amenity of the locality. Therefore the variation to the maximum height and FSR under BBLEP 2013 is considered acceptable in this instance.

The application was the subject of three (3) objections and the matters have been addressed in the body of the report.

The proposal has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979*, the *Botany Local Environmental Plan 1995* and the *Botany Bay Local Environmental Plan 2013*. The proposal is permissible in the B2 – Local Centre 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 3.72:1 and a maximum building height of 47.1 metres (51m AHD); and
- (b) Approve Development Application No. 13/200 for the mixed use development comprising the following; 899 residential apartments; 262 serviced apartments; Three levels of basement car parking for 1,666 vehicles; 5,666sqm retail floor space including retail tenancies, a supermarket and a childcare centre; the dedication and embellishment of new public land with a total area of 9,435sqm including a new east-west pedestrian link, new north-south road, extension of John Street from Kent Road and land dedication along Church Avenue and Kent Road for road widening.

5.0 **CONDITIONS OF CONSENT**

Premises: 19-33 Kent Road, Mascot

DA No: 13/200

SCHEDULE OF CONSENT CONDITIONS

GENERAL CONDITIONS

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

Drawing No.	Author	Dated Received
DA 0001 titled Site Plan dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
A0098 titled Level B2 Plan dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
A0099 titled Level B1 Plan dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
A0101 titled Level 01 Plan dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
A0102 titled Level 02 Plan dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
A0103 titled Level 03 Plan dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014

Drawing No.	Author	Dated Received
A0104 titled Level 04 Plan dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
A0105 titled Level 05 Plan dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
A0106 titled Level 06 Plan dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
A0107 titled Level 07 Plan dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
A0108 titled Level 08-09 Plan dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
A0110 titled Level 10 Plan dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
A0111 titled Level 11 Plan dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
A0112 titled Level 12 Plan dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
A0113 titled Level 13 Plan dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
A0114 titled Level 14 Plan dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
A0115 titled Roof Plan dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
A0501 titled Street Elevations Rev E dated 20/09/2013	PTW Architects for Meriton	27 September 2013
A0502 titled Street Elevations Rev E dated 20/09/2013	PTW Architects for Meriton	27 September 2013
A0503 titled Street Elevations Rev E dated 20/09/2013	PTW Architects for Meriton	27 September 2013
Q1 A0711 titled Q1 - Facade Detail 1 Rev G	PTW Architects for Meriton	21 February 2014
Q1 A0712 titled Q1 - Facade Detail 2 dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014

Drawing No.	Author	Dated Received
Q1 A0713 titled Q1 - Facade Detail 3 dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
Q1 A0714 titled Q1 - Facade Detail 4 dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
Q2 A0721 titled Q2 - Facade Detail 1 dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
Q3 A0731 Q3 - Facade Detail 1 dated 06/09/2013 Rev D	PTW Architects for Meriton	27 September 2013
Q3 A0732 Q3 - Facade Detail 2 dated 06/09/2013 Rev D	PTW Architects for Meriton	27 September 2013
Q3 A0733 Q3 - Facade Detail 3 dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
Q4 A0741 titled Q4 - Facade Detail 1 dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
Q4 A0742 titled Q4 - Facade Detail 2 dated 18/02/2014 Rev G	PTW Architects for Meriton	21 February 2014
A0800 titled Shadow Diagrams - Winter Solstice dated 20/09/2013 Rev G	PTW Architects for Meriton	21 February 2014
A0801 titled Shadow Diagrams – Equinox dated 20/09/2013 Rev G	PTW Architects for Meriton	21 February 2014
UT _A0104 titled – Studio Masionette dated 01/08/14	PTW Architects	23 January 2014
UT_A0107 titled – Studio Courtyard Dated 01/08/14	PTW Architects	23 January 2014
UT_A0113 titled – Studio – FlexiInternal dated 01/08/14	PTW Architects	23 January 2014
UT - A0340 titled Studio – Terrace dated 01/08/14	PTW Architects	23 January 2014
UT – B1105 titled Studio Corner dated 01/08/14	PTW Architects	23 January 2014
UT – D0405 titled 1 Bed – Corner dated 01/08/14	PTW Architects	23 January 2014
UT – F0603 titled Studio – FlexiInternal dated 01/08/14	PTW Architects	23 January 2014

Drawing No.	Author	Dated Received
UT – J0301 titled 2Bed – FlexiInternal dated 01/08/14	PTW Architects	23 January 2014
UT – K0201 titled 1 Bed – Courtyard dated 01/08/14	PTW Architects	23 January 2014
UT - K0202 titled 2 Bed – Corner dated 01/08/14	PTW Architects	23 January 2014
UT - K0217 titled 1 Bed – Terrace dated 01/08/14	PTW Architects	23 January 2014
UT – K0302 titled 1 Bed – FlexiInternal dated 01/08/14	PTW Architects	23 January 2014
UT - K0303 titled 1 bed – FlexiInertanl dated 01/08/14	PTW Architects	23 January 2014
UT_Kt0322 titled 1bed – through dated 01/08/14	PTW Architects	23 January 2014
UT – M0504 titled 2 bed terrace dated 01/08/14	PTW Architects	23 January 2014
UT – M0605 titled 2bed – FlexiInternal dated 01/08/14	PTW Architects	23 January 2014
UT – M1108 – 2Bed – Courtyard dated 01/08/14	PTW Architects	23 January 2014
Civil Internal Works Plans, Drawing Nos. DAC101 to DAC163	AT & L Civil Engineers	27 September 2013
Amended Landscape Concept, Issue 5, dated February 2014	Arcadia Landscape Architecture	21 February 2014
Amended Landscape Details, Drawing Nos. 000 to 502, Issue B, dated 20 February 2014	Arcadia Landscape Architecture	21 February 2014
Level 5/6 Typical Podium Privacy Screens	PTW Architects	11 March 2014
Level 4 Privacy Screens	PTW Architects	11 March 2014

Reference Document(s)	Author	Date Received
Statement of Environmental Effects	Planning Ingenuity Pty Ltd	27 September 2013
Architectural Design Report	PTW Architects	27 September 2013
Survey Plan, Sheets 1-4	JBW Surveyors Pty Ltd	27 September 2013

Reference Document(s)	Author	Date Received
Qualitative Wind Assessment, Report No. 610.12735-R1 (Rev O)	SLR Consulting Australia Pty Ltd	27 September 2013
BASIX Assessment, Issue 02 dated 26 September 2013	Efficient Living	27 September 2013
DA Acoustic Assessment Report, Report No. 20130401.1	Acoustic Logic Consultancy Pty Ltd	27 September 2013
Solar Access Assessment, Report No. 610.12735-R2	SLR Consulting Australia Pty Ltd	27 September 2013
Assessment of Traffic, Transport and Parking Implications,	Transport & Traffic Planning Associates	27 September 2013
Supplementary Traffic Report, dated 14 November 2013	Transport & Traffic Planning Associates	20 November 2013
Further letter from TTPA, dated 23 January 2014	Transport & Traffic Planning Associates	21 February 2014
Final letter from TTPA, dated 17 February 2014	Transport & Traffic Planning Associates	17 February 2014
Waste Management Plan, Revision B	Elephants Foot	27 September 2013
Quantity Surveyors Report	Gibson Quantity Surveyors	27 September 2013
Arboricultural Assessment Report, dated 29 November 2013	Tree And Landscape Consultants	21 February 2014
Geotechnical and Hydrogeological Investigation, Report No. 26541Zrpt Rev 1	JK Geotechnics	27 September 2013
Contamination Review Report, dated 18 September 2013	Consulting Earth Scientists	27 September 2013
Flood Impact Assessment, Ref X13255	Brown Consulting (NSW) Pty Ltd	27 September 2013
Crime Risk & Security Report	Meriton Property Services Pty Ltd	27 September 2013
Construction Management Plan (including Traffic Management Plan), Rev 1	Karimbla Constructions Services (NSW) Pty Ltd	27 September 2013
Clause 4.6 Variation to Height & Roof Plan Overlay	Meriton	21 February 2014
Mascot Residential Demand	Hill PDA	10 February 2014

Reference Document(s)	Author	Date Received
Assessment		
Response to Design Review Panel	PTW Architects	21 February 2014
Communal Open Space Calculations	Arcadia Landscape Architecture	21 February 2014

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

2

- (a) The applicant must prior to the issue of the Construction Certificate, pay the following fees:
- (i) Builders Security Deposit \$50,000.00;
 - (ii) Development Control \$11,011.00;
 - (iii) Section 94 Contributions \$20,635,245.00;
 - (iv) Waste Contribution \$25,000.00;
 - (v) Street Tree Maintenance Bond \$5000.00;

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

3

- (a) This Consent relates to land in Lot 2 in DP 620023 and as such, building works must not encroach on to adjoining lands or the adjoining public place, other than public works required and as otherwise permitted by this consent; and
- (b) Prior to the issue of the Occupation Certificate, a survey report must be submitted to Council to verify that Condition 3(a) above has been complied with;
- (c) Separate development applications must be lodged with Council for the supermarket, individual retail tenancies, child care centre, serviced apartment operation and associated signage.

4

- (a) The road widening and public domain to Church Avenue, Kent Road and within the subject site shall be the subject of a separate development application to be lodged with Council and shall include but not be limited to

footpath treatments, service adjustments/access lids and street trees (as provided by the Landscape Consultant) (including the under-grounding of existing above ground electricity and telecommunication cables in Church Avenue, adjoining the site together with the provision of appropriate street light standards, drainage (if any), kerb and gutter, footway, bicycle paths, landscaping, traffic signs). The landscape component shall be in accordance with Council's City Identity Program and any other Council specification or requirement. All public domain/footpath improvements shall be installed in accordance with Council specifications by the Applicant and at the Applicant's expense. All improvements shall be completed prior to the issue of an final Occupation Certificate;

- (b) The detailed landscape design of the public park area in the south-western corner of the site will be the same separate development application as detailed above to be lodged with Council. The Agreement shall also include timelines for construction of the public park and Applicant contribution to greening of the Sydney Water easement to the east of the site. The detailed design shall address the following: street furniture, amenity area lighting types and locations, level changes/treatments, drainage design (WSUD), irrigation, tree pit details, root barrier, pavement types, construction and slip ratings (paving samples supplied), public art/sculpture provision, elevations, sections and sketches provided;
- (c) The public footpaths in Church Avenue, Kent Road, John Street and New Street shall be constructed in accordance with Council specifications and the Draft Public Domain Manual. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications. Hold points and Council inspections are required after formwork setback and to prior pouring the concrete blinding slab, at the commencement of paving works and at final completion as a minimum. Pavers shall be ordered allowing for adequate lead time for manufacture (10-12 weeks); and
- (d) New street trees at the pot size specified shall be installed in the accordance with the approved landscape plan. The trees shall be sourced from a reputable supplier that grows stock to the NATSPEC specifications. A Dial-Before-You-Dig enquiry is required prior to all planting - Council is not liable for any damage to subsurface infrastructure during public domain works. Two hold point inspections are required: prior planting trees to ensure plant stock is suitable and post-planting.
- (e)
 - (i) The requirements under (a) and (b) above must form part of a separate development application to Council;
 - (ii) The completion of works at (a) to (d) above is a pre-condition to the issue of the Occupation Certificate.

- (a) The Strata subdivision of the development shall be the subject of a further Development Application to Council; and

- (b) The subdivision application must be accompanied by a formal copy of the by-laws which shall be in accordance with the plans and documentation approved under this Consent and must also include the following:
- (i) Responsibilities with regard to the ongoing maintenance of the building and landscaped areas at the property in accordance with the plans and details approved under Development Consent No. 13/200.
 - (ii) Responsibilities with regard to the maintenance of artificial features at the property in accordance with the plans and details approved under Development Consent No. 13/200.
 - (iii) Responsibilities regarding the maintenance of the car wash bay the Owners Corporation / building owner.
 - (iv) Responsibilities for ensuring owners and/or tenants have adequate and hygienic disposal and collection arrangements and for ensuring the waste storage area is appropriately maintained and kept in a clean and safe state at all times in accordance with the Plan of Management required under the conditions of this consent.
 - (v) Responsibilities to ensure that receptacles for the removal of waste, recycling etc. are put out for collection between 4.00pm and 7.00pm the day prior to collection, and, on the day of collection, being the day following, returned to the premises by 12.00 noon;
 - (vi) Responsibilities to ensure that wastewater and stormwater treatment devices (including drainage systems, sumps and traps) are regularly maintained in order to remain effective. All solid and liquid wastes collected from the devices shall be disposed of in a manner that does not pollute waters and in accordance with the Protection of the Environment Operations Act 1997.
 - (vii) The Owners Corporation/Executive Committee obligations under clauses 177, 182, 183, 184, 185 and 186 of the *Environmental Planning and Assessment Regulation 2000*.
 - (viii) The linen plan must include details of any easements, encroachments, rights of way, including right of footway. restriction as to user or positive covenants and include a Section 88B Instrument under the *Conveyancing Act, 1919*. Council is to be nominated as the only authority permitted to release, vary or modify any easements, encroachments, rights of way, restriction as to user or positive covenants;
 - (ix) A graffiti management plan for the removal of graffiti and similar vandalism within seven (7) days of its occurrence and surface re-instatement;
 - (x) The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system.

All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines;

- (xi) Maintenance of required acoustic measures of Development Consent No. 13/200; and
- (xii) CCTV surveillance of all public areas within the development site.

- 6 The consent given does not imply that works can commence until such time that:
- (a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
 - (i) The consent authority; or,
 - (ii) An accredited certifier; and,
 - (b) The person having the benefit of the development consent:
 - (i) Has appointed a principal certifying authority; and
 - (ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
 - (iii) The person having the benefit of the development consent has given at least 2 days notice to the council of the persons intention to commence the erection of the building.
- 7 All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 8 Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the each building in the development are fulfilled.
- (a) Note:
- Relevant BASIX Certificate means:
- (i) A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
 - (ii) If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.
 - (iii) BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

- 9 The Applicant has permission to remove the Kent Road street trees at their own expense. A qualified Arborist with public liability insurance must be engaged and a Dial-Before-You-Dig enquiry is required. All work is to take place on the Council road reserve with the appropriate safety and directional signage implemented to ensure public safety and access. Partial road and footpath closures require Council approval. The trunk is to be stump ground to a depth of 150mm without damage to Council infrastructure or underground services. Council shall take no responsibility for any damage incurred to persons, property or services during the tree removal works. **Note:** Trees are not permitted to be removed until the public domain works are due to commence.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

- 10 The following condition is imposed by Ausgrid and is to be complied with:
Provision shall be made for accommodation for an electricity substation within the premises.

- 11 The following condition is imposed by Sydney Water and is to be complied with:

Water

- (a) The 100 mm drinking water main fronting the proposed development in Church Avenue does not comply with the Water Supply Code of Australia (Sydney Water Edition – WSA 03-2002) requirement for minimum sized mains for this scope of development.
- (b) The 100 mm drinking water main must be upsized to a 200 mm main.

Wastewater

- (c) The wastewater main available for connection is the 225mm main traversing the south eastern portion of the site.
- (d) Where proposed works are in close proximity to a Sydney Water asset, the developer may be required to carry out additional works to facilitate their development and protect the wastewater main. Subject to the scope of development, servicing options may involve adjustment/deviation and or compliance with the Guidelines for building over/adjacent to Sydney Water assets.

Sydney Water Servicing

- (e) Sydney Water will further assess the impact of the developments when the proponent applies for a Section 73 Certificate. This assessment will enable Sydney Water to specify any works required as a result of the development and to assess if amplification and/or changes to the system are applicable. Sydney Water requests Council continue to instruct proponents to obtain a Section 73 Certificate from Sydney Water.
- (f) The proponent must fund any adjustments needed to Sydney Water infrastructure as a result of any development. The proponent should engage a Water Servicing Coordinator to get a Section 73 Certificate and manage the

servicing aspects of the development. Details are available from any Sydney Water Customer Centre on 13 20 92 or Sydney Water's website at www.sydneywater.com.au.

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

- (a) The intersection on Kent Road and Ricketty Street and Church Avenue shall be upgraded in accordance with the attached plan.

Note: This concept plan is indicative only and subject to further refinement at the detailed design stage.

- (b) The proposed access road (John Street connection) off Kent Road shall be restricted to left in/left out only on Kent Road.

- (c) The abovementioned works shall be designed and constructed in accordance with RMS requirements, Austroads, RMS's supplements, RMS's Traffic Signal Design Manual and other Australian Standards and endorsed by a suitably qualified practitioner.

The certified copies of traffic signal and civil design plans as well as swept path analyses of the longest vehicles shall be submitted to RMS for consideration and approval prior to the release of Construction Certificate by the Principal Certifying Authority (PCA) and commencement of any road works.

RMS fees for administration, plan checking, signal works inspection and project management shall be paid by the developer prior to the commencement of works.

The developer will be required to enter into a Works Authorisation Deed (WAD) for the abovementioned traffic signal and civil works. The Works Authorisation Deed (WAD) will need to be executed prior to RMS assessment of the detailed traffic signal design plans. The Construction Certificate shall not be released by the Principal Certifying Authority (PCA) until such time the WAD is executed.

The works shall be completed and operational prior to the release of the Occupation Certificate.

- (d) Stormwater discharge from the subject site into the RMS drainage system must not exceed the pre-development discharge.

The post development stormwater discharge from the subject site into RMS drainage system should not exceed the pre-development discharge.

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

Details should be forwarded to:

The Sydney Asset Management
Roads and Maritime Services

With regard to the Civil Works requirement please contact the RMS Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2766.

- (e) The developer is to submit detailed documents and geotechnical reports relating to the excavation of the site and support structures to RMS for approval in accordance with Technical Direction (GTD 2012/001).
- (f) Applicant should be aware of the potential for road traffic noise impact on the development on the subject site. Noise attenuation measures should be provided in accordance with Office of Environment and Heritage's Environmental Criteria for Road Traffic Noise;
- (g) All vehicles are to enter and leave the site in a forward direction;
- (h) The developer shall be responsible for all public utility adjustment/relocation works, necessitated by the above work and as required by the various public utility authorities and/or their agents;
- (i) All works and regulatory signposting associated with the development are to be at no cost to RMS or Council.
- (j) The swept path of the longest vehicle (including garbage trucks) entering and exiting the subject site as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval which shows that the proposed development complies with this requirement;
- (k) The number of car parking spaces should be provided to Council's satisfaction;
- (l) The layout of the proposed car parking areas associated with the subject development (including driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths and parking bay dimensions) should be in accordance with AS 1890.1-2004, AS 2890.2 – 2002 for heavy vehicle useage and AS 2890.6:2009 for the disabled;
- (m) A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of the Construction Certificate;

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

General and Administrative Issues

- (a) An authorisation shall be obtained for the take of groundwater as part of the activity. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will be limited to the volume of groundwater take identified;

- (b) The design and construction of the structure shall preclude the need for permanent dewatering by waterproofing those areas that may be impacted by any water table (i.e. a fully tanked structure) with adequate provision for unforeseen fluctuations of water table levels to prevent potential future inundation;
- (c) Construction methods and material used in and for construction shall not cause pollution of the groundwater;

Prior to Excavation

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

During Excavation

- (j) Piping or other structures used in the management of pumped groundwater (tailwater) shall not create a flooding hazard. Control of pumped groundwater (tailwater) is to be maintained at all times during dewatering to prevent unregulated off-site discharge;
- (k) Measurement and monitoring arrangements to the satisfaction of the NSW Office of Water are to be implemented. Monthly records of the volumes of all

groundwater pumped and the quality of any water discharged are to be kept and a report provided to the NSW Office of Water after dewatering has ceased. Daily records of groundwater levels are to be kept and a report provided to the NSW Office of Water after dewatering has ceased;

- (l) Pumped groundwater (tailwater) shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewerage system, etc) without the controlling authorities approval and/or owners consent. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater (tailwater) shall be complied with;
- (m) Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulphate soils management plan or remediation action plan) shall not be compromised by the dewatering activity;
- (n) The location and construction of groundwater extraction works that are abandoned are to be recorded and a report provided to the NSW Office of Water after dewatering has ceased. The method of abandonment is to be identified in the documentation;
- (o) Access to groundwater management works used in the activity is to be provided to permit inspection when required by the NSW Office of Water under appropriate safety precautions;

Following excavation

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

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

- (a) As the development may be exposed to Break and Enter Steals, Stealing, Steal from persons, Malicious Damage and Steal from Motor Vehicle offences, a closed circuit surveillance system (CCTV) which complies with the Australian Standard - Closed Circuit Television System (CCTV) AS:4806:2006 shall to be implemented to receive, hold or process data for the identification of people involved in anti-social behaviour prior to the issue of the Occupation Certificate. The system is obliged to conform with Federal, State or Territory Privacy and Surveillance Legislation;
- (b) The CCTV system should consist of surveillance cameras strategically located at the front and rear of the premises to provide maximum surveillance coverage of the area. Particularly areas that are difficult to supervise. Cameras should be strategically mounted outside the development buildings and within the car parking areas to monitor activity within these areas. One or more cameras should be strategically mounted at entry and exit points to monitor activities around these areas;
- (c) Any proposed landscaping and vegetation should adhere to the following principles:

- (i) Shrubs bushes, plants should remain under 900mm in height;
- (ii) Branches or large trees should start at a height of two (2) metres and higher;

This will assist with natural surveillance and reduce hiding spots and dark areas for potential offenders.

- (d) Bicycle parking areas should be located within view of capable guardians. The provision of covered lockable racks to secure bicycles increases the effort required to commit crime.
- (e) Any storage cages in the underground car park areas should not be constructed in an isolated area. CCTV cameras must cover this area, as they are easy targets when they have little supervision. Solid steel housing and quality key locks should be used to prevent access.

15 The following conditions are imposed by the Sydney Airport Corporation Limited (SACL) and must be complied with:

- (a) The PROPERTY DEVELOPMENT at 19-33 KENT ROAD MASCOT lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations, which limit the height of structures to 50 feet (15.24 metres) above existing ground height (AEGH) without prior approval of this Corporation.
- (b) The Civil Aviation Safety Authority (CASA) have no objection to the erection of the building to a height of 51.0 metres above Australian Height Datum (AHD).
- (c) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
- (d) Should you wish to exceed the above heights, a new application must be submitted. Should the height of any temporary structure and/or equipment be greater than 50 feet (15.24 metres) above existing ground height (AEGH), a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.
- (e) Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations. SACL advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct. Information required by SACL prior to any approval is to include:
 - (i) the location of any temporary structure or equipment, ie. construction cranes, planned to be used during construction relative to Mapping Grid of Australia 1994 (MGA94);
 - (ii) the swing circle of any temporary structure/equipment used during construction;
 - (iii) the maximum height, relative to Australian Height Datum (AHD), of any temporary structure or equipment ie. construction cranes, intended to be used in the erection of the proposed structure/activity;

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

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

- 16 The City of Botany Bay being satisfied that the proposed development will increase the demand for public amenities within the area, and in accordance with Council's Section 94 Contributions Plans listed below a contribution of **\$20,635,245.00**.

The Section 94 Contribution of **\$20,635,245.00** is to be paid to Council prior to the issue of the Construction Certificate.

17

- (a) Prior to the issue of the Construction Certificate, the applicant shall submit an amended plan of the new north-south street from Church Avenue to John Street, which indicates that vehicles are prohibited from traversing over the pedestrian corridor that connects with Mascot Station. A culdesac turning area for vehicles shall be provided for each termination point and a vehicle free zone established together with the extension of the park space to include this area as composite public space;
- (b) Public convenience amenities are to be provided in a location which is safe, easily accessible and identifiable for pedestrians and visitors to the site.

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

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

- (a) A copy of the dilapidation report together with the accompanying photographs shall also be given to all immediately adjoining properties owners and public

utility authorities, and a copy lodged with Principal Certifying Authority and the Council. The report shall be agreed by all affected parties as a fair record of existing conditions prior to commencement of any works.

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

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

- 20 A Soil and Water Management Plan (also known as an Erosion and Sediment Control Plan) shall be prepared according to *'Do It Right On-Site' Soil and Water Management for the Construction Industry* (available from Council) and NSW EPA's *Managing Urban Stormwater: Construction Activities* and submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. This Plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times during the construction works. A copy of the Soil and Water Management Plan shall be kept on-site at all times and made available to Council Officers on request.
- 21 Prior to the issue of the Construction Certificate the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.
- 22 Prior to the issue of the Construction Certificate design verification is required to be submitted from a qualified designer to confirm the development is in accordance with the approved plans and details and continues to satisfy the design quality principles in State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development.
- 23
 - (a) All plumbing stacks, vent pipes, stormwater downpipes and the like shall be kept within the building and suitably concealed from view. This Condition does not apply to the venting to atmosphere of the stack above roof level;
 - (b) The basement of the building must be designed and built so that on completion, the basement is a "fully tanked" structure, i.e. it is designed and built to prevent the entry of ground water / ground moisture into the inner part of the basement;
 - (c) The provision of disabled access throughout the development is required and shall be in compliance with the Building Code of Australia Part D3 "Access for People with Disabilities" and Australian Standard AS1428.1 (2001) - Design for Access and Mobility - Part 1 General Requirements for Access -

Buildings. This requirement shall be reflected on the Construction Certificate plans.

(d) Prior to the issue of a Construction Certificate, the construction drawings shall indicate the following:

- (i) That water will be prevented from penetrating behind fittings/linings and into concealed spaces in laundry, sanitary areas and bathrooms etc;
- (ii) That floor to ceiling in laundry and bathroom areas to be tiled;
- (iii) That timbers used in the development are plantation, recycled or regrowth timbers of timbers grown on Australian farms or State forest plantations and that no old growth or rainforest timbers are to be used in any circumstances; and
- (iv) That plumbing to each dwelling will be separated and adequately contained to prevent noise transmission and vibration.

24 Prior to the issue of the Construction Certificate, the measures required in the Qualitative Wind Assessment, Report No. 610.12735-R1 (Rev O) prepared by SLR Consulting Australia Pty Ltd shall be detailed on the Construction Certificate plans. These shall include additional wind mitigation treatments to exposed south west facing balconies.

25

- (a) Prior to the issue of the Construction Certificate, the measures required in the Acoustic Report: Report No. 20130401.1, prepared by Acoustic Logic Consultancy Pty Ltd dated 16 September 2013, received by Council 27 September 2013, shall be undertaken in accordance with the provisions of *AS2021-2000: Acoustics – Aircraft Noise Intrusion – Building Siting and Construction* to establish components of construction to achieve indoor design sound levels in accordance with Table 3.3 of AS2021-2000 shall be incorporated into the construction of the buildings;
- (b) Prior to the issue of the Construction Certificate, a compliance report from a suitably qualified acoustic consultant shall be submitted to Council indicating any required noise mitigation measures to the approved development, as detailed in the NSW Road Noise Policy 2011 in accordance with AS 3671-1989 – Acoustic – Road Traffic Intrusion;
- (c) Prior to the issue of the Construction Certificate details are to be provided on acoustic treatment to the entry and exit driveway on Church Avenue adjacent to No. 8 Bourke Street of the development to comply with the Office of Environment & Heritage's Industrial Noise Policy and Noise Control Guidelines.

26 Prior to the issue of the Construction Certificate, a Certificate under Section 73 of the Water Board (Corporation) Act 1994 shall be obtained and submitted to Council for each stage of construction to ensure that the developer has complied with all relevant

Sydney Water requirements, including appropriate connections, correctly sized amplifications, procurement of trade waste agreements, where necessary, and the payment of developer charges.

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

- 27 Plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Principal Certification Authority with the application for the Construction Certificate. Storage of Waste and recycling shall meet the following requirements:
- (a) The rooms for the storage of garbage and recyclable materials shall be:
 - (i) fully enclosed;
 - (ii) adequately ventilated;
 - (iii) Constructed with a concrete floor, concrete or cement rendered walls coved to the floor;
 - (iv) The floor shall be graded to an approved sewer connection incorporating a sump and galvanized grate cover or basket in accordance with the requirements of Sydney Water Corporation.
 - (v) Washing facilities shall be provided within close proximity to the garbage and recycling storage area.
- 28 A suitable intercom system linked to all units within the development shall be provided at the vehicle entrance to the development to ensure any visitors to the site can gain access to the visitor parking in the car parking area. The details of the intercom system shall be submitted to Principal Certifying Authority prior to the issue of a Construction Certificate and its location and specifications endorsed on the construction drawings.
- 29 Prior to the issue of the Construction Certificate, the following documentation shall be submitted to Principal Certifying Authority:
- (a) Longitudinal sections along centreline of all the ramps between each basement parking levels;
 - (b) Design certification, prepared by a suitably qualified engineer, showing the longitudinal sections shall be designed in accordance with AS2890.1 (including gradients and gradient transitions).
- 30
- (a) Prior to the issue of the Construction Certificate, detailed Stormwater Management Plans and specifications shall be prepared by a suitably qualified and experienced civil engineer and the design shall be generally in accordance with the Concept Stormwater Management Plans prepared by AT

& L Consulting Engineers Pty Ltd, Job No. 13-127, Drawing Nos. DAC101-DAC163 and received by Council on the 27 September 2013.

With the following issues to be complied with and shown on the plans:

- (i) The stormwater drainage system from the roof and balcony of the building to the On-site detention (OSD) system shall be shown on the stormwater management plans. All stormwater runoff from the roof area and balcony shall be directed to the system.
- (ii) The layout of the basement parking area and OSD system shown on the stormwater management plans shall correspond with the architectural plan. The location of the discharge control pit shall be revised accordingly.
- (iii) The emergency overflow of OSD systems shall be shown on the plans to ensure any overflow from the OSD system will be conveyed to the public streets via surface overland flow.
- (iv) Additional access grates shall be provided to each corner of the OSD tank.
- (v) In order to protect the buildings from stormwater inundation, the OSD tank shall be water-tight.
- (vi) The outlet pipes of the OSD system and the GPT shall be minimum 300mm diameter.
- (vii) Rainwater tanks shall be provided with a minimum 5,000 L capacity and shall service any landscape systems.
- (viii) All stormwater runoff from the site shall pass through a pollution control device capable of removing litter and sediment prior to entering the public stormwater system.
- (ix) Design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the stormwater drainage (including OSD and infiltration system) and basement pump-out system shown on the construction plans have been designed to comply with current Australian Standards and Council's requirements.

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

- (b) Further it is also a condition of this consent that any public system stormwater line(s) that pass through the development site and or natural road drainage that passes through the site must be piped and given the benefit of an easement in favour of the Council prior to the issue of the Occupation Certificate.

- 31 Prior to the issue of the Construction Certificate, design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority

certifying the car parking area shown on the construction plans includes the required sight lines for safety and has been designed in accordance with AS 2890.1, AS2890.2 (for loading area) and AS2890.6.

Note: Any wall or fence or solid object on either side of the driveway/vehicular crossing where it meets the Council's road reserve at the boundary must comply with sight distances stipulated in AS 2890.2.

32 Prior to the issue of the Construction Certificate:

- (a) The public areas of the residential parts of each building must be designed by a practicing Interior Designer or other appropriately qualified person and include (but not limited to) colour schemes, artwork surface finishes, timber mid rails/skirting boards and historic photographs of the Botany Local Government Area etc;
- (b) The details of interior design required by Condition 32(a) above are to be included with the Construction Certificate;
- (c) The pedestrian mall area must be provided with male and female conveniences including the provision of conveniences with those persons with a disability.

33 Prior to the issue of the Construction Certificate, the public domain landscape areas shown on the plan by *Arcadia, Issue 5, February 2014, Plans 000-106 Issue B and Plans 401-7 Issue B* shall be the subject of detailed landscape construction documentation (plans and specifications) to be submitted to and approved by the City of Botany Bay Council prior to Construction. The landscape documentation is to be prepared by a Arcadia Landscape Architects and shall include, but not be limited to:

- (a) The clear delineation of all public domain areas as follows :
 - (i) Church Avenue, Kent Road, John Street and New Street footpaths areas
 - (ii) The public park located on the western side of New Street
 - (iii) The through site east-west link from Kent Road to Bourke Road.
- (b) A planting plan at 1:100 showing all plant locations/groupings and plant centres/species. There is to be a dense layered planting scheme consisting of trees, shrubs and groundcovers in all of these areas;
- (c) A plant schedule listing all plants by botanical name, total plant numbers, plant spacings, pot sizes and staking. Trees in these areas are to be a minimum litreage of 200 litres and street trees 400 litre;
- (d) Specifications detailing soil and mulch finishes, root barriers, irrigation, edging and other landscape hardworks such as retaining walls, steps, planter walls, feature walls, skateboard restrictors, tree pits, tree grates, tree guards, tree pit treatments and so on in accordance with Council's Draft Public Domain specifications;
- (e) Areas of paving, schedule of materials, edge treatments, tactiles and sectional construction details. Paving to Council Draft Public Domain schedule/specification. Drainage details in specific locations such as the public park and through site link, use of WSUD initiatives or materials;

- (f) Details of all fencing, privacy screening, arbors and the like – elevations and materials, impacting or visible to public domain areas;
- (g) Details of all other hardscape landscape elements such as street furniture, pedestrian amenity lighting, playground and recreational equipment, water features, bollards, public toilets, signage suite. Provide sectional construction details and elevations;
- (h) Rigid polyethylene sheet type tree root barriers are to be specified as required to protect structural elements;
- (i) A detailed public art proposal;
- (j) Elevated planter box sectional details and drainage details. All planter box depths and dimensions shall be in accordance with Council's DCP and capable of supporting the medium and large canopy trees;
- (k) Trees are to be used extensively throughout the site and shall be of an appropriate scale to complement and ameliorate buildings and for appropriate scaling within pedestrian areas – footpaths and open spaces. Deep soil zones must include larger trees. Trees are to be predominantly native, evergreen species using open canopy evergreens or selected deciduous for solar penetration;
- (l) Indicate the location of all basement structures relative to the landscape areas;
- (m) Show the detailed design for the civil and footpath works surrounding tree # 4 and ensure these works do not compromise the health or structural stability of the tree;
- (n) The street trees in New Street (Spotted Gum) are to be increased to 10-12 metre centres. The Church Avenue street trees (Chinese Elms) are to be increased to 10 metre spacings (as per Council specification).

34 Prior to the issue of the Construction Certificate, subject to the approval of CASA, the applicant is to provide roof mounted solar collector panels below a height of 51m AHD, to the rooftop area of each building, of which 20% of power generated shall be returned to the Ausgrid network together with tariff rebates. Details of the panel system are to be provided with the Construction Certificate including the approval from the Civil Aviation Safety Authority.

35 Plans submitted with the Construction Certificate shall demonstrate compliance with the following:

- (a) All residential unit size excluding balconies as minimum must be as following:
 - (i) Studio = 60m²
 - (ii) 1 bedroom = 75m²
 - (iii) 2 bedroom = 100m²
- (b) All unmarked rooms identified on Typical Unit Plan Nos. UT_J0301, UT_K0302, UT_K0303, UT_K0322, UT_M504, UT_K0201, UT_K0202, UT_K0217, UT_D0405, UT_M0605UT_M1108, shall only be used as a study or extension of the dining/living area only and indicated as such on the plans of the Construction Certificate.
- (c) Adaptable units must be provided in accordance with Section 4C.6.1 of Botany Bay Development Control Plan 2013. Such units shall be designed in

accordance with AS 4299 and BBDCP 2013 (Section 4C.6.1). Details to be submitted with the Construction Certificate.

- 36 In order to maximise visibility in the basement car parks, the ceilings shall be painted white. This requirement shall be reflected on the Construction Certificate plans.

- 37 The development shall make provision for the following car parking allocations:

Car Parking Rates	Required
1 space per studio and 1 bedroom units	575 spaces
2 spaces per 2 bedroom units	648 spaces
1 visitor space per 7 dwellings	123 spaces
Retail Spaces (includes 8 child care spaces)	189
Serviced Apartments	131
TOTAL REQUIRED	1666
TOTAL PROVIDED	1666

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

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

- 38 In order to ensure that street tree No. 4 in Church Avenue near Kent Road and trees Nos. 49, 50, 51, 52, 66 and 67 on the adjoining property to the south are retained and protected during construction, and their health and structural stability ensured, the following is required :

- (a) A Consultant Arborist AQF Level 5 shall be engaged from site establishment to the post-construction period to erect tree protection zones and signage, inspect and advise on all works during the entire construction period, monitor tree health and to authorize and undertake tree canopy and root pruning where necessary only and to the minimum only so that the health or structural stability of the trees is not impacted;
- (b) All tree works and tree management shall be undertaken in accordance with the Arborist report by TALC dated 29th November 2013. For all tree root and canopy work to trees, comply with the recommendations and requirements and management plan contained within this report;

- (c) Trees to be retained are to be tagged with clearly visible marking tape at a height of approx. 2 metres from ground and numbered with the corresponding number in the Tree Report;
- (d) Prior to commencing demolition/any works the tree/s is/are to be physically protected by fencing underneath the canopy dripline using 1.8 metre high chainwire fence to form the Tree Protection Zone (TPZ). The area within the fencing is to be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken during construction. The fence shall remain in place until construction is complete;
- (e) If there is insufficient space to erect fencing in a particular area, wrap the trunk with hessian or carpet underlay to a height of 2.5 metres or to the tree's first lateral branch, whichever is greater, and affix timber palings around the tree with strapping or wire (not nails);
- (f) Before any works commence on site, the Applicant is required to contact Council for an inspection and/or provide photographic evidence of the fenced TPZ's. Council approval is required prior commencement of any work;
- (g) All detailed Construction Certificate plans shall show trees to be protected and the TPZ;
- (h) The TPZ's are "No-Go" zones. There shall be no access to the property excluding the existing crossover, no stockpiling, storage or sorting of waste or building materials, no construction work, no concrete mixing, strictly no washing down of concrete mixers or tools, no chemicals mixed/disposed of, no excavation or filling, no service trenching. Any unavoidable work within the fenced zone shall be under the direction of Council's Tree Officer or Consultant Arborist;
- (i) Where unavoidable foot access is required in the TPZ, provide temporary access with timber sheets to minimise soil compaction, spillage or root damage;
- (j) Excavation within the TPZ and within a nominated radial dimension from the tree trunk as determined by the consultant Arborist in accordance with AS 4970 : 2009 – Protection of Trees on Development Sites shall be carried out manually using hand tools or light machinery to minimise root damage or disturbance;
- (k) No tree roots greater than 30mm in diameter shall be pruned without further assessment by Council's Tree Officer and the consulting Arborist and only following the submission of further Arborists reports to Council so as not to unduly impact or stress the tree;
- (l) Ensure no damage to the canopy, trunk or root system (including the surrounding soil) of any tree to be retained. There shall be no canopy pruning unless approval has been granted by Council's Tree Officer under application from the consultant Arborist. Approved pruning shall be undertaken by a qualified Arborist in accordance with AS 4373;
- (m) As most of the retained trees are on the private property adjoining, the developer is required to consult with and advise the owners of the adjacent properties as owners of the trees prior to any tree works taking place;

- (n) Care shall be taken with construction work in the primary root zone of all existing neighbouring trees to be retained, including tree # 4. These trees must be retained and construction works are to accommodate tree roots, branches and canopy without damage or impact. Trees are not to be pruned back to the boundary fence line under any circumstances. The canopy may otherwise overhang the property;
- (o) The Applicant will be required to undertake any tree maintenance or remedial pruning works required by Council or the Consultant Arborist at the completion of construction;
- (p) If there is any contravention of these tree preservation conditions, or a tree was found to be damaged (including roots), in decline, dead or pruned without permission, then Council may claim all or part of the lodged security bond prior to its release as well as require remedial pruning work. Epicormic growth is evidence of root damage.

39 Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993 as appropriate:

- (a) Permit to erect hoarding on or over a public place, including Council's property/road reserve
- (b) Permit to construction works, place and/or storage building materials on footpaths, nature strips
- (c) Permit for roads and footways occupancy (long term/ short term)
- (d) Permit to construct vehicular crossings, footpath, kerb and gutter over road reserve
- (e) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever
- (f) Permit to place skip/waste bin on footpath and/or nature strip
- (g) Permit to use any part of Council's road reserve or other Council lands
- (h) Permit to stand mobile cranes and/or other major plant on public roads and all road reserve area

(It should be noted that the issue of such permits may involve approval from RTA and NSW Police. In some cases, the above Permits may be refused and temporary road closures required instead which may lead to longer delays due to statutory advertisement requirements.)

- (i) Permit to establish "Works Zone" on public roads adjacent to the development site, including use of footpath area.

(Application(s) shall be submitted minimum one (1) month prior to the planned commencement of works on the development site. The application will be referred to the Council's Engineers for approval, which may impose special conditions that shall be strictly adhered to by the applicant(s))

- 40 A detailed Traffic Management Plan for the pedestrian and traffic management of the site during demolition, excavation and construction shall be prepared and submitted to the relevant road authority (Council or Roads and Maritime Service) for approval prior to commencement of any works. The plan shall:
- (a) be prepared by a RMS accredited consultant.
 - (b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police.
 - (c) if required, implement a public information campaign to inform any road changes well in advance of each change.
 - (d) Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.
 - (e) During construction, all works and measures shall be implemented in accordance with approved Traffic Management Plan at all times.
- 41
- (a) Erection of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
 - (b) Each toilet provided:
 - (i) must be standard flushing toilet; and,
 - (ii) must be connected:
 - (1) to a public sewer; or
 - (2) if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,
 - (3) if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.
 - (iii) The provisions of toilet facilities in accordance with this clause must be completed before any other work is commenced.
- 42 Prior to the commencement of works, the applicant must inform Council, in writing, of:
- (a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
 - (b) The name and permit number of the owner-builder who intends to do the work;

- (c) The Council also must be informed if:
 - (i) A contract is entered into for the work to be done by a different licensee; or
 - (ii) Arrangements for the doing of the work are otherwise changed.
- 43 A detailed Construction Management Plan (CMP) shall be submitted to Council and the Principal Certifying Authority for approval prior to the commencement of any works. The plan shall address:
- (a) Excavation and construction vehicles access to and egress from the site;
 - (b) Parking for demolition and construction vehicles. All construction-related vehicles shall be parked on-site and no parking of these vehicles shall be allowed on Church Avenue or Haran Street;
 - (c) Locations of site office, accommodation and the storage of major materials related to the project;
 - (d) Protection of adjoining properties, pedestrians, vehicles and public assets;
 - (e) Location and extent of proposed builder's hoarding and Work Zones, if there is any.
 - (f) Active measures to control and suppress dust, grit and the like that are associated with construction activity.
 - (g) Measures to control the arrival of plant and equipment associated with the construction process and the delivery of such plant and equipment during reasonable hours of the working day;
 - (h) Public Notification where working hours are extended for a particular construction activity;
 - (i) Provision of on-site car parking for employees, contractors and site personnel during the construction phase of the development; and
 - (j) During construction, all works and measures shall be implemented in accordance with approved Construction Management Plan at all times.
- 44 A sign must be erected in a prominent position on any work site on which work involved in the erection of a building is being carried out;
- (a) stating that unauthorised entry to the work site is prohibited;
 - (b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
 - (c) the Development Approval number;
 - (d) the name of the Principal Certifying Authority including an after hours contact telephone number; and
 - (e) any such sign is to be removed when the work has been completed.

- 45 The Applicant must indemnify Council against all loss of or damage to the property of others and injury or death to any persons which may arise out of or in consequence of the carrying out of the work and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto. In this regard, the Applicant shall take out a public liability policy during the currency of the works in the sum of not less than \$20,000,000 and to be endorsed with City of Botany Bay Council as principal, and keep such policy in force at the Applicant's own expense. A certificate from the Applicant's insurers to this effect is to be **LODGED WITH COUNCIL BEFORE ANY WORK IS COMMENCED**. The amount of Common Law liability shall be unlimited.
- 46 During construction, the applicant shall ensure that all works and measures have been implemented in accordance with following approved plans at all times:
- (a) Approved Erosion and Sediment Control Plan;
 - (b) Approved Traffic Management Plan and;
 - (c) Approved Construction Management Plan.
- 47 All works carried out on the public roads shall be inspected and approved by Council's engineer. Documentary evidence of compliance with Council's requirements shall be obtained prior to proceeding to the subsequent stages of construction, encompassing not less than the following key stages:
- (a) Initial pre-construction on-site meeting with Council's engineers to discuss concept and confirm construction details, traffic controls and site conditions/constraints prior to commencement of the construction of the civil works associated with the road widening;
 - (b) Prior to placement of concrete (kerb and gutter and footpath);
 - (c) Prior to construction and placement of road pavement materials; and
 - (d) Final inspection.
- Note:** Council's standard inspection fee will apply to each of the above set inspection key stages. Additional inspection fees may apply for additional inspections required to be undertaken by Council.

DURING WORKS

- 48 If the work involved in the construction of a building:
- (a) likely to cause pedestrians or vehicular traffic in a public place to be obstructed or rendered inconvenient; or,
 - (b) involves the enclosure of a public place:
 - (i) a hoarding or fence must be erected between the work site and the public place.

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

49

- (a) Any new information that comes to light during construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council;
- (b) Results of the monitoring of any field parameters such as soil, groundwater, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the remediation and construction works.

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

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

52 The Applicant shall conduct all construction and related deliveries wholly on site. If any use of Council's road reserve is required then separate applications are to be made at Council's Customer Services Department.

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

54

- (a) Existing structures and or services on this and adjoining properties shall not be endangered during any demolition associated with the above project. The Applicant is to provide details of any stabilisation works required to adjacent developments to Council.
- (b) As the development involves an excavation that extends below the level of the base of the footings of a building or road on adjoining land, the person

having the benefit of the development consent must, at the person's own expense:

- (i) Protect and support the adjoining premises from possible damage from the excavation, and
- (ii) Where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) Must at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of his intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished.

55

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

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

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

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

58

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

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

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

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

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

- (a) Prior to the issue of the Occupation Certificate, the development is to be constructed to meet the requirements detailed in the Acoustic Report, prepared by Acoustic Logic Consultancy Pty Ltd dated 16 September 2013, received by Council 27 September 2013; and
 - (b) All acoustic work including that acoustic work required at Condition No. 28 shall be completed prior to the issue of the Occupation Certificate and validated by a person with appropriate qualifications and experience.
- 65 Prior to the issue of the Occupation Certificate, a Site Audit Report is to be submitted to Council which states the subject site is suitable for residential development, together with a supplementary Statement which states that the land to be dedicated to Council for public reserves meets the criteria for recreation areas and those within the public reserve areas has not been excavated and remains undisturbed.
- 66 Prior to the issue of the Occupation Certificate, the following is to be complied with:
- (a) Dedicate to Council and at no expense to the Council and generally in accordance with the Communal Open Space Landscape Masterplan prepared by Arcadia Landscape Architecture Issue 5, dated February 2014, the following:
 - (i) Dedicate the portion of land to Council for the purpose of widening Church Avenue and Kent Road. The areas of the land to be dedicated shall be the full length of Church Avenue and Kent Road frontages of the development site and as detailed in the Botany Bay Development Control Plan 2013. The Plan of Dedication shall be lodged with Council and registered with Land & Property Information prior to the issue of the Occupation Certificate. A copy of the registered document shall be submitted to Council for record purposes;
 - (ii) Dedicate the portion of land to Council for the purpose of a public park adjacent to new Church Avenue boundary (following the road widening of Church Avenue). The total area of public domain dedication shall be 6,915sqm. Construction of paving and landscaping within this area is to be in accordance with the approved landscape plans identified in Condition No.1 of DA13/200;
 - (iii) Dedicate the portion of land to Council for the purpose of a public pedestrian through link adjacent from John Street to Kent Road. Construction of paving and landscaping within this area is to be in accordance with the approved landscape plans identified in Condition Nos. 1 and 17 of DA13/200;
 - (iv) Upgrade the public domain by the reconstruction of half the road pavement, kerb and gutter, footpath, drainage system, street trees, landscaping and any associated works for the street frontage to Church Avenue of the site, at the applicant's expense. All improvements shall be in accordance with specifications and

requirements from Council's landscape and engineering sections and the approved civil works construction plans and landscape plans.

- (v) Upgrade the public domain by reconstruction of the kerb and gutter to the full street frontage to Kent Road of the site including footpath, drainage system, street trees, landscaping and any associated works for the street frontage to Kent Road of the site, at the applicant's expense. All improvements shall be in accordance with specifications and requirements from Council's landscape and engineering sections and the approved civil works construction plans and landscape plans.

(b)

- (i) Replace all the existing above ground electricity and telecommunication cables to underground cables that adjoin the site and road reserve area fronting both Kent Road and Church Avenue in accordance with the guidelines and requirements of the relevant utility authorities and Ausgrid. The applicant shall bear all the cost of the construction and installation of the below ground cables and any necessary adjustment works. These works and payments shall be completed prior to the issue of the Occupation Certificate; and
- (ii) Provide appropriate and suitable street lighting to a high decorative standard to both street frontages of the site together with those internally publicly accessible paths, spaces and corridors, so to provide safety and illumination for residents of the development and pedestrians in the area. All street lighting shall comply with relevant electricity authority guidelines and requirements.

67

- (a) A total of 1666 car parking spaces shall be provided for within the development. Resident parking spaces shall made available to residents and visitors at all times, with such spaces being clearly marked and signposted prior to issue of the Occupation Certificate;

- (b) Allocation of the car parking shall be as follows:

Car Parking Rates	Required
1 space per studio and 1 bedroom units	575 spaces
2 spaces per 2 bedroom units	648 spaces
1 visitor space per 7 dwellings	123 spaces
Retail Spaces (includes 8 child care spaces)	189
Serviced Apartments	131
TOTAL REQUIRED	1666

TOTAL PROVIDED	1666
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- 68 All services (Utility, Council, etc) within the road reserve (including the footpath) shall be relocated/adjusted to match the proposed/existing levels as required by the development.
- 69 Prior to the issue of the Occupation Certificate, street numbers shall be clearly displayed with such numbers being of contrasting colour and adequate size and location for viewing from the footway and roadway.
- 70 Prior to the issue of the Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the car parking areas, driveways entrances and egresses have been constructed generally in accordance with the approved construction plan(s) and comply with AS2890.1, AS2890.2 and AS2890.6 requirements. The internal parking facilities shall be clearly designated, sign posted and line marked. Signage and line marking shall comply with the current Australian Standards.
- 71 The following shall be complied with prior to the issue of the Occupation Certificate:
- (a) A new vehicular crossing including layback and/or gutter and any associated road restoration shall be constructed in accordance with Council's requirements. The applicant shall make a separate application to Council's Customer Service Counter for the construction/ reconstruction of vehicular crossing (either by Council or own forces) to the vehicular entry point of the site as shown on the submitted approved plan.
 - (b) The crossing shall be able to accommodate the turning movement of Heavy Rigid Vehicle (HRV) entering and leaving the site and at 90° to the kerb and gutter in plain concrete. All adjustments to the nature strip, footpath and/or public utilities' mains and services as a consequence of the development and any associated construction works shall be carried out at the full cost to the Applicant.
 - (c) The redundant vehicular crossing, together with any necessary works shall be removed and the footpath, nature strip and kerb and gutter shall be reinstated in accordance with Council's specification.
 - (d) Written confirmation / completion certificate obtained from Council.
 - (e) Inspection report (formwork and/or final) for the works on road reserve obtained from Council's engineer.
 - (f) A copy of the approved public domain civil works plans showing Work-as-Executed details (together with an electronic copy) prepared by a registered surveyor.
 - (g) Driveways and vehicular access paths shall be designed and constructed to comply with the minimum requirements (including changes of grade) of AS/NZS 2890.1.

- 72 Prior to the issue of the Occupation Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority and the Council to the effect that:
- (a) All reduced levels shown upon the approved plans, with relation to the required solar panels, drainage, boundary and road reserve levels, have been strictly adhered to; and
 - (b) A Floor Space Ratio (FSR) of 3.72:1 and height of 51m AHD as approved under this Development Consent No. 13/200, have been strictly adhered to and any departures are to be rectified in order to issue the Occupation Certificate.
 - (c) The development as built, stands within Lot 2 in DP 620023.
- 73 The applicant is responsible for the installation and protection of all regulatory/ parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the development and associated construction works shall be replaced at full cost to the applicant.
- 74
- (a) In order to ensure that the required on-site detention, infiltration and rainwater reuse systems will be adequately maintained, Positive Covenant and Restriction on the Use of Land on the Title under Section 88B/88E(3) of the Conveyancing Act 1919 shall be created in favour of Council as the benefiting authority for the as-built on-site detention, infiltration and rainwater reuse systems. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council. The relative location of the on-site detention, infiltration and rainwater reuse systems, in relation to the building footprint, shall be shown on a scale sketch, attached as an annexure to the plans/ forms. Proof of registration shall be submitted to the Principal Certifying Authority prior to occupation of the premises.
 - (b) In order to ensure that the required pump-out system will be adequately maintained, Positive Covenant and Restriction on the Use of Land on the Title under Section 88B/88E(3) of the Conveyancing Act 1919 shall be created in favour of Council as the benefiting authority for the as-built pump-out system. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council. Proof of registration shall be submitted to the Principal Certifying Authority prior to occupation of the premises.
- 75 Prior to the issue of the Occupation Certificate:
- (a) the construction of the stormwater drainage system of the proposed development shall be generally in accordance with the approved stormwater management construction plan(s), Council's 'Guidelines for the Design of

Stormwater Drainage Systems within City of Botany Bay', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA; and

- (b) documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) accepted practice and the construction standard referred to in Condition 75(a) above.
- 76 Any damage not shown in the dilapidation report required under Condition No. 19 submitted to Council before site works have commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense, prior to the issue of the Occupation Certificate.
- 77 Prior to the issue of the Occupation Certificate, landscaping within the private property shall be installed in accordance with the landscape plans by *Arcadia, Issue 5, February 2014, Plans 000-106 Issue B and Plans 401-7 Issue B*. This plan is to be amended to include the following additional landscape requirements:
- (a) A small, evergreen spreading canopy tree is required within the Church Avenue landscaped setbacks to provide privacy and shading for residents and amelioration of the building. The tree should attain a minimum height at maturity of 3-4 metres. Minimum pot size 200 litre;
 - (b) The large private patios in the Church Avenue setbacks shall include additional landscaping in the form of planter boxes to break up the linear nature of the landscaping across this frontage, provide depth to the landscaping and provide additional space for small trees. All planter boxes containing trees are to have min 900mm soil depth;
 - (c) Where possible, small trees are to be provided in the 1 metre wide Kent Road setback (residential section). Additional planter width should be provided where possible;
 - (d) Landscaping on the property and in the public domain shall be installed in accordance with the approved landscape plan by *Arcadia, Issue 5, February 2014, Plans 000-106 Issue B and Plans 401-7 Issue B* and in accordance with sub-clauses (a) to (b) above, prior to the issue of an Occupation Certificate. The landscaped areas on the property shall be maintained in accordance with the Council stamped and approved landscape documentation, the conditions of development consent and Council's DCP all times.
- 78 At the completion of landscaping on the site, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to the City of Botany Bay Council prior to the Issue of an Occupation Certificate.

- 79 Prior to the issue of an Occupation Certificate, planter boxes constructed over a concrete slab shall be built in accordance with the following requirements :
- (a) Ensure soil depths and dimensions in accordance with Council's DCP allowing a minimum soil depth of 1 metre to support trees. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes;
 - (b) A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter;
 - (c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil;
 - (d) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns; and
 - (e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
- 80 Prior to the issue of the Occupation Certificate, the public domain landscaping shall be installed in accordance with the approved landscape plan as stamped by Council's Landscape Architect. This amended plan supercedes the original landscape plan. The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation and to Council's satisfaction all times.
- 81 An experienced Landscape Contractor shall be engaged to undertake all landscaping (site and public domain) work and shall be provided with a copy of both the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements. The contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.
- 82 Prior to the issue of the Occupation Certificate, to ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscaped areas, inclusive of the street tree pits in Kent Road, Church Avenue and New Street. The system shall be installed by a qualified landscape contractor and provide full coverage of planted areas with no more than 300mm between drippers, automatic controllers and backflow prevention devices, and should be connected to a recycled water source. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.

- 83 Any air conditioning units are to be located so that they are not visible from the street or public place and are not obscure windows/window frames or architectural features of the development and installed in a manner not be inconsistent with the relevant provisions of the Building Code of Australia (BCA).
- 84 Prior to issue of the Occupation Certificate, the applicant's Traffic Engineer must conduct a survey within one (1) month following the sale of at least 90% of the available apartments stock within the development, to validate the findings of the Traffic Assessment prepared by Traffic and Transport Planning Associates dated 17 February 2014. If the Traffic Assessment cannot be validated, the Applicant must undertake measures to ensure the road network achieves a satisfactory level of service.
- 85
- (a) Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109M of the Environmental Planning and Assessment Act 1979.
 - (b) Condition Numbers 3(b), 4(e), 14, 30 and 65 to 85 of this consent are pre-conditions to the issue of the Occupation Certificate.

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

- 86 The landscape contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time monthly maintenance is required.
- 87 New street trees shall be maintained by the Applicant/Owner/Strata Corporation for a 24 months after final inspection by Council. Maintenance includes twice weekly watering within the first 6 months then weekly thereafter to sustain adequate growth and health, bi-annual feeding, weed removal round the base, mulch replenishment at 3 monthly intervals (to 75mm depth) and adjusting of stakes and ties. Maintenance but does not include trimming or pruning of the trees under any circumstances.
- 88 The landscaped areas on the property shall be maintained in accordance with the Council stamped and approved landscape documentation, the conditions of development consent and Council's DCP all times.
- 89 Ongoing maintenance of the road verges and footpaths in Church Avenue, Kent Road, John Street and New Street nature strip shall be undertaken by the owner/body corporate/strata corporation. Maintenance includes mowing, watering and maintaining the landscaping in these areas at all times. Maintenance does not include pruning, trimming, shaping or any work to street trees at any time.

- 90 The use of the premises shall not give rise to any of the following when measured or assessed at “sensitive” positions within any other property. These “sensitive” positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.
- (a) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
 - (b) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
 - (c) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
 - (d) For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.
- 91 Any air conditioning units shall comply with the following requirements:
- (a) Air conditioning units are not to be visible from the street or public place and are not to obscure windows/window frames or architectural features of the dwelling.
 - (b) A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
 - (i) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
 - (ii) Before 7 am or after 10 pm on any other day.
- 92
- (a) Each residential dwelling (apartment) is approved as a single dwelling for use and occupation by a single family. They shall not be used for separate residential occupation or as separate residential flats. No plumbing fixtures, fittings, walls shall be deleted or added, doorways enclosed or any other changes made from the approved plans in Condition No. 1 of this Consent without the prior Consent of the Council;
 - (b) The adaptable apartments approved under this development consent are to remain unaltered at all times; and
 - (c) The storage areas located within the basement shall be allocated to the relevant residential dwelling in any future subdivision of the site. In addition,

any isolated storage areas and other spaces identified by the NSW Police in Condition 14, shall be monitored by CCTV cameras at all times.

- 93 All parking bays shown on the approved architectural plans shall be set aside for parking purpose only and shall not be used for other purposes, e.g. storage of goods. Vehicle turning areas shall be kept clear at all times and no vehicles are permitted to park in these areas.
- 94 The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 13/200 dated as 27 September 2013 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.