

**SUPPLEMENTARY REPORT –  
JOINT REGIONAL PLANNING PANEL  
(East Region)**

<b>JRPP No</b>	2013SYE098
<b>DA Number</b>	13/227
<b>Local Government Area</b>	City of Botany Bay
<b>Proposed Development</b>	<p>Amended Integrated Development Proposal involving, as follows:</p> <ul style="list-style-type: none"> <li>• The erection of a mixed use development involving the construction of a 15 storey mixed-use development comprising 167 apartments (8 x studio, 53 x one bedroom, 105 x two bedroom and 1 x three bedroom units); 406m<sup>2</sup> of retail floor space (2 x shops); three levels of basement car parking containing 296 parking spaces;</li> <li>• Land dedication at the intersection of Kent Road and Coward Street.</li> </ul>
<b>Street Address</b>	39 Kent Road, Mascot
<b>Lot &amp; DP Nos.</b>	Lot 1 in DP 1081391
<b>Capital Investment Value (CIV)</b>	\$37,935,210
<b>Applicant/Owner</b>	JKN Kent Pty Ltd
<b>Number of Submissions</b>	<p>One- First Notification round</p> <p>Nil – Second Notification round</p>
<b>Recommendation</b>	Approval
<b>Report by</b>	Rodger Dowsett, Director Planning and Development

## PRECIS

### Background

Council received Development Application No. 13/227 on the 1 November 2013, for consent to redevelop the site as follows:

Integrated Development Application originally submitted to Council was for a mixed-use development involving the erection of a 14 storey mixed use development comprising 142 residential apartments (13 x studio, 16 x one bedroom, 107 x two bedroom and 6 x three bedroom units); 283m<sup>2</sup> of retail floor space (2 x shops); three basement levels of car parking containing 285 car spaces.

Amended plans for Development Application 13/227 were received on 3 February 2014. The plans provide for the erection of comprise a 15 storey mixed use development with 167 residential apartments (8 x studio, 53 x one bedroom, 103 x two bedroom and 3 x three bedroom units); 415m<sup>2</sup> of retail floor space (2 x shops) and three levels of basement car parking containing 344 parking spaces.

The application was reported to the JRPP on the 16 April 2014 with a recommendation for refusal based on two main areas of concern, being aircraft noise and the design of the building.

Discussions that occurred during the JRPP meeting to the extent that the applicant stated in open session and confirmed that the two main areas of concern could be satisfactorily addressed, as such, the Panel made the following recommendation on the 5 March 2014:

*“The Panel resolves unanimously to defer the matter subject to receipt of a supplementary report to reach the Panel by 21 May 2014. A further public meeting will schedule on receipt of the supplementary report.”*

The applicant on the 4 June 2014 submitted further amended plans and documents, which includes an amended Acoustic Report. The detail of the plans (as amended) provide for a 15 storey mixed use development with 167 residential apartments (8 x studio, 53 x one bedroom, 105 x two bedroom and 1 x three bedroom units); 406m<sup>2</sup> of retail floor space (2 x shops) and three levels of basement car parking containing 296 parking spaces. The design of the building has been amended to express a modern architectural approach that accentuates the sites corner/gateway location.

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

The following table provides a summary of compliance:

Control	Required	Proposal		Complies
FSR	3.2:1 (11,878.4 m <sup>2</sup> )	<i>Presented to Panel</i> 4.26:1 (15,825m <sup>2</sup> )	<i>Amended Proposal</i> 4.21:1 (15,622m <sup>2</sup> )	No – Clause 4.6 variation to FSR submitted.

<b>Height</b>	44 metres (under BBLEP 2013)	<i>Proposed height:</i> 47.2m	No change to Height	No – Clause 4.6 Variation to Height submitted.
<b>Car Parking</b>	<p><b>Residential</b></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><b>Retail</b></p> <p>1 space/80sqm of GFLA (based on TMAP)</p>	<p><b>Presented to Panel</b></p> <p><b>Residential</b></p> <p>Studio = 8 x 1 = 8</p> <p>1 bedroom = 53 x 1 = 53</p> <p>2 bedroom = 103 x 2 = 206</p> <p>3 bedroom = 3 x 2 = 6</p> <p>Visitor = 1 space per 7 apartments = 24</p> <p><b>Retail</b></p> <p>415m<sup>2</sup></p> <p>39 spaces</p> <p>Total of 344 spaces only required 303</p>	<p><b>Amended Proposal</b></p> <p><b>Residential</b></p> <p>Studio = 8 x 1 = 8</p> <p>1 bedroom = 53 x 1 = 53</p> <p>2 bedroom = 105 x 2 = 210</p> <p>3 bedroom = 1 x 2 = 2</p> <p>Visitor = 1 space per 7 apartments = 24</p> <p><b>Retail</b></p> <p>406m<sup>2</sup></p> <p>5 spaces</p> <p>Required: 302</p> <p>Total of 296 spaces provided deficient in 6 spaces</p>	No – Development is required to provide 302 car parking spaces, the amended development is deficient in 6 spaces.
<b>Unit Sizes</b>	<p>Studios 60m<sup>2</sup></p> <p>1 Bedroom 75m<sup>2</sup></p> <p>2 Bedroom 100m<sup>2</sup></p> <p>3 Bedroom 130m<sup>2</sup></p>	<p>Studios 60-75m<sup>2</sup></p> <p>1 Bedroom 75m<sup>2</sup></p> <p>2 Bedroom 100m<sup>2</sup></p> <p>3 Bedroom 130m<sup>2</sup></p>		Yes – No change
<b>Unit Mix</b>	Total No. of studio/one bedroom apartments to be no more than 35%	<p><b>Presented to Panel</b></p> <p>Studio 5%</p> <p>1 bedroom 31.5%</p> <p>2 bedroom 63%</p> <p>3 bedroom 0.5%</p> <p><b>Total:</b> 36.5% of studio/1 bedroom units</p>	<p><b>Amended Proposal</b></p> <p>Studio 5%</p> <p>1 bedroom 31.5%</p> <p>2 bedroom 63%</p> <p>3 bedroom 0.5%</p> <p><b>Total:</b> 36.5% of studio/1 bedroom units</p>	No – Minor non-compliance with Part 9A.4.7 of BBDCP

**Table 1 – Development Details**

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 \$37,935,210 million.

The recommendation is for approval, as stated below:

*The Joint Regional Planning Panel (JRPP), as the Consent 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 4.21:1 and a maximum building height of 47.2 metres (51m AHD); and*
- (b) *Approve Development Application No. 13/277 comprising of a 15 storey mixed use development with 167 residential apartments (8 x studio, 53 x one bedroom, 105 x two bedroom and 1 x three bedroom units); 406m<sup>2</sup> of retail floor space (2 x shops) and three levels of basement car parking containing 296 parking spaces.*

### **Description of Development**

The amended application now seeks the Panel consent for a mixed-use development involving the construction of a 15 storey mixed used development comprising 167 apartments; 406m<sup>2</sup> of retail floor space, three and a half levels of basement car parking containing 296 parking spaces and 4 loading bays. The commercial parking for 4 vehicles is provided on grade in the north eastern corner under the communal open space. Visitor and disabled car parking provision is made available at basement level 3.



**View of the south-west corner - Kent Road and Coward Street Intersection**



**View looking south-east from Kent Road**

## **SECTION 79C CONSIDERATIONS**

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

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

The matter have relevance have addressed in the amended proposal.

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

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

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

The provisions of SEPP No. 65 have been considered in the assessment of the development application. The policy aims to improve the design quality of residential flat development in NSW namely to maximise amenity, safety and

security and achieve a better built form of buildings and streetscapes. An Architectural Design Statement, a SEPP 65 Assessment and an assessment against the Residential Flat Design Code accompany the application. A design verification statement is submitted by way of a letter dated 20 May 2014 stating that the plans submitted were drawn by a registered Architect.

The Council's Design Review Panel (DRP) considered the proposal on 31 July 2013, at pre-DA stage. At this stage the Panel acknowledged that the proposed development was generally in accordance with recently approved residential development in the area and with the vision for the Precinct which is "*undergoing a transition in urban form*". The Panel made recommendations in respect of height, bulk and street activation. The proposal was subsequently amended referred back to DRP on 22 January 2014 as part of the Development Application process and was generally supported and considered to be an appropriate response to the corner site.

As a result of the increased road widening required by RMS and to respond to the approved Development to the north of the subject site in terms of setbacks, amended plans were submitted to Council. The amended scheme was referred back to the DRP on 17 March 2014. The Panel made the following conclusion:

*'The amended scheme as proposed is highly problematic. Whilst the reasons for reconsideration by the applicant are appreciated, the new proposal is less successful in almost every aspect, building form, landscape, communal space, relatively poor amenity of residential units, questionable location of main entrance, and aesthetic quality. The deletion of the public courtyard would be a major loss. The arguments supporting the extremely large excess in density could not be supported without very substantial evidence as to major financial public benefit. The Panel is not persuaded that the development could not be set back as previously from the northern boundary, the courtyard and entrance location retained, the density reduced to a more reasonable level, and potentially a better outcome achieved in relation to amenity of residential units.'*

The proposal presented to JRPP on 16 April 2014 was considered to be inconsistent with the aims and objectives of SEPP 65 particularly in respect of built form, height, bulk and scale. However, development of the site for the purpose of a mixed use development comprising residential apartments and ground floor retail remained feasible subject to the applicants' ability to address the design issues raised by the DRP.

Aesthetically and functionally, the development proposes reasonable internal design and layout however at the time the external design required further refinement by modulation of the facade form. The 15 storey height contributes to the impact of the scale of the building.

The amended proposal submitted to Council on 2 June 2014 as illustrated via two pictorial views above provides for a development has been design to address the concerns raised by the DRP. The Applicant has provided the following comments:

ISSUE	COMMENT	RESPONSE	OFFICERS COMMENT
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ISSUE	COMMENT	RESPONSE	OFFICERS COMMENT
Context	<p>The negative impacts of this variation to the Masterplan, even with the amendments from the pre-DA design on the 'Meriton' site include major increase in winter overshadowing of the northern part of the subject site, and a resulting unwelcoming scale in this section of John Street. In addition much of this part of the 'Meriton' street frontage is proposed for vehicle access and egress. Whilst the landscaped courtyard space as proposed in the original design for 39 Kent Street could still be created, and it would still benefit from western sunlight after mid-day, such a space would be less attractive in that it would be compromised by the changes described on the 'Meriton' site. Two further issues are relevant to the context of the subject site:</p> <ul style="list-style-type: none"> <li>• The adjoining site to the east between Coward Street and the John Street extension has been acquired for development by the owner of the subject site. It was advised that a pedestrian through-way will be provided on that site as required by the Masterplan, and that a better opportunity exists to ensure integration of the design of that site and the subject site than if the two were in separate ownerships.</li> <li>• The RMS wishes to acquire land on the Kent Road-Coward Street corner additional to that indicated on the original submission, thus requiring further set-back of the new building.</li> </ul>	<p><i>"The scheme was redesigned to take into account the significant impact and lack of setback of the approved development to the north. The John Street interface between both developments is more a service lane and provides vehicular access to the development to the north. It is no longer proposed to be closed at the western end and provided as a park. Accordingly, the proposal to provide the additional park in the original design is no longer suitable. The northern development site does not provide activation of the frontage. Notwithstanding this, the plans have been amended to provide a 3 metre landscaped setback from John Street. In addition, windows have been provided from the adjacent retail space. The landscaped setback will improve the amenity of this space. It is proposed that a through site link will be provided in the adjacent development site which has been purchased by Toplace. The current scheme accommodates the next development site in its form and siting. The scheme provides for the land dedication over and above the requirements of the DCP."</i></p>	<p>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.</p> <p>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 amended proposed use of the subject site for the purposes of residential flat development, together with retail premises on the ground floor, is consistent with its desired future context.</p>
Scale	<p><i>Generally appropriate for this development area. The proposed colonnade and awnings are critical elements in creating a comfortable pedestrian scale at the base of the buildings.</i></p> <p>The general height and mass of the proposed building remains appropriate. However the attractive continuous colonnade and awning</p>	<p><i>"The building design allows for the building to cantilever over the public domain and entry forecourt to achieve weather protection in line with the colonnade and awning design to achieve the same intent. As amended the scheme provides for an additional awning at the south western</i></p>	<p>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</p>

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	have been deleted, - being replaced by setbacks to the commercial frontages along Kent Road, and an exposed two-level undercover space at the entrance, neither of which are supported.	<i>corner of the building. The DCP does not require an awning to Kent Road which is consistent with the approved development to the north."</i>	<p>attain a height of 6 to 13 storeys with podium level commercial premises upon which is erected residential towers.</p> <p>To the north at No. 19-33 Kent Rd is the Meriton development is approved at 8 to 13 storeys and 899 residential units and to the north 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.</p> <p>To the 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, 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.</p> <p>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 Coward Street and Kent Road. The height of the proposed development is 47.2 metres, and the FSR proposed is 4.21:1, which both exceed the standards contained in BBLEP 2013. Notwithstanding these exceedences, the amended proposal achieves a high quality architectural design and results in the redevelopment of a prominent corner in Mascot Station Town Centre Precinct.</p> <p>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</p>



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			<p>maximised.</p> <p>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</p>
Built Form	<p>Satisfactory in principle.</p> <p>The amended scheme proposes a major change to the plan configuration of the building, resulting in an outcome which is considered to be less than satisfactory. The S.E.E. states that this change is "...due to recent discussions with Council in regards to the John Street road extension and the current DA to the north."</p> <p>There is no doubt that the approved form of the Meriton proposal as stated above has had adverse impacts on the applicant's site. The revised L-shaped plan has units facing towards Kent Road, Coward Street and the communal open space.</p> <p>The main entrance is relocated to the southern corner. Whilst the revised plan has some advantages, these on balance appear to be outweighed by negative outcomes, the less satisfactory internal planning and poor location of entrance, whilst still not achieving good amenity in relation to solar access.</p> <p>Concern is raised about the presentation of the podium walls particularly the wall facing the new street. Detailed design is required to ensure adequate modulation of the walls (and activation where possible) and high quality external finishes where they are to remain blank and where they will be exposed to view from the public domain.</p> <p>The proposed retail could be extended further from Kent Road along the new road frontage to provide some activation of the façade.</p>	<p><i>"Noted. The accompanying amended architectural plans have been altered from the plans submitted to the Design Review Panel and the JRPP. The Kent Road and Coward Street corner has been redesigned to provide a stronger, formal corner emphasis to the street junction. A solid curved spandrel and blade element now defines the corner and lobby entrance, with a curved awning providing appropriate scale and weather protection to the lobby entrance. The roof plane to level 14 roof has been emphasised with a continuation of the corner blade element to provide a cap to the building. The redesigned corner reinforces the lobby address of the development. The amended design provides for a 'curved' corner treatment that will provide a strong built form and emphasise the corner of Kent Road and Coward Street. The wall to John Street has been setback 3 metres and a landscaped strip provided to improve the visual amenity of the space.</i></p> <p><i>Windows have been added to the northern elevation of the retail space at ground level to further enhance the activation of the façade. "</i></p>	<p>The building form is expressed with a defined corner element, base, middle and upper component with modern elements to the front facades and a modern roof form that is consistent with surrounding development. The proposal comprises a built form, which could be described as a contemporary masonry style with added external elements to provide visual interest. Communal open space areas are provided to the ground level and on Level 1 of the building fronting John Street extension, along with significant street tree planting to contribute to the streetscape. The overall built form is compatible with the adjacent mixed developments and the emerging character of the area as it undergoes redevelopment. The proposed modern architectural form will contribute to the public domain as a gateway location.</p>

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Density	<p><i>The permissible density under the Botany LEP 2013 is 3.2:1. The submission proposes a density of 3.75:1, approximately 17% in excess. Non-compliance with the standard, particularly in view of the very recent gazettal of the new statutory plan, could not be supported unless there is a demonstrable public benefit provided by the development. In the submitted design there is some benefit in the form of a landscaped courtyard area to the north which would be available for public use although it would remain in private ownership. Basement-level parking extends below some of this area. Were ownership of the courtyard area to be transferred to Council as a 'public benefit' there could be a good case in support of the additional FSR as proposed, but without such arrangement an excess of this order could not be supported. It should be noted in favour of the applicant's case that although the additional floor space proposed would result in an increase in the bulk and height of the building of the order of an additional two floors, this appears unlikely to cause any unacceptable adverse impacts such as view loss or overshadowing. The proposed FSR has been significantly increased, and is now stated to be 4.26:1. This would be 33% in excess of the standard, and would substantially benefit the applicant by permitting of the order of 40 additional dwellings, obviously depending on the mix of units. The additional FSR is proposed to be negotiated by way of a Voluntary Planning Agreement with Council. The Statement of Environmental Effects argues that the public benefit would be:</i></p> <ul style="list-style-type: none"> <li>• Replacement of lightpoles adjacent to the site property boundaries</li> <li>• Dedication of land at the corner of Kent and Coward Street to the RMS to facilitate road widening and improved</li> </ul>	<p><i>"As amended, the DA provides a FSR of 4.21:1. The DA seeks to enter into a VPA for additional public works to offset the increased FSR. The works include:</i></p> <ul style="list-style-type: none"> <li>• <i>Dedication of land at the corner of Kent and Coward Street to the RMS to facilitate road widening and improved intersection arrangement.</i></li> </ul> <p><i>The dedication of land is over and above the requirements of the DCP and will facilitate the necessary intersection works.</i></p> <p><i>The development does not rely on future works on the adjacent site, although it is noted that these future works will provide a significant public benefit to the wider community.</i></p> <p><i>The orientation of the building has been impacted by the approval of the development to the north. The approved buildings significantly overshadowed the previous scheme and therefore an alternate configuration of buildings on the site was required.</i></p> <p><i>The subject site is a key corner location and the final amended design provides for a strong corner statement that successfully emphasises this corner. The ground level treatment as amended encourages activation of all frontages and the internal planning creates attractive and useable areas of communal open space. The scale and form of the development has no impact on surrounding properties and the quality urban design outcome supports the increase in density."</i></p>	<p>The proposal has been amended to incorporate changes to achieve greater solar access visual amenity to the adjoining properties to the south.</p> <p>The building has been design provide a for a gateway building to the precinct.</p> <p>The public benefits, detailed in this report include the dedication of land for improved functioning of the Kent Road and Coward Street intersection. This area was highlighted within Council's DCP as being minor road widening, however RMS have acquired approximately 500m<sup>2</sup> of the subject site for road widening, where the applicant will providing this a public benefit to the development. This dedication will provide for an improved traffic movement through the area and is a requirement to ensure the redevelopment of the precinct.</p> <p>In addition to this the applicant will be required by their development to underground any services and provide new street light.</p>

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	<p>intersection arrangement</p> <ul style="list-style-type: none"> <li>• Dedication and embellishment of through site link that will be provided in the next stage of development to provide public pedestrian access from Coward Street to John Street. The dedication and embellishment will provide a significant public benefit and is offered as a public benefit for both stages of development including 39 Kent Road and 280 Coward Street.</li> <li>• Landscape and footpath works to the Bourke Street frontage at the corner of Coward Street.”</li> </ul> <p>The third of these points relates to the adjoining site and would normally be negotiated as part of any development proposal on that site in the future when and if it proceeds, and the fourth is remote from the subject site. The first two are normal public works which can be funded from various sources. Although the Panel is aware broadly of the quantum of likely margins of profit from additional units, if Council is minded to negotiate on this issue expert advice no doubt will be sought from independent assessors familiar with financial factors in the development process.</p> <p>A further consideration is the amenity of units. Where the level of amenity in a development is of very high standard there is an argument in support of encouraging additional density; however in the subject case because of the considerable constraints of the site, requiring orientation of the majority of units to east and west rather than north, and the impact of road noise, amenity of residential units is generally considered to be acceptable but no more than that, -as set out in comments below under ‘Amenity’.</p> <p>In summary it is considered that overall the arguments put forward by the applicant do not substantiate the case for approving density above the standard:</p> <ul style="list-style-type: none"> <li>• There are other means of</li> </ul>		

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	<p>funding the public works nominated</p> <ul style="list-style-type: none"> <li>The amended application is of considerably lesser quality than the original submission.</li> <li>The amenity of units is not such as to encourage higher density.</li> </ul>		
Resource, Energy and Water Efficiency	<p>Subject to BASIX. It would also be expected that the development would include best practice ESD including for example: use of the main roof area for solar collection at least for water heating purposes.</p>	<p><i>"The development complies with BASIX."</i></p>	<p>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.</p>
Landscape	<p><i>The landscape design by 'iScape' could result in significant enhancement of the streetscape, and the creation of an attractive courtyard space. It will require development in consultation with Council in relation to species selection, paving etc.</i></p> <p><i>There is opportunity to create an attractive 'green roof' at level 10 on the northern block, which would be potentially an excellent visual amenity for residents looking down on to it, or using the communal area suggested below under 'Social Dimensions'.</i></p> <p>The amended plan by 'iScape' is unfortunately far less attractive due to the complete reconfiguration of the building form:</p> <ul style="list-style-type: none"> <li>The street-level courtyard no longer forms any part of the proposal</li> <li>The roof-top landscaped communal space at level 10 is not included: it is replaced by a roof-top space at the first floor level above the carpark.</li> </ul> <p>In this location it would be completely overshadowed at</p>	<p><i>"The plans have been amended to provide for a useable external communal room within the landscaped podium and internal meeting room.</i></p> <p><i>Communal facilities have been amplified to include a meeting room at level 1 accessible from the common corridor with adjacent access to the external communal open space.</i></p> <p><i>The additional external communal room is integrated with a roofed external seating and barbeque facility with a kitchenette, accessible toilet and storage facility providing an all year around facility for the residents' use.</i></p> <p><i>The landscaping is considered appropriate and the podium level communal terrace provided above the ground level car park incorporates landscaped planter beds. An amended landscape plan</i></p>	<p>A landscape plan has been submitted with the development application. Council's Landscape Officer has reviewed the proposal and provided conditions requiring additional planting on the site. The proposed plantings consist of native species and varying sizes to provide visual interest to enhance the setting of the site.</p> <p>The proposed landscape plan demonstrates that a quality landscaped setting for the proposed development will provide a significant level of amenity for future occupants and the adjoining properties, with street planting to enhance the streetscape, and commensurate with the building size and bulk. As such it is considered that the proposal is consistent with this design quality principle.</p>

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	<p>midwinter as demonstrated by the shadow diagrams and have little sunlight for much of the year, it no longer would offer distant views, and it would be overlooked by the proposed development to the north. Whilst it could be pleasantly landscaped, most of its appeal as a communal area would be negated.</p> <p>‘Canopy trees’ are proposed in Kent Road and on the corner linking to Coward Street; subject to being consistent with Council’s landscape strategy these should be acceptable although the species and canopy spread would be limited due to their proximity to the road.</p>	<p><i>accompanies this submission.”</i></p> <p><i>Noted.</i></p>	
Amenity	<p><i>General amenity of residential units should be of good standard. The provision of good daylight access and outlook from the lift lobbies and corridors is commended. The following detailed matters should be addressed:</i></p> <ul style="list-style-type: none"> <li><i>Road noise impacting, particularly on lower units; consider minimising balcony openings, providing solid balustrading and screening, and acoustic treatment of balcony soffits.</i></li> <li><i>Visual and aural privacy for immediately abutting units at the north-western internal corner.</i></li> <li><i>Provide adjustable screens to all balconies to maximise their usability.</i></li> <li><i>Details issues raised in ‘Social Dimensions’.</i></li> <li><i>Extend ground level awning onto Coward Street frontage.</i></li> </ul> <p>The following issues are of concern:</p> <ul style="list-style-type: none"> <li>The amended plans at typical floor levels are of lesser quality. Although there is natural light into the southern end of</li> </ul>	<p><i>“Refer to accompanying amended Acoustic Report. The building is capable of complying with the acoustic requirements.</i></p> <p><i>The north western corner has been redesigned as a result of the ‘curved’ treatment. All units are appropriately separated. Adjustable screens have been provided.</i></p> <p><i>The upper levels of the design cantilevered over the lower levels to provide weather protection for pedestrians along Kent Road and Coward Street which is consistent with the original design intent. An additional awning has been added at the corner of Kent and Coward.</i></p> <p><i>All typical levels are provided with natural light and ventilation at the southern end of the corridor. This is considered appropriate and it is</i></p>	<p>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.</p> <p>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.</p> <p>An assessment of environmental acoustic impacts as well as a road traffic noise and aircraft noise assessment have accompanied amended proposal prepared by The Acoustic Group dated 19 May 2014 , which details measure to be implemented. To ensure that the occupants of</p>

ISSUE	COMMENT	RESPONSE	OFFICERS COMMENT
	<p>corridors it is not immediate to the elevators, and there is no natural light at the northern end. This should be provided by some re-planning of the northern units.</p> <ul style="list-style-type: none"> <li>Only 63% of residential units would receive 2 hours of sunlight at midwinter. (p.45 of S.E.E.), although the independent consultant's report is nevertheless supportive of design because of its particular context. This is well below the RFDC recommendation of 70% and undesirable. It is recognized that the non-compliance of the Meriton development to the north with the Masterplan has posed challenges, but the plan now proposed with its additional south-facing units has exacerbated the problem.</li> <li>The above recommendations in relation to balconies remain relevant. It is noted that adjustable screens are proposed and that an Acoustic Report has been provided. The Panel has not had access to this report, and Council will need to be satisfied that acceptable acoustic conditions will result in units facing the road, without the need for residents to resort to closing windows and utilizing artificial air-conditioning.</li> <li>There are recesses in front of the commercial spaces but now no continuous cover or protection for pedestrians along the Kent Road frontage, and this should be provided.</li> <li>The new location of the main entrance lobby on the corner of the site is highly questionable. It is unlikely to be permissible for cars or cabs to stop for pick-up and drop-off purposes opposite the lobby, by comparison with the ideal</li> </ul>	<p><i>not considered necessary to provide an additional source. As accepted by the panel, the orientation of the units was governed by the approved development to the north. As amended, 68% of the units will achieve 2 hours of solar access in mid winter between 9am to 3.30pm. Given the significant site constraints this is considered acceptable. An amended acoustic report accompanies this submission.</i></p> <p><i>The DCP does not require awnings along Kent Road, and this is consistent with the approved development to the north on Kent Road. An additional awning has been added to the corner of Kent and Coward.</i></p> <p><i>The provision of natural light and ventilation to the service (bath) rooms on level 14 is problematic due to BCA requirement for fire separation of 3m between roof openings in sole occupancy units."</i></p>	<p>the development are not adversely impacted upon. This matter is discussed further in the report.</p> <p>The proposal complies with disability access requirements and incorporates sufficient service areas as required.</p> <p>This matter is discussed further under the BBDCP 2013 assessment, however 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 units shall achieve flow through ventilation with the proposal indicating 60% of proposed units able to achieve cross flow ventilation. The applicant has confirmed that all habitable spaces are adequately ventilated.</p> <p>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 provides for 68% of units proposed will receive at least 2 hours sunlight during the winter solstice. The minor non-compliance has resulted from No 19-33 Kent Rd development departing from the Mascot Station Masterplan at the time of the assessment of this application discussions were held with both landowners to ensure that the redevelopment of No 39 Kent was not compromised. This was report to the JRPP at the time. As a result of orientation of the site and the departure of the block form from the DCP 2013, the minor departure can be supported in this instance.</p> <p>It is considered that the development satisfies the</p>

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	<p>location of the original scheme. There is a two-storey covered recess outside the entrance which will give some protection, although it is very exposed to southerly and westerly winds.</p> <p>Provide natural light and ventilation through roof openings to the service rooms on level 14.</p>		provisions with respect to layout and amenity, and therefore the development is consistent with this principle.
Safety and Security	Satisfactory	<i>"The design provides a more open and direct lobby entry at the corner of Kent Road and Coward Street being an acceptable design resolution that will provide a safe and well-lit entry for future residents."</i>	The development provides for safe direct pedestrian access from Kent Road and Coward Street. 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.
Social Dimensions	The original design had not only the roof-top communal space but also a potentially very effective communal facility near the main entrance. The latter is no longer included and as discussed above the now proposed communal space would have limited value due to extensive winter overshadowing, as well as overlooking. Other options such as a smaller roof-top area on the tall building should be explored to supplement this provision.	<p><i>"Further to discussions with Council, the amended scheme relocates the communal room and provides for a new external communal room added to the podium landscaped BBQ area. The external communal room is integrated with a roofed external seating and barbeque facility with a kitchenette, accessible toilet and storage facility providing an all year around facility for the residents' use. Improved access has been provided between the communal facilities and the podium landscaped area.</i></p> <p><i>In addition, an internal meeting room is provided at level 1 accessible from the common corridor with adjacent access to the external communal open space.</i></p> <p><i>Seating has been maintained within the amended ground floor lobby area to encourage</i></p>	<p>The amended development provides a minor amendment to the unit types, unit mix of apartment has remained the same at 36.5%. The site 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 mix is considered appropriate as it reflects current market demand and future projections for increased demand for smaller apartments.</p> <p>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</p>

ISSUE	COMMENT	RESPONSE	OFFICERS COMMENT
		<i>the social interaction of the residents.”</i>	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.
Aesthetics	<p>Although generally acceptable overall the important Kent Road-Coward Street corner is lacking the formal strength that might be expected to emphasize this prominent element.</p> <p>The facades of the top storey (level 14) could be redesigned to provide a better definition and a top to the building. A roof plane layer could also be considered to express the roof level.</p>	<p><i>“The Kent Road and Coward Street corner has been redesigned to provide a stronger, formal corner emphasis to the street junction. A solid curved spandrel and blade element now defines the corner and lobby entrance, with a curved awning providing appropriate scale and weather protection to the lobby entrance. The roof plane to level 14 roof has been emphasised with a continuation of the corner blade element to provide a cap to the building.</i></p> <p><i>The redesigned corner reinforces the lobby address of the development.</i></p> <p><i>The amended design provides for a ‘curved’ corner treatment that will provide a strong built form and emphasise the corner of Kent Road and Coward Street.”</i></p>	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 modern contemporary design of the building is 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.
Conclusion/Recommendation	<p>The amended scheme as proposed is highly problematic. Whilst the reasons for reconsideration by the applicant are appreciated, the new proposal is less successful in almost every aspect, building form, landscape, communal space, relatively poor amenity of residential units, questionable location of main entrance, and aesthetic quality. The deletion of the public courtyard would be a major loss.</p> <p>The arguments supporting the extremely large excess in density could not be supported without very substantial evidence as to major financial public benefit.</p> <p>The Panel is not persuaded that the development could not be set back as previously from the northern boundary, the courtyard and entrance</p>	<i>“Noted. As amended, the development addresses the issues raised by the panel.”</i>	



ISSUE	COMMENT	RESPONSE	OFFICERS COMMENT
	location retained, the density reduced to a more reasonable level, and potentially a better outcome achieved in relation to amenity of residential units.		

Overall, the development as amended 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 its corner treatment, along with a selection of appropriate finishes. The contemporary design of the building is compatible with the design and scale of the urban form found Mascot Station Precinct. It is considered that the proposed brickwork, glazed finishes, and articulation contribute to the overall contemporary style. Therefore the proposed development is considered to be consistent with these design quality principles.

The amended 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.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the proposed development. The development application was accompanied by BASIX Certificate No. 508329M\_03 committing to environmental sustainable measures.

#### Botany Bay Local Environmental Plan 2013

The provisions of the Botany Bay Local Environmental Plan 2013 (BBLEP 2013) have been considered in the assessment of this Development Application and the following information is provided:

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Land use Zone	Yes	The site is zoned B2 – Local Centre under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed mixed use development comprising residential apartments and commercial retail uses is permissible with Council's consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives in the BBLEP 2013: ▪ <i>To provide a range of retail, business,</i>

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		<p><i>entertainment and community uses that serve the needs of people who live in, work in and visit the local area. ;</i></p> <ul style="list-style-type: none"> <li>▪ <i>To encourage employment opportunities in accessible locations</i></li> <li>▪ <i>To maximise public transport patronage and encourage walking and cycling</i></li> </ul>
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.
<p>What is the height of the building?</p> <p>Is the height of the building below the maximum building height?</p>	No	<p>47.2m</p> <p>The building exceeds the 44m height limit by 3.2m. As such a Clause 4.6 variation has been submitted. Refer to discussion below.</p>
<p>What is the proposed FSR?</p> <p>Does the FSR of the building exceed the maximum FSR?</p>	Yes	<p>The proposed FSR is 4.21:1</p> <p>The proposal exceeds the 3.2:1 FSR by 1.01:1 As such a Clause 4.6 variation has been submitted. Refer to discussion below.</p>
Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m <sup>2</sup> min and maximum height of 22 metres and maximum FSR of 1.5:1?	N/A	The subject site is not located within an R3 or R4 zone. R3 zoned land adjoins to the immediate south of the subject site.
Is the site within land marked “Area 3” on the FSR Map	N/A	The subject site is not identified as being within “Area 3” on the FSR map.
Is the land affected by road widening?	No	The Development Application involves the dedication of land to Council for the road widening of the Kent Road/Coward Street intersection. See assessment relating to BBDCP below.
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.
<p>The following provisions in Part 6 of the LEP apply to the development:</p> <p>6.1 – Acid sulfate soils</p>	Yes	<p>Clause 6.1 – Acid Sulfate Soils. The subject site is affected by both Class 2 and Class 4 Acid Sulfate Soils. An investigation of ASS will be required prior to any excavation commencing on site as the presence of ASS is likely at the subject site. The development is considered to be consistent with Clause 6.1 of BBLEP 2013.</p>

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
6.2 – Earthworks	Yes	Clause 6.2 – Earthworks. The proposed development involves bulk excavation to accommodate 3 basement levels. The development application has been accompanied by a Geotechnical Assessment. The development application is Integrated Development and in a letter dated 19 December 2013, the NSW Office of Water has provided its General Terms of Approval for the proposed development. The development is considered to be consistent with Clause 6.2 of BBLEP 2013.
6.3 – Stormwater management	Yes	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.
6.8 - Airspace operations	Yes	Clause 6.8 – Airspace Operations. The subject site lies within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority. The application proposed buildings to this maximum height and was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration. In a letter dated 19 November 2013, SACL raised no objections to the proposed maximum height of 50.3 metres AHD. The development is considered to be consistent with Clause 6.8 of BBLEP 2013.
6.9 – Development in areas subject to aircraft noise	Yes	Clause 6.9 – Aircraft Noise. The subject site is affected by the 25-30 ANEF contour. Residential accommodation is considered “unacceptable” in this noise contour.  An Amended Acoustic Report has been submitted with the development application which indicates that the new buildings have been designed to comply with the requirements of AS2021-2000. – See Discussion below
6.16 – Design excellence	Yes	The proposed design has been the subject of consideration by Council’s Design Review Panel at pre-DA stage and during the development assessment phase at its meetings on 22 January 2014 and 17 March 2014. The

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		<p>original design was generally supported with the exception of the departure from the height and FSR standards relating to the site.</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 modern contemporary in nature and presents an articulated façade providing enhanced interest to the streetscape and the gateway to precinct.</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 8 – BBLEP 2013 Compliance Table**

#### **Clause 4.3 – Height of Buildings**

The subject site is affected by a maximum height requirement of 44m. The proposed buildings will have a maximum height of 47.2m above the existing ground level. This is a 3.2m height departure is a result of an additional floor.

The proposed development is considered to be consistent with the objectives contained within *Clause 4.3 Height of buildings* of the Botany Bay LEP 2013. The departure to height is considered a minor variation to the control and is consistent with the future built form.

The non-compliance has been substantiated by the applicant with the submission of a clause 4.6 exception to Council's LEP Development Standards and which is addressed below.

The Panel should also note that the height of building works required the referral of this application to Sydney Airport Corporation Limited (SACL), who raised no objection to the proposal subject to the imposition of certain conditions of consent.

#### **Clause 4.4 – Floor Space Ratio**

The floor space ratio of development on the subject site is restricted to a maximum of 3.2:1 (11878m<sup>2</sup>). The proposed development has an FSR of 4:21:1(15622m<sup>2</sup>), which exceeds the FSR by 31%.

The proposed development is consistent with relevant objectives contained within Clause 4.4 Floor Space Ratio, of the Botany Bay Local Environmental Plan 2013 for the following reasons:

- a. The development proposal is compatible with the bulk and scale of the existing and desired future character of the locality,
- b. The development proposal maintains an appropriate visual relationship between new development and the existing character of areas and its locations that are not undergoing, and are not likely to undergo, a substantial transformation,
- c. The development proposal will not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,
- d. The development proposal will provide an appropriate correlation between the size of a site and the extent of any development on that site,

The compliance has been substantiated by the applicant with the submission of a clause 4.6 exception to Council's LEP Development Standards, which is addressed below, through the Clause 4.6 Exception submission.

#### **Clause 4.6 Exceptions to Development Standards**

Clause 4.6 is reproduced as follows:

- (1) *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
  - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
  - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

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

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

The applicant has submitted a request for an exception to Clauses 4.3 and 4.4 of the Botany Bay LEP 2013 as it applies to the subject development proposal. The applicant has submitted the following to justify the proposed variations to Council's LEP controls as they currently apply to height and floor space ratio within the B2 – Local Centre zone:

- 2.1 *“Clause 4.3 and Clause 4.4 of the Botany Bay Local Environmental Plan 2013 contains a development standard that allows for a maximum height and floor space ratio on the subject site. A written justification for the proposed variation to the FSR is required in accordance with Clause 4.6.*
- 2.2 *The objectives of Clause 4.6 ‘Exceptions to Development Standards’ are as follows:*
  - (a) *To provide an appropriate degree of flexibility in applying certain development standards to particular development; and*
  - (b) *To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- 2.3 *Clause 4.6 allows for the contravention of a development standard with approval of the consent authority.*
- 2.4 *A development standard is defined under the Environmental Planning and Assessment Act, 1979 as:*

*“Provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development”*
- 2.5 *This exception is required under Clause 4.6 of the Botany Bay Local Environmental Plan 2013, to justify why the maximum height under Clause 4.3 and maximum floor space ratio control under Clause 4.4 is considered unreasonable or unnecessary for this site.*
- 2.6 *The proposed development satisfies the objectives of Clause 4.6 as demonstrated below.*

*Clause 4.6(1) Objectives:*

*The objectives of this clause are:*

- (a) *To provide an appropriate degree of flexibility in applying certain development standards to particular development; and*
- (b) *To achieve better outcomes for and from development allowing flexibility in particular circumstances.*

*Comment*

- 2.7 *The objectives of the Clause seek to allow 'flexibility' in the application of the controls. This development is considered an appropriate form of development that warrants the flexible application of the Height and Floor Space Ratio Control.*
- 2.8 *The site is a corner site that is bounded by Kent Road to the west, Coward Street to the south and the extension of John Street to the north. The site presents a unique opportunity to provide a quality and strong urban design outcome that will accentuate the corner and activate the adjoining streets.*
- 2.9 *The development will provide non-residential uses along Kent Road and a substantial double height lobby area that is clearly defined and identifiable.*
- 2.10 *The Kent Road and Coward Street corner has been redesigned to provide a stronger, formal corner emphasis to the street junction. A solid curved spandrel and blade element now defines the corner and lobby entrance, with a curved awning providing appropriate scale and weather protection to the lobby entrance. The roof plane to level 14 roof has been emphasised with a continuation of the corner blade element to provide a cap to the building.*
- 2.11 *The redesigned corner reinforces the lobby address of the development. The amended design provides for a 'curved' corner treatment that will provide a strong built form and emphasise the corner of Kent Road and Coward Street. As amended the development responds and addresses the key comments provided by Council's Design Review Panel.*
- 2.12 *The site will allow for increased road widening at the corner of Kent and Coward Streets that would not be achieved without the proposed development. The development provides for dedication of land in addition to that required by the DCP to facilitate road widening and improved intersection arrangement.*
- 2.13 *The shape of the allotment of land is an 'L' shape and is an unusual shape which can create a challenge with building form and design. In this instance, the architects have achieved a quality design outcome which emphasises the corner of Kent & Coward Streets.*
- 2.14 *The flexible application of the Height & FSR control is therefore considered appropriate on this site.*
- 2.15 Clause 4.6(2)
- Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment



- 2.16 *Clause 4.3 & 4.4 of the Botany Bay LEP 2013 are considered to be a development standard in accordance with the Act. They have not been excluded from the operation of this Clause or any other policy.*

*Clause 4.6(3)*

*Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*Comment*

- 2.17 *The following comments provide written justification for a variation to Clause 4.3 & 4.4 of Botany Bay LEP 2013 in respect of maximum height and floor space ratio.*

- 2.18 *Compliance with the development standard Clause 4.3 Height & 4.4 Floor Space Ratio is unreasonable or unnecessary for the following reasons:*

- The variation to the standard results in an appropriate building form and scale that is complimentary to the Mascot Station Precinct and successfully accentuates the corner of Coward Street and Kent Road. The building height although a minor variation to the standard creates a development that is complimentary to the western edge of the precinct and provides a 'gateway' building. As amended the 'curved' corner treatment will provide a superior urban design outcome that responds to comments of Council's Design Review Panel.*
- Compliance with the standard would not result in any tangible improvement. The building form is appropriate on this corner site and a reduction of the Height and FSR to strict compliance would not increase the proportion of landscaped area or reduce the site coverage.*
- The development maintains high levels of residential amenity to the surrounding sites that may be developed in the future for residential uses. In particular, the orientation of the site and form of the development will not unreasonably overshadow adjoining properties that have the potential for future residential redevelopment, namely the property to the east. The development proposes no adverse impact on the B5 zoned properties to the south.*
- The development will be an appropriate transition from business/industrial uses to a mixed use precinct. The development seeks to provide a far superior interface with the public domain, which will benefit the streetscape and wider community through the ground floor*

*activation and dedication of land for road widening and intersection works.*

- The residential amenity of the apartments is high and not reflective of an overdevelopment of the site. 100% of units comply with the generous apartment sizes required under the Mascot Station Precinct DCP, all units are double or triple fronted, 63% of units will receive at least 2 hours of sunlight on 21 June and 60% of units are cross ventilated.*
- Any reduction in the FSR or height of the building would not result in additional landscaped areas due to the configuration and layout of the site. To comply with the standard a reduction in floor space and height would occur at the upper levels which would impact on the balance of the built form and significant contribution the development makes to the streetscape and in particular the presentation to the corner of Coward Street and Kent Road.*

- 2.19 *Based on the above it is therefore considered that compliance with the standard is unreasonable and unnecessary.*

*Clause 4.6(4)*

- 2.20 *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.*

*Comment*

- 2.21 *This report is a written request to vary the maximum building height control and floor space ratio standard under Clauses 4.3 and 4.4 of the Botany Bay LEP 2013. The report has adequately demonstrated above that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.*
- 2.22 *The proposed development maintains compliance with the objectives of the zone and the maximum height and floor space ratio controls as detailed below:*
- 2.23 *The objectives of the B2 Local Centre Zone under the Botany Bay LEP 2013 are as follows:*

- *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.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*

2.24 *The proposed development satisfies the objectives of the B2 Local Centre zone as follows:*

- *406m<sup>2</sup> of non-residential uses will be provided at ground level. This will contribute towards serving the needs of people who will live, work and visit the area.*
- *The development will contain 8 x studio units, 53 x 1 bedroom units, 105 x 2 bedroom units and 1 x 3 bedroom units which will provide a variety of housing types within a local centre close to public transport and work opportunities.*
- *The unit mix satisfies the demand for the locale.*
- *Residential uses on this site are an appropriate type of development that is complimentary to the transitional nature of the area and will further support the locality. The site is a highly desirable location given the proximity to major arterial roads, airport, Mascot railway station, bus services, Sydney CBD and employment opportunities.*
- *The development will provide an interface between non-residential uses to the west and south which are unlikely to be redeveloped to residential uses due to the current zoning and the transitioning Mascot Station Precinct Area which is able to accommodate increased residential uses due to location and proximity to public transport.*
- *The subject site is located within a 5 minute walk to Mascot railway station. This will encourage public transport uses due to the sites excellent public transport accessibility.*
- *The development will make a substantial contribution to the Botany Bay LGA and will enhance the unique character of the area given the quality architectural design and much needed and improved interface with the public domain.*

2.25 *The objectives of Clause 4.3 Height under Botany Bay LEP 2013 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.*

2.26 *The proposed development satisfies the objectives of the Height Controls as follows:*

- Given the transitional nature of the area from industrial to mixed use, the design proposes an appropriate building form.*
- The height of the new mixed use building is reflective of the surrounding area, approved building to the north and the desired future character established by the LEP controls. The building form enables the adjacent sites to develop in accordance with the planning controls.*
- Given the corner location, additional building height is considered appropriate, the increased height results in no adverse impacts to surrounding buildings. The strong building form that emphasises the curved glazed elements wrapping and meeting the ground at the corner strongly addresses the corner and highlights the appropriateness of the taller form to this corner site.*
- The setbacks of the building and articulated facade ensures that the development will not unreasonably affect adjoining properties and in particular the adjacent sites which may redevelop in the future.*
- The buildings will not adversely affect adjoining residential properties by way of overshadowing and view loss. The proposed development maintains sufficient solar access to the future development site to the east. The development has no impact on the land to the south which is zoned B5 which does not permit residential development.*
- The building will significantly improve the streetscape and the highly articulated façade, generous lobby entry, road widening and landscape treatment will ensure the scale is appropriate for the surrounding streetscape.*
- The redesign of the building has enabled the plant, services and lift overrun to be concealed behind residential units on the uppermost residential level. This ensures that the top of the building offers a slick clean line with no additional height protrusions.*

2.27 *Based on the above, Council should be satisfied that the design is appropriate for the site and achieves the objectives of the height control.*

2.28 *The objectives of Clause 4.4 Floor Space Ratio under Botany Bay LEP 2013 are as follows:*

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

2.29 *The proposed development satisfies the objectives of the FSR controls as follows:*

- The building has been designed to accentuate the corner of Kent Road and Coward Street to create a gateway building which is consistent with the desired future character of the Mascot Station Precinct and defines the street edges including the John Street extension along the northern boundary.*
- The increased residential density will assist in meeting the increased housing targets within Botany Bay LGA and as set out in the Metropolitan Plan.*
- The proximity of the development to Mascot Station makes it an ideal location to support this increased density and encourages the use of public transport.*
- A compliant number of car parking spaces will be provided to accommodate 406m<sup>2</sup> of retail space and 167 new residential apartments. This will ensure that the development will not unreasonably impact on any existing on-street parking within close proximity to the site.*
- The site is located on the western edge of the Mascot Station Precinct and the form and design of the development will not unreasonably affect sites to the south or west which are outside the precinct and are zoned: Business Park, General Industrial or Business Development. All the zones opposite do not generally permit residential accommodation with the exception of dwelling houses in the Business Park zone on the western side of Kent Road. Sufficient separation is achieved due to the width of adjoining roads.*
- The building will significantly improve this corner of Kent Road and Coward Street by removing an underutilised car park, providing non-*

*residential uses along Kent Street and providing an architecturally designed building that will frame the adjoining streets.*

- *A significant public benefit will be provided by the development including the dedication of land at the corner of Kent and Coward Street to the RMS to facilitate road widening and improved intersection arrangement.*
- *The proposed development will not unreasonably overshadow adjoining properties or the public domain due to the orientation of the site with the majority of the shadow falling across Coward Street.*
- *The proposed setbacks from adjoining sites are reasonable and will not detrimentally affect the future redevelopment of these sites. Privacy screens have been installed or highlight windows to minimise any adverse impacts.*
- *The redevelopment of the site will contribute positively to the economic growth of Botany Bay LGA by providing residential accommodation that will support the surrounding industry and services within the immediate locality.*

2.30 *Based on the above, Council should be satisfied that the design is appropriate for the site and achieves the objectives of the floor space control.*

Clause 4.6(5)

*In deciding whether to grant concurrence, the Director-General must consider:*

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Comment

- 2.31 *The variation to the floor space ratio control will not raise any matter of significance for State or regional environmental planning.*
- 2.32 *The proposed height and form allows for adequate solar access to be provided to the subject development and maintained for adjoining properties in particular the site to the east.*
- 2.33 *The level and position of the landscaping will soften the built form from adjoining properties, assist in maintaining privacy between dwellings and significantly improve the interface with the public domain compared to the existing situation.*
- 2.34 *As amended, the building will achieve a high level of design excellence and provide a highly articulated design that will complement the western edge of*

*the mascot Station Precinct and provide a visually interesting development that will successfully accentuate the corner of Kent Street and Coward Road.*

- 2.35 *Compliance with the development standard is unreasonable in this instance as the reduced floor space ratio and building height will not significantly reduce environmental impacts beyond what is proposed and will weaken the strong corner statement achieved by this design.*
- 2.36 *In addition to the improvements to the ground level and interface with the public domain, the development will provide for a significant public benefit including the dedication of land at the corner of Kent and Coward Street to the RMS to facilitate road widening and improved intersection arrangement.*
- 2.37 *There is no public benefit of maintaining the standards given the significant improvements to the locality that will be achieved through the development, particularly the enhanced public domain works proposed.*

Clause 4.6(6)

*Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Comment

- 2.38 *The proposal does not seek to subdivide the land and therefore this Clause is not applicable.*

Clause 4.6(7)

*After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

- 2.39 *Should consent be granted for a variation of Clause 4.3 Height and 4.4 Floor Space Ratio, the Council is required to advise the Department of Planning of such a variation, in which case the reasons outlined in this report provide adequate justification for this variation and should form part of this record.*

Clause 4.6(8)

*This clause does not allow consent to be granted for development that would contravene any of the following:*

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) Clause 5.4.*

2.40 *The proposed development is not complying development, will not affect any commitments set out in a BASIX certificate and is not affected by Clause 5.4 of the Botany Bay LEP 2013. Therefore, this Clause is not applicable.*

2.41 *It is therefore requested that pursuant to Clause 4.6 of the Botany Bay LEP 2013, that an exception be granted to compliance with Clause 4.3 and 4.4."*

In to the above the Applicant has submitted legal advice dated 3 April 2014 which concluded the following:

*"There is no quantitative limit on the variation that may be allowed by a consent authority in response to a request made under Clause 4.6 of LEP 2013 in relation to the maximum height or floor space ratio development standard."*

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

The proposed height of the building at 47.2m exceeds the 44m height limit permitted under Clause 4.3 and proposed FSR at 4.21:1 exceeds the FSR of 3.2:1 permitted under Clause 4.4 of BBLEP 2013. As such, the applicant has submitted with this development application a Clause 4.6 variation to the height and FSR limit as discussed above. The objection to the height and FSR controls has been assessed in accordance with relevant case law and the applicant variation request is supported in this instance for the reasons outlined below together with the views of the DRP.

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

The subject height and FSR limit are development standards contained in Clauses 4.3 and 4.4 of Botany Bay Local Environmental Plan 2013.

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

Clause 4.3 and Clause 4.4 of Botany Bay LEP 2013 contain the following specific objectives in respect of height.

The objectives for Clause 4.3. *Height of Buildings* are:



- (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.*

The objective for *Clause 4.4 – Floor space ratio* are follows:

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

Comment:

The Applicant has identified the underlying objective or purpose of the standard. The Masterplan, which now forms the BBDCP 2013, envisaged a 6 storey tower with and FSR of 3.2:1 at the location proposed. The proposed development is 15 storeys and proposes an FSR 4:21:1 which departs from the numerical controls of the BBDCP 2013, but satisfy the objectives of the BBDCP 2013 ensure that the bulk and scale of the development are in keeping with the desired future character of the area.

In addition the proposed development site is on a prominent gateway site to the Mascot Precinct and has satisfied objectives of the BBLEP 2013 in providing a development that is compatible in term and bulk and scale with the adjoining development. The Applicant has adequately identified the objectives applying to height and FSR under BBLEP 2013 and the BBDCP 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?***

Height

The applicant claims that compliance with the maximum height and FSR development standards are unreasonable and unnecessary in circumstances of the case as discussed earlier in this report.

The exceedence of the 44 metre height limit by 3.2 metres (7% variation to the standard) is not considered to be significant and the additional height would not be noticeable from the street, or result in loss of views or adverse visual impacts on the streetscape from the increased bulk and scale of the building.

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

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

FSR

As discussed above the applicant's justification is generally agreed with. The proposal is considered to be of an appropriate bulk, scale and height for the subject site which has been amended to address concerns raised by Council and DRP in relation to the proposed design and aircraft noise to comply with the requirements of Botany Bay Development Control Plan 2013.

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

The proposal is therefore considered to satisfy the underlying objectives for the FSR control, however it is pointed out to the Panel that the height control (44m) is not consistent with the FSR limit proposed under the BBLEP 2014.

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

The underlying objectives and purposes of the height and FSR controls remain relevant to the proposed development. The proposed development

is consistent with the objectives of the height and FSR controls in BBLEP 2013, as detailed above.

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

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

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

#### Clause 4.3 Height

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

Site Address & DA No.	Approved Height	Approval Date
619-629 Gardeners Road (DA10/324)	51m AHD	3 August 2011
208 Coward Street (DA11/67)	51m AHD	5 December 2011
7 Bourke Street (30-34 John Street) (DA09/378)	49.1m AHD	November 2011
2-4 Haran Street (DA13/213)	51m AHD	June 2013
103 O'Riordan Street (DA11/135)	51m AHD	20 June 2012
19-33 Kent Rd, Mascot(13/200)	51mAHD	20 March 2014

**Table 2 – Comparison of Height**

The variation sought is considered appropriate in this instance. The heights listed above are at Obstacle Limitation Surface 51m AHD, as stipulated by Sydney Airport Corporation Limited maps. The 44m height exceedence and the levels of the land relative to other sites in the Mascot Station Precinct relate to an additional floor which is considered acceptable in this location.

#### Clause 4.4 FSR

The applicant has provided the justification discussed above which demonstrates that the underlying objectives of the FSR control of BBLEP 2013 would be thwarted or defeated if compliance were required.

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

Address	FSR Control	Approved FSR (BBLEP 1995)	Approval Date
214 Coward Street (JRPP Application)	2.5:1	4.5:1	16 December 2010

<b>Address</b>	<b>FSR Control</b>	<b>Approved FSR (BBLEP 1995)</b>	<b>Approval Date</b>
230 Coward Street (aka 25 John Street)	2.5:1	4:1	23 August 2006
3-9 Church Avenue	2:1	2.08:1	21 May 2008
13A Church Avenue	2:1	2.36:1	30 June 2009
10-14 Church Avenue & 619-629 Gardeners Road (JRPP Application)	2:1	2.52:1	3 August 2011
1-5 Bourke Street	3.3:1	3.35:1	11 August 2004
7 Bourke Street & 30-32 John Street	2.9:1	4.16:1	13 January 2011
24-26 John Street	2:1	3.46:1	6 September 2009
8 Bourke Road & 37 Church Avenue (Court Approval)	3.3:1	4.24:1	13 May 2009
208-210 Coward Street (JRPP Application)	2.5:1	4.44:1	5 December 2011
5 Haran Street (Court Approved)	2:1	3.4:1	June 2013
103-105 O'Riordan Street, Mascot	2:1	3.16:1	June 2012
671-683 Gardeners Road, Mascot (JRPP Application)	3.2:1	3.2:1	May 2014

**4. *Is the objection well founded?***

It is considered that the proposal is generally consistent with the underlying objectives of the standard identified in 2 above. The Clause 4.6 variation contends that compliance with the height of 44m and 3.2:1 FSR development standard is unreasonable and unnecessary in the circumstances of the case with respect of the aims and objectives of BBLEP 2013 and the relevant matters of consideration.

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

The rationale and argument presented in the Clause 4.6 variation is generally agreed with and it is recommended that the development standard relating to the maximum height and FSR for the site as contained within Clauses 4.3 and 4.4 of the BBLEP 2013 should be varied in the circumstances to allow the development to attain a height of 47.2m and floor space ratio of 4.21:1.

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

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

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

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

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

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

Clause 4.6(4) states the following:

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

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

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

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

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

As detailed above, the development application involves public benefits in the terms of road widening 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. The proposed development includes dedication of land for improved functioning of the Kent Road and Coward Street intersection. This area was signified within Council's DCP as being minor road widening, however RMS have acquired approximately 500m<sup>2</sup> of the subject site for road widening, where the applicant will providing this a public benefit to the development.

***Clause 6.9 – Development in areas subject to aircraft noise***

The requirements of this clause have been considered in the assessment of the development application, along with the requirements of Part 3J of the Botany Bay DCP 2013 relating to Aircraft Noise. The subject site is located within the 25-30 contour.

Residential flat buildings are otherwise 'unacceptable' within ANEF contours of 25-30.

It is important to note that the development site to the immediate north (Meritons Site) has consent for a mixed development land use and that part of the site is above the ANEF contour of 25, is to be occupied by “serviced apartments”.

Previously presented to JRRP with the original application was a Preliminary Assessment Report prepared by Acoustic Group which did not make an acceptable assessment of the amended plan submitted to Council. The report provided no mitigations measures or treatments to the internal to external amenity to the development. Therefore at the time the proposed development did not satisfy the requirements of AS2021-2000 and could not be supported.

The Applicant has submitted an Acoustic Assessment prepared by the Acoustic Group dated 19 May 2014. As the subject site falls within 25-30 ANEF contour the Report made the following assessment:

*“Due to the proximity of the site to Sydney Airport, Botany Bay Council Development Control Plan 2013 requires the site to be assessed in accordance with Australian Standard 2021-2000 "Acoustics – Aircraft Noise Intrusion, Building Siting and Construction".*

*Under clause C5 of the DCP high density residential development would be supported as the site is located within the 30 ANEF contour. Under AS2021 if a building site is in the above ANEF 25 zone there is a requirement for new developments to consider the aircraft noise in outdoor spaces.*

*The ANEF 25 contour for the current Sydney Airport 2029 ANEF map passes through the site and indicates the SW portion of the site is above ANEF 25 with the majority of the site at or below ANEF 25. However the width of the ANEF contour is significantly greater than the line shown on the contour map such that at the subject site can be in the order of 100 metres wide.*

*In section 3J.2 of the DCP Clause C5 identifies that where a site is located on or immediately adjacent to an ANEF contour and could be affected by aircraft noise the development will be assessed as if it was located with the relevant ANEF contour, i.e. the DCP nominates the site as being at ANEF 25 and therefore under AS2021 is classified as conditional.*

*Under the DCP classification of the ANEF level for the site (i.e. ANEF 25) from AS 2021 there is no requirement to assess the outdoor areas. However Council has requested consideration of the outdoor areas and is discussed in the Assessment Section of this report.*

*Under part 3J.2 Clause C2 the development must comply with the requirements of AS 2021-2000, being for this development compliance with the internal noise levels is Table 3.3 of AS2021-2000.*

*In utilising AS2021 the internal noise target set out in Table 3.3 is a dB(A) maximum level.*

*The Australian Standard AS2021 sets out a procedure for determining the position of a building site with respect to an aerodrome by the determination*

of a distance in metres from the building site to the extended runway centreline (DS), the distance in metres from the closest end of the runway to the intersection of the extended runway centreline (DL) and the distance in metres from the further end of the runway to the intersection of the runway centreline (DT).

Aircraft operations with respect to the subject site have different configurations dependent upon the orientation of the arrival and departure of aircraft (described in the Long Term Operating Plan for Sydney Airport as "modes").

The subject site is most affected by aircraft utilising the main runway (16R for arrivals from the north, 34L for departures to the north) and the third parallel runway (16L for arrivals from the north) of Sydney Airport.

From the location of the proposed development with respect to the runways at Sydney Airport, the position of the building site has been determined and presented in Table 2:

**TABLE 2: Position of Building Site**

Runway	Main Runway		Third Parallel(m)	
	South Direction 16R	North Direction 34 L	South Direction 16L	North Direction 34R
DS	1290	1290	145	720
DL	510	NA	3150	NA
DT	NA	5350	NA	5000

Australian Standard AS2021 contains a series of tables providing noise levels at different displacements from the flight track for aircraft operating in commercial airports around Australia. From these tables the highest aircraft noise of common aircraft at the building site will be 85 dB(A) from a Boeing 767 from the north landing on the third runway (16L) affecting the western side of the development and 81 dB(A) for a 767 using the curved flight path to the north off the third runway.

Attended measurements on the afternoon of Friday 28th February, 2014 found similar levels to that indicated in AS2021.

The Aircraft Noise Reduction ("ANR") is based upon a recommended internal design goal for sleeping areas and dedicated lounges of not more than 50 dB(A). For other habitable spaces, AS2021 recommends an internal design sound level of 55 dB(A) whilst for bathrooms, toilets and laundries the design goal is 60 dB(A).

Therefore for the subject site the proposed building is required to have an ANR of not less than  $85-50 = 35$  dB(A) for sleeping areas and dedicated lounges, 30 dB(A) for other habitable spaces, and 25 dB(A) for bathrooms, toilets and laundries.

In considering the internal noise levels the frequency characteristics of the aircraft noise has a bias towards the low frequencies which therefore tends



*to require an attenuation performance (when expressed as an  $R_w$  value) greater than the ANR that is expressed as a  $dB(A)$ .*

*The field measurements and the tables in the Standard reveal that aircraft movements on the eastern side of the site give rise to higher levels than for aircraft west of the site. Therefore in terms of noise control measures the eastern and northern sides of the building is governed by the aircraft traffic landing on the third runway (16L), whilst the southern and western façades are governed by road traffic.”*

The report concludes that building can comply with the AS2021 and other noise impacts such as traffic noise as follows:

*“For the purpose of this development application additional noise monitoring has been carried out on the site to determine both the road traffic noise levels at the subject façade and also the aircraft noise levels impacting upon the site.*

*The forms of glazing upgrade necessary to satisfy the Council's DCP requirements in relation to road traffic (which have been found to be more stringent than that of the Infrastructure SEPP requirements) are addressed by way of a glazing schedule set out in Appendix H.*

*Under the clauses c2 and C5 of Part 3J.2 of the Council's DCP 2013 the site is classified as conditionally acceptable under AS2021 and requires the design of the façade to address noise intrusion from aircraft operations. For the western façade the aircraft noise reduction required for the development is greater than for traffic noise.*

*The compliance with the acoustic criteria necessitates that whilst doors and windows may be operable to the residential uses in the building the opportunity exists for the occupants of the apartments to close the doors and windows and have ventilation satisfying Australian Standard 1668.2.*

*The provision of such mechanical ventilation, together with exhaust stacks associated with bathroom exhausts and any mechanical ventilation for the retail uses on the ground floor are required on a cumulative basis to satisfy the Council's mechanical plant noise target and as such must be considered in the entirety of such mechanical plant at the Construction Certificate stage.*

*Botany Council's DCP requires the development to incorporate noise control measures to ensure the intrusive noise from both road traffic and aircraft traffic achieves the nominated levels. The required glazing to satisfy the DCP internal noise levels is set out in Appendix H which are to be incorporated into the development during construction.”*

Based on the above the proposed development can be suitably noise attenuated against aircraft noise and traffic noise and the process has taken the following into account;

- the land is zoned B2- Local Centre and residential flat buildings are permissible in the zone;
- the dwellings all have a generous internal floor areas, ranging between for a 1 bedroom apartment to an average of for a 2 bedroom apartment and up to 3 bedroom apartment. The larger apartment sizes provide a high level of internal amenity in terms of access to daylight / solar access; and
- The outdoor environment given the curfew and current operating patterns is such that in daylight hours there will be sufficient opportunity to use the private open spaces associated with each apartment without the presence of aircraft noise.

It should also be noted that the JRPP and Council have approved mixed use and residential flat buildings within the 25-30 ANEF contours.

Address	Development Type	ANEF	Approved By
182-196 O’Riordan St, Mascot	Construction of 113 residential apartments, retail/ commercial show rooms, associated car parking, loading facilities and landscape treatment.	25-30 ANEF	JRPP
1271-1277 Botany Rd, Mascot	Ground floor shops and 44 residential units	25-30 ANEF	Council
1 Robey Street, Mascot	4 ground floor retail tenancies and 18 residential apartments	25-30 ANEF	Council

Based on the above it considered the amended development satisfied the provisions of Clause 6.9 – Development in areas subject to aircraft noise of the BBLEP 2013.

### 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
<b>3J.2</b> Aircraft Noise Exposure Forecast	<b>C2</b> Where building site is classified as "conditional", development may take place, subject to Council consent and compliance with AS2021-2000.	The subject site is affected by the 25-30 ANEF contour. An acoustic report has been submitted.	Yes- Can comply see discussion under Cl 6.9 of BBLEP 2012
Part	Control	Proposed	Complies
9A.4.3.1 Height	<b>C1</b> The maximum height of buildings must be in accordance	The building exceeds the 44m height limit by 3.2m. As such a Clause 4.6	No- See BBLEP 2013 discussion

	with the Height of Buildings Map and Clause 4.3 of the Botany Bay Local Environmental Plan 2013.	variation has been submitted. Refer to discussion below.	above on Cl4.6 of BBLEP2013
	<b>C3</b> Development must conform to the maximum height of buildings in storeys for Urban Blocks 1, 3, and 4 as shown in <b>Figures 16, 17, 19 and 20.</b>	The building exceeds 6 storey.	No- See BBLEP 2013 discussion above on Cl4.6 of BBLEP2013
9A.4.3.2 Floor Space Ratio (FSR)	<b>C1</b> 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 4.26:1. The proposal exceeds the FSR by 1.06:1	No- See BBLEP 2013 discussion above on Cl4.6 of BBLEP2013
	<b>C3</b> Development must comply with the future layout and built form controls for Urban Blocks 1, 3, and 4 in <b>Figures 11, 12, 14 and 15.</b> This requirement may result in the FSR not being achieved.	The development does not comply with the six storey form.	No- See BBLEP 2013 discussion above on Cl4.6 of BBLEP2013
9A.4.3.4 Street Setbacks	<b>C1</b> All development within Urban Block 1 must comply with the street setbacks identified in <b>Figures 30 and 31.</b>	The Kent Road setback varies between 3.8m -1.0m towards the intersection with Coward Street.	Yes – Minor variation at the corner of the site
	<b>C4</b> All development within Urban Blocks 1, 3 and 4 must comply with the section plans in <b>Figures 36, 37, 38, 39, 40, 41 and 42.</b>	The amended proposal does not comply with these sections	N/A
9A.4.3.5 Side and Rear Setbacks	<b>C1</b> All development within Urban Blocks 1, 3 and 4 must comply with the side and rear setbacks identified in <b>Figures 11, 12, 14 and 15.</b>	The setback required under Figure 11 for the subject site is not compliant at the corner of the Kent Road and Coward Street intersection.	No- Considered Satisfactory as the subject site is on a prominent corner and required to provide road widening.
9A.4.3.6 – Building Separation	<b>C1</b> Mixed Use developments containing residential units must comply with the principles and provisions of State Environmental Planning Policy No. 65 (SEPP65) and the RFDC.	The proposed development complies with required building separation distances.	Yes
9A.4.4.4 Active Street Frontages and Awnings	<b>C1</b> All development within Urban Blocks 1, 3 and 4 must provide retail or commercial street frontages where shown in <b>Figures 49, 50, 51 and 52.</b>	Commercial tenancies are provided to the Kent Road and Coward Street frontages .	Yes
	<b>C2</b> All development within Urban Blocks 1, 3 and 4 must provide awnings where shown in <b>Figures 53, 54, 55 and 56.</b>	The subject site is not required to have an awning at the street edge under Figure 53.	Yes
	<b>C4</b> There must be a minimum clear passage width of 2 metres between the adjacent building and leased area for outdoor	There is adequate area in the forecourt for outdoor dining and pedestrian movement where the proposal meets with the required	Yes

	dining to allow for clear passage of pedestrian traffic at all times.	setbacks away from the Kent Road and Coward Street intersection.	
9A.4.4.5 Residential and Non Residential Interface	<b>C2</b> Shadow diagrams must be provided for all development proposals for the summer and winter solstices. Shadow diagrams must show shadow impacts at 9am, 12 noon and 3pm for both solstices. Additional building setbacks may be required where internal site shadow impacts or impacts on adjoining properties are considered by Council to be unreasonable.	Shadow diagrams have been submitted for winter solstice.	Yes
9A.4.4.6 Building Articulation	<b>C1</b> Corner buildings to address both streets	The proposal does address both streets	Yes
	<b>C2</b> Blank external walls of greater than 100m <sup>2</sup> 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	<b>C1</b> Dwellings are to have the following minimum areas:  Studio: 60m <sup>2</sup> 1 bedroom: 75m <sup>2</sup> 2 bedrooms: 100m <sup>2</sup> 3 bedrooms: 130m <sup>2</sup>	Studios 60m <sup>2</sup> 1 Bedroom 75-83m <sup>2</sup> 2 Bedroom 100-112 m <sup>2</sup> 3 Bedrooms – 130-134 m <sup>2</sup>	Yes
	<b>C2</b> 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 36.5%	No – Minor departure considered acceptable
9A.4.4.8 Landscaped Area	<b>C8</b> 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 to meet the required public domain requirements in particular the street tree planting along Kent Road and Coward Street	Yes
	<b>C9</b> 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.	DCP does not identify the provision of a Public Park to be provided on this site.	Yes
9A.4.4.9 Private Open Space and Communal Open Space	<b>C2</b> The minimum private open space requirement per dwelling for multi dwellings and residential flats are as follows:  Residential Flats: Studio and 1 bedroom: 12m <sup>2</sup> 2 Bedrooms: 15m <sup>2</sup>	All units provided with open space in accordance with the DCP	Yes

	3 bedrooms: 19m <sup>2</sup>		
	<b>C5</b> The minimum communal open space requirement for multi dwellings is 15% of the site area (only applies to sites with 15 or more dwellings) and residential flats is 20% of the site area.	41% of site area (ie. 2,511m <sup>2</sup> )	Yes
	<b>C7</b> More than 70% of the communal open space area should be capable of growing plants, grasses and trees.	Landscape plans have been submitted demonstrating that plants can grow in the communal open space area.	No- Considered acceptable
9A.4.4.11 Car Parking	<b>C1</b> Car parking provision must comply with the following car parking rates: <ul style="list-style-type: none"> <li>Commercial and retail development: consistent with the recommendations of the Mascot TMAP</li> <li>1 bedroom dwelling: 1 parking space</li> <li>2 bedroom dwelling: 2 parking spaces</li> <li>3 bedroom (or more) dwelling: 2 parking spaces</li> <li>1 space per 7 dwellings for visitors</li> </ul>	<b>Residential</b> Studio = 8 x 1 = 8 1 bedroom = 53 x 1 = 53 2 bedroom = 105 x 2 = 210 3 bedroom = 1 x 2 = 2 Visitor = 1 space per 7 apartments = 24 <b>Retail</b> 405m <sup>2</sup> 5 spaces	No- See Note 1
9A.4.5.4 Solar Access and Shadow	<b>C3</b> Development must demonstrate: <ul style="list-style-type: none"> <li>(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</li> <li>(ii) 30% of any common open space will obtain at least two hours of direct sunlight between 9am and 3pm on 21 June.</li> </ul>	Diagrams have been submitted demonstrating compliance with Council's controls. However as result of the development to the north this has impacted on the solar amenity to the units on the lower levels of the development, resulting in only 68% of complying.	No- minor variation considered acceptable. – See Note 2
9A.4.5.7 Wind Mitigation	<b>C1</b> All new buildings are to meet the following maximum wind criteria: <ul style="list-style-type: none"> <li>(i) 10 metres/second along commercial/retail streets;</li> <li>(ii) 13 metres/second along main pedestrian streets, parks and public places; and</li> <li>(iii) 16 metres/second in all other streets</li> </ul>	A Pedestrian Wind Environment Statement has been submitted with the application prepared by Windtech and dated 11 February 2014.	Yes
9A.5.1	To be in accordance with	Plans are underway to provide for	Yes

Public Domain Works	Council requirements	road widening along Kent Road and Coward Street in consultation with RMS. The road widening is in excess of the DCP requirements.	
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**Table 10 – BBDCP 2013 Compliance Table**

**Note 1 - Car Parking**

Control C2 of Part 9.4.4.11 – Parking for specific uses states that car parking for residential flat buildings and commercial premises is as follows:

- Commercial = 1 space per 80m<sup>2</sup> of GFA (as required by the TMP);
- Studio or 1 bedroom dwelling = 1 parking space
- 2 bedroom dwelling = 2 parking spaces
- 3 bedroom dwelling = 2 spaces
- 1 space per 7 dwellings for visitors

Based on the above requirements, the proposed development would therefore require 302 off street car parking spaces, being 273 resident spaces, 24 visitor spaces and 5 retail spaces.

The proposed development only provides a total of 296 car parking spaces. Therefore a shortfall of six (6) spaces is proposed. Parking provision for residents and visitors is fulfilled, therefore the shortfall is confined to the commercial tenancy parking, with only four (4) spaces being provided for the commercial tenancies (ie. two each).

The applicant has submitted a Traffic Impact Assessment prepared by Thompson Stanbury Associates dated May 2014 which concludes the following:

- *The proposed parking provision is satisfactory notwithstanding a minor noncompliance with respect to the requirements of DCP 2013;*
- *Access movements are proposed to be separated such that ingress is to be facilitated via a recently proposed link road connecting Kent Road and Church Avenue and egress movements is to be to Coward Street, being restricted to left out via the proposed provision of a central median within that road;*
- *The abovementioned separation of site generated ingress and egress movements to different street frontages is projected to reduce the potential*
- *impact of the development on any one particular location, road link or intersection and facilitate safe and efficient site access arrangements;*
- *The proposed internal circulation and manoeuvring arrangements are capable of providing for safe and efficient vehicular movements during peak times;*
- *Whilst traffic demands throughout the surrounding road network are considerable during peak periods, motorists have been observed to be capable of entering and exiting abutting developments in the subject vicinity with a reasonable level of safety and efficiency during peak periods;*
- *Roads and Maritime Services Authority generation rates suggest that the proposed development will generate approximately 51 peak hour vehicle trips.*
- *The actual nett increase in traffic generation from the subject site could be expected to be lower (approximately 25 trips) based on the traffic generating capability of the existing site development;*
- *Such a level of traffic generation is consistent with the planned redevelopment of the Mascot Town Centre Precinct as outlined within the TMAP prepared by SMEC for Botany Council; and*

- *The surrounding road network is projected to provide motorists with a reasonable level of service up to 2031, incorporating the orderly redevelopment of the precinct (including the subject site) and a series of planned road network improvements.*

*Based on the contents of this report, the following recommendation is provided:*

- *The ingress driveway be widened from 4m to 6m to suitably accommodate the required manoeuvring requirements of MRVs.*

The subject site has a direct frontage to Coward Street with public transport bus routes passing the site and within 300m of the Mascot train station. After hours, the commercial parking spaces would be available for additional visitor parking.

The commercial premises are of a size which is unlikely to attract excessive traffic generation. Uses which would be permissible may include shops, offices or food and drink premises which are likely to support the day to day needs of the resident and workforce population in the immediate vicinity of the subject site.

On this basis, the proposed shortfall in commercial car parking spaces for the proposed development is considered acceptable in this instance. A condition is included in the recommendation that the driveway be widened to allow for Council's garbage trucks and MRV's accessing the site.

### **Note 3 - Solar Access**

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. The subject site is a corner site and to east is No. 280 Coward Street is 4 storey commercial building, Opposite the site at No. 251-253 Coward Street and 48-50 Kent Rd are a commercial developments. Shadow diagrams have been submitted which indicate that the adjoining will continue to receive a minimum of 2 hours sunlight during winter solstice.

- *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. The design is optimal for the subject site, as demonstrated by the similar design previously approved in the Mascot Precinct, in which a similar level of solar access and amenity is achieved throughout the Precinct.

- *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 in shadow analysis, the west facing openings to adjoining property No. 280 Coward Street will achieve a minimum of 2 hours sunlight between 9am-3pm during winter solstice when the site is redevelopment in the further for residential, at present the site is a commercial use. The west of the site the shadow falls on Kent Rd and Coward Street.

- *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 adjoining property No. 280 Coward Street when redeveloped the proposed development has taken this into account and will achieve a minimum of 2 hours sunlight between 9am-3pm during winter solstice. However it is noted adjoining site is currently used for commercial purposes. The west of the site the shadow falls on Kent Rd and Coward Street.

- *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 around Mascot train station. The adjoining property to the west is a recently constructed mixed development and the adjoining site to the east is likely to be developed in a similar manner in accordance with the current zoning 10(a) mixed use commercial/residential under the Botany LEP 1995.

In addition to the above Council met with the landowner for 280 Coward Street, 39 Kent Road during the assessment of 19-33 Kent Road to resolve the solar amenity issues and the SEPP 65 non-compliance as a result of the development will have on these sites, which are directed to the south. As a result of this meeting Council received amended plans relating to which altered 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.

BBDGP2013 and SEPP 65 requires that the 70% of the apartment on site at least in dense urban areas receive a hours of 2 hours of sunlight to living rooms and private open spaces between 9am and 3pm. The amended development provides for 68% of the units will have 2 hours of sunlight.

The applicant submitted a Solar Access Report prepared by Mr Steve King dated 13 February 2014, which concluded the following:

*“The development achieves 61 (36.5%) out of 167 apartments with minimum 3 hours of effective sun access to living areas on June 21, and a further 44 (26.3%) apartments that have more than 2 hours during that time. A smaller number of apartments on the eastern side of the building benefit from earlier effective sun, such that an additional 10 (6%) have minimum 2 hours of morning sun to the living areas on June 21.*

***The overall number of apartments that may be deemed complying with the performance objective of the RFDC for solar access amenity is 115 out of 167 being 68.9%.***

*The RFDC recommends a minimum of 70%, but acknowledges that a smaller proportion may be deemed to comply with the control on sites subject to constraints on solar access.*

*It is clear that the Applicant has made a considerable design effort to achieve full compliance. For the site without disproportionate overshadowing (by the proposed development to its north) ‘nominal’ solar access achieved by this design is a very high 86% of apartments having minimum two hours of winter sun between 9am and 3pm. To achieve that standard, no earlier or later sun has to be taken into account I therefore conclude that if the relatively small portions of the Meriton development which create this constraint on the subject site cannot be removed or relocated to achieve a more equitable solar access opportunity, **Council should properly exercise its discretion and consider the achieved total solar access as complying with the intent of the controls.**”*

The Solar Access report remains as a current document and was not re-submitted with amended plans as the internal layout of the building had minor alterations which included changes to units 1305 and 1306 on levels 13 and 14 where the living

areas were altered, in that these are two units are two storey, and the living areas were located on Level 14 and are now on Level 13. As a result in the change in the design in the facade of the building, has resulted in a loss of 0.9%, therefore 68% of the units comply with the requirements of the BBDCP 2013 and SEPP 65.

Based on the above, it is considered that the proposed building form is consistent with the building envelopes and the future desired character of area. The minor departure which is 2% from the BBDCP 2013 and SEPP 65 can be support in this instance.

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

These matters have been considered in the assessment of the application. It is considered that the proposal would be unlikely to result in significant adverse environmental, social or economic impacts in the locality.

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

These matters have been considered in the assessment of the development application. The subject site has a long history of industrial/commercial uses. Pockets of contamination have been identified on site and within the groundwater, however adequate information has been submitted to confirm that the site can be made suitable for the proposed mixed use development. In addition, an acoustic report has been submitted to demonstrate that the development can meet the acoustic requirements of sites affected by ANEF 25-30 and road traffic noise impacts. Accordingly, it is considered that the site is suitable for the proposed development.

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

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

The amended plans were not re-notified as the changes were considered minor and had no additional impact on the adjoining development.

**(e) The public interest.**

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

## **Other Matters**

### **External Referrals**

- *Ausgrid (Formerly Energy Australia)*

Ausgrid have by letter dated 22 November 2013 advised that the provision of an electrical substation was required on the subject property as a condition of consent.

- *NSW Office of Water*

The Office of Water in a letter dated 19 December 2013 has provided their General Terms of Approval to the proposed development.

- *NSW Police Service*

NSW Police in a letter dated 12 December 2013 assessed the development as having a 'medium' crime risk and CPTED conditions were provided.

- *Sydney Airports Corporation Limited (SACL)*

SACL by letter dated 19 December 2013 confirmed that they raise no objections to the development to a maximum height of RL 50.3 metres above Australian Height Datum (AHD) as shown on the plans. This does not include the height required for construction cranes, etc.

- *Roads and Maritime Service (RMS)*

The Application is "Traffic Generating Development" and was referred to RMS. The Development Application involves the dedication of land to Council for the road widening of Kent Road/ Coward Street intersection. Land acquisition (in excess of the acquisition required under BBLEP 2013) is now required for these purposes due to an issue advised in an email dated 24 December 2013 that it is preparing a strategic concept plan of the Kent Road/Coward Street intersection. There are two indicative plans and cost estimates are required by RMS for relocating Telstra pits(s) to decide which option is acceptable.

A central median is also required on Coward Street to restrict access into the site to be left in /left out of the proposed development.

### Internal Referrals

The development application was referred to relevant internal departments within Council, including the Development Engineer, Traffic Engineer, Landscape Officer, Environmental Scientist and Environmental Health Officer for consideration.

### 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 84 residential units. As such, the calculations are as follows:

- $DA13/277 = 167 \text{ units @ } \$20,000.00 \text{ each} = \$3,340,000.00$

The subject site is vacant and is not entitled to any S94 credits. Therefore a total Section 94 Contribution of \$3,340,000.00 is required to be paid to Council in accordance with the draft schedule of Conditions attached to this report.

## 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 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 matters for refusal in the original report to JRPP have been addressed as follow:

1. *The proposed development is inconsistent with the objectives and requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings, in that it does not fulfil the requirements of Part 2 - Design Quality Principles in respect of scale, built form, density, amenity, social dimensions and aesthetics. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).*

Comment: This matter has been addressed under SEPP 65 and it was concluded that, the development as amended proposes quality internal and external design, having regards 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, together with a selection of appropriate finishes. The modern design of the building is compatible with the design and scale of the urban form found Mascot Station Precinct. It is considered that the proposed rendered masonry walls, glazed finishes, and articulation contribute to the overall contemporary style. Therefore the proposed development is considered to be consistent with these design quality principles.

The amended 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

2. *The proposed development is inconsistent with the objectives and development standards of Clause 4.3 of Botany Bay Local Environmental Plan 2013 as it exceeds the Maximum Height of Buildings for the subject site, which results in adverse impacts on the streetscape amenity. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).*
3. *The proposed development is inconsistent with the objectives and standards of Clause 4.4 of Botany Bay Local Environmental Plan 2013 as it exceeds the*

*Maximum FSR of Buildings for the subject site, which results in adverse impacts on the streetscape amenity. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).*

4. *The proposed development fails to adequately justify the variation to the maximum height and FSR of buildings under Clause 4.3 and 4.4 through the submitted Clause 4.6 Variation. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).*

**Comment:** Points 2, 3, and 4, have been addressed and as discussed the clause 4.6 of BBLEP 2013 section of the report is considered that the proposal is generally consistent with the underlying objectives of the standard identified in 2 above. The Clause 4.6 variation contends that compliance with the height of 44m and 3.2:1 FSR development standard is unreasonable and unnecessary in the circumstances of the case with respect of the aims and objectives of BBLEP 2013 and the relevant matters of consideration.

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

The rationale and argument presented in the Clause 4.6 variation is generally agreed with and it is recommended that the development standard relating to the maximum height and FSR for the site as contained within Clauses 4.3 and 4.4 of the BBLEP 2013 should be varied in the circumstances to allow the development to attain a height of 47.2m and floor space ratio of 4.21:1.

5. *The proposed development is inconsistent with the objectives and requirements of Clause 6.16 – Design Excellence of Botany Bay Local Environmental Plan 2013, as the character and design of the development in its current form is inconsistent with the desired future character envisaged for the Urban Block precinct under BBDCP 2013. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).*

**Comment:** As discussed above the proposed design has been the subject of consideration by Council's Design Review Panel at pre-DA stage and during the development assessment phase at its meetings on 22 January 2014 and 17 March 2014. The original design was generally supported with the exception of the departure from the height and FSR standards relating to the site.

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.

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 modern contemporary in nature and presents an articulated façade providing enhanced interest to the streetscape and the gateway to precinct.

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.

6. The proposed development fails to satisfy the requirements of Part 3 and 9A of Botany Bay Development Control Plan 2013, in relation to not comply with aircraft noise, built form and scale. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(iii)*).

Comment: As discussed above under Clause 6.9 Aircraft Noise, the amended Acoustic Report has provided sufficient evidence noise attenuate the building and based on the finding of this Report, the proposed development can be suitably noise attenuated against aircraft noise and road traffic, noise the process of which has taken into account;

- the land is zoned B2- Local Centre and residential flat buildings are permissible in the zone;
- the dwellings all have a generous internal floor areas, ranging between for a 1 bedroom apartment to an average of for a 2 bedroom apartment and up to 3 bedroom apartment. The larger apartment sizes provide a high level of internal amenity in terms of access to daylight / solar access; and
- The outdoor environment given the curfew and current operating patterns is such that in daylight hours there will be sufficient opportunity to use the private open spaces associated with each apartment without the presence of aircraft noise; and
- Compliance with AS2021-2000.

7. The proposed development is not in the public interest as the proposed design in its current form results in adverse impacts on the amenity of the locality as a result of its height, bulk, and scale which are inconsistent with the built form envisaged for the subject site. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(e)*).

Comment: As the development satisfies the relevant provisions of the BBLEP2013 and BBDCP 2013 the development as amended is now in apposition to supported.

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 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.

### **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 4.21:1 and a maximum building height of 47.2 metres (51m AHD) by reason that the two (2) variations are well founded; and
- (b) The Panel approve Development Application No. 13/277 comprising of a 15 storey mixed use development with 167 residential apartments (8 x studio, 53 x one bedroom, 105 x two bedroom and 1 x three bedroom units); 406m<sup>2</sup> of retail floor space (2 x shops) and three levels of basement car parking containing 296 parking spaces.

### **SCHEDULE OF CONSENT CONDITIONS**

**Premises: 39 Kent Road, Mascot**

**DA No: 13/227**

### **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.

<b>Drawing No.</b>	<b>Author</b>	<b>Dated</b>
A01/06 Title Sheet, Location Plan & Site Plan	Krikis Tayler Architects	19 May 2014
A02/05 Site Analysis	Krikis Tayler Architects	19 May 2014

<b>Drawing No.</b>	<b>Author</b>	<b>Dated</b>
A03/07 Basement Level 3	Krikis Tayler Architects	16 May 2014
A04/06 Basement Level 2	Krikis Tayler Architects	15 May 2014
A05/08 Basement Level 1	Krikis Tayler Architects	15 May 2014
A06/07 Ground Plan	Krikis Tayler Architects	15 May 2014
A07/07 Level 1 Plan	Krikis Tayler Architects	15 May 2014
A08/07 Typical Plan Level 2-8	Krikis Tayler Architects	15 May 2014
A09/07 Typical Plan Level 9-12	Krikis Tayler Architects	15 May 2014
A10/07 Level 13	Krikis Tayler Architects	19 May 2014
A11/07 Level 14	Krikis Tayler Architects	19 May 2014
A12/07 Roof Plan	Krikis Tayler Architects	19 May 2014
A20/05 Elevations 1	Krikis Tayler Architects	15 May 2014
A21/04 Elevations 2	Krikis Tayler Architects	15 May 2014
A22/04 Elevations 3	Krikis Tayler Architects	15 May 2014
A23/05 Elevations 4	Krikis Tayler Architects	15 May 2014
A24/05 Section 1	Krikis Tayler Architects	19 May 2014
A25/05 Section 2	Krikis Tayler Architects	19 May 2014
A30/04 Plan Shadow Diagrams – Equinox	Krikis Tayler Architects	15 May 2014
A31/04 Plan Shadow Diagrams – Winter Solstice	Krikis Tayler Architects	15 May 2014
A32/04 Plan Shadow Diagrams – Summer Solstice	Krikis Tayler Architects	15 May 2014
A50/04 Material Sample Board	Krikis Tayler Architects	19 May 2014
Apartment Schedule Rev L	Krikis Tayler Architects	19 May 2014
GFA Area Schedule and Diagrams REF 0016-1213-3.14-DC-dc.xls	Krikis Tayler Architects	16 May 2014
Communal Open Space, Deep Soil Area and Site Coverage Ground and L1 Ref 1213 A06	Krikis Tayler Architects	16 May 2014
Landscape Plans Ref 15.14/026A	Iscape Landscaping	May 2014



<b>Drawing No.</b>	<b>Author</b>	<b>Dated</b>
Stormwater Drainage Drawings Drawing Nos D00-D04 Issue C, D0 Issue E, D07, D09-D12 Issue B and D08 Issue A	Australian Consulting Engineers Pty Ltd	April 2013
Photomontages	Krikis Tayler Architects	19 May 2014

<b>Reference Document(s)</b>	<b>Author</b>	<b>Date</b>
Statement of Environmental Effects Amended 6 February 2013	LJB Urban Planning Pty Limited	6 February 2013
Letter - DA 13/337 – JRPP Number 2013SYE098	LJB Urban Planning Pty Limited	20 May 2014
Clause 4.6 Exceptions to Development Standards Report	LJB Urban Planning Pty Limited	20 May 2014
Design Verification Statement – SEPP 65	Krikis Tayler Architects	20 May 2014
Survey Plan	H Ramsay Surveyors	16 November 2012
BASIC Certificate 508329M_04	AGA Consultants	21 October 2013
Pedestrian Wind Environment Assessment, Report No. 610.12735-R1 (Rev O)	Windtech Consultants Pty Ltd	1 October 2013
Acoustic Report, Report No. 44.5039.R3B:MSC	The Acoustic Group	19 May 2014
Dewatering Model Report Ref 1207	Environmental Strategies	23 October 2013
DA Landscape Report	Iscape Landscaping	May 2014
Natural Ventilation Report	Steve King Consultant Architect	24 September 2013
Detailed Cost Report	Washington Brown Associates	1 November 2013
Remediation Action Plan Ref 1736.1 AE	Environmental Investigations Pty Ktd	28 October 2013
Drains Model Analysis Reports and Drains Model	Australian Consulting Engineers Pty Ltd	18 February 2014
Traffic Impact Assessment Report ref 13-017-3	Thompson Stanbury Associates	May 2014
Construction Waste Management Plan	Krikis Tayler Architects	October 2013

Reference Document(s)	Author	Date
Geotechnical Investigation, Report No. 2019-A	Asset Geotechnical Engineering Pty Ltd	30 October 2013
Environment Site Assessment Report Ref E1736.1AD	Environmental Investigations Pty Ktd	30 October 2013
Residential Waster Management Plan	Elephants Foot Recycling Solutions	October 2013

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

2

- (a) The applicant must prior to the issue of the Construction Certificate, pay the following fees:
- (i) Builders Security Deposit \$50,000.00;
  - (ii) Development Control \$11,011.00;
  - (iii) Waste Contribution \$25,000.00;

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- (a) This Consent relates to land in Lot 1 in DP 1081391 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;

4

- (a) The road widening and public domain to Kent Road and Coward Street 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 public footpaths in Kent Road and Coward 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.

Note: Pavers shall be ordered allowing for adequate lead time for manufacture (10-12 weeks); and

- (c) 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.
- (d)
  - (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 (b) above is a pre-condition to the issue of the Occupation Certificate.

- 5 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.
- 6 All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 7 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.

- 8 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.

### **CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY**

- 9 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.

- 10 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](http://www.sydneywater.com.au).

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

- (a) The intersection on Kent Road and Coward Street and 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 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.

- (c) 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

PO Box 973 Parramatta CBD 2124

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

- (d) 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).
- (e) 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;
- (f) All vehicles are to enter and leave the site in a forward direction;
- (g) 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;
- (h) All works and regulatory signposting associated with the development are to be at no cost to RMS or Council.
- (i) 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;
- (j) The number of car parking spaces should be provided to Council's satisfaction;
- (k) 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;
- (l) 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;

- 12 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 must prevent any take of groundwater after authorisation has lapsed by making any below ground levels that may be impacted by any water table watertight for the anticipated life of the structure. Waterproofing of below ground levels must be sufficiently extensive to incorporate adequate provision for unforeseen high water table elevations 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.

13 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.
- 14 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 50.3 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**

- 15 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.
- 16 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.
- 17 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.

18 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.

19

- (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.

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

21

- (a) Prior to the issue of the Construction Certificate, the measures required in the Acoustic Report: Report No. 44.55039.R3B:MSC, prepared by The Acoustic Group dated 19 May 2014, 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; and

- (b) Prior to the issue of the Construction Certificate, a compliance report from a suitably qualified acoustic consultant shall be submitted to Council indicating any required noise mitigation measures to the approved 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 all units will have an air conditioning system installed in accordance with BASIX's Certificate and Construction Certificate AS 1668 Part 2 and further external air conditioning unit is not to be visible from a public vantage point. Details submitted with the Construction Certificate in the form of amended plans.

- 22 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.

- 23 Plans and specifications for the storage room for waste and recyclable materials to allow for on site waste and recyclable collection 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.
- (b) The area can be serviced easily accessed and serviced by a garbage truck or MRV.

24 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.

25 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).
- (c) 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.
- (d) Details including swept paths demonstrating that a HRV vehicle and a garage can access the Coward Street and Kent vehicular entry/exit to the building are to be submitted.
- (e) The vehicular driveways to the building are to be a minimum of 6m.

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.

26

- (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 Stormwater Drainage Drawings prepared by Australian Consulting Engineers Pty Ltd Job No.130178, Drawings Drawing Nos D00-D04 Issue C, D0 Issue E, D07, D09-D12 Issue B and D08 Issue A and dated April 13 .

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 10,000 L capacity and shall service any landscape systems and car wash bay.
- (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.

27 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 27(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.

28 Prior to the issue of the Construction Certificate, the public domain landscape areas shown on the plan by Iscape Landscape Architecture Landscape Plans Ref 15.14/026A dated May 2014 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 Iscape Landcape Architecture and shall include, but not be limited to:

(a)

- (i) 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;
- (ii) 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;
- (iii) 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;
- (iv) 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;
- (v) Details of all fencing, privacy screening, arbors and the like – elevations and materials, impacting or visible to public domain areas;
- (vi) 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;
- (vii) Rigid polyethylene sheet type tree root barriers are to be specified as required to protect structural elements;
- (viii) A detailed public art proposal;
- (ix) 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;
- (x) 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;
- (xi) Indicate the location of all basement structures relative to the landscape areas;
- (xii) Planner boxes are to be provides at perimetres of boundary of the site in front of the retail areas to delineate the public areas from the private property and details to be submitted in an amended landscape plan.
- (xiii) The Coward Street and Kent Road street trees (Golden Robina) (as per Council specification).
- (xiv) Increase the quantum of landscaping within the street setbacks. Large scale planters are to be provided with suitable mid-level tree

canopy, palms and architectural planting to soften the interface between the public footpath and ground floor retail, improve pedestrian comfort and amenity, improve the public domain, provide buffering from the streets bordering the site and provide a feature entry statement at the corner.

- (xv) The internal communal landscaping to be further developed to incorporate more evergreen, broad canopy trees.
  - (xvi) Inclusion of a roof garden due to the overshadowing of the communal open space throughout winter to improve amenity for residents.
  - (xvii) Landscaping in the private ground floor terraces at the rear of the building Level 1 to be increased. Terraces sizes are generous and there is ample room to incorporate large planters with screening shrubs and small trees, especially along the northern boundary. On Level 13 the large private terraces are to also incorporate landscaping.
  - (xviii) Large canopy trees in the deep soil area of the eastern boundary.
- (b) Revised public domain plan is required to be submitted and approved by Council's Landscape Architect. The revised plan shall incorporate the following amendments to the Landscape Plan dated May 2014 :
- (i) Feature full width segmental paving in accordance with Council's Draft Public Domain Manual and any other specification.
  - (ii) Deletion of grassed nature strip with tree pits in full width paving, to align with the adjoining site interface to the north.
  - (iii) Street trees in accordance with Council's Street Tree Masterplan. Tree pits and tree guards in accordance with the Draft Public Domain Manual.
  - (iv) Street furniture in accordance with the Draft Public Domain Manual and Council specification and requirement.
  - (v) Proposed treatment of the traffic island at the slip lane.
  - (vi) The design must consider and incorporate the location of any above ground electrical pillars to be erected by the Energy Provider associated with the undergrounding of power around the site.
  - (vii) The public domain and Council footpath area shall be upgraded with new paving, street furniture and street tree planting, to be installed by the applicant at the applicant's expense. All improvements shall be in accordance with final approved public domain plan and Council Landscaping and Engineering specifications and requirements, and shall be constructed and complete prior to the issue of an Occupation Certificate.
- (c) Detailed civil plans shall be provided for the public domain work on the footpath frontages of the site and is to align with the public domain landscape plan with respect to pavement types and construction, street trees and street furniture.



- 29 Prior to the issue of the Construction Certificate, subject to the approval of CASA, the applicant is to provide in the Construction Certificate documentation roof mounted solar collector panels below a height of 50.3m 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 and the solar collectors system are to be installed before the issue of the Occupation Certificate.
- 30 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 = 60m<sup>2</sup>
    - (ii) 1 bedroom = 75m<sup>2</sup>
    - (iii) 2 bedroom = 100m<sup>2</sup>
  - (b) 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.
- 31 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.
- 32 The development shall make provision for the following car parking allocations:

<b>Car Parking Rates</b>	<b>Required</b>
1 space per studio and 1 bedroom units	61 spaces
2 spaces per 2 or 3 bedroom units	214 spaces
1 visitor space per 7 dwellings	17 spaces
Retail Spaces (2 per retail space)	4
<b>TOTAL REQUIRED</b>	<b>296</b>

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**

33 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))

34 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.

35

- (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.

36 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.
- 37 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.
- 38 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.
- 39 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.
- 40 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**

- 41 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.
- 42
- (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.
- 43 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.
- 44 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.

- 45 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.
- 46 All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
- 47
- (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.
- 48
- (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.

- 49 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.
- 50
- (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.
- 51 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.
- 52 Building plans must be lodged at Sydney Water Quick Agent for approval prior to commencement of works.
- 53 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.
- 54 The fire hydrant and booster assembly are required to be housed within an external façade/wall of the building or elsewhere within the building structure and shall be enclosed/screened with doors to Council approval.
- 55
- (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**

- 56 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 \$3,340,000.00

The Section 94 Contribution of \$3,340,000.00 is to be paid to Council prior to the issue of the Occupation Certificate.

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.

57

- (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 The Acoustic Group dated 19 May 2014.
- (b) All acoustic work including that acoustic work required at Condition No. 21 shall be completed prior to the issue of the Occupation Certificate and validated by a person with appropriate qualifications and experience.

- 58 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.

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

- (i) Dedicate the portion of land to Council for the purpose of widening Coward Street and Kent Road. The areas of the land to be dedicated shall be the full length of Kent Road frontage and Coward Street area 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) Upgrade the public domain by the reconstruction of corner of Kent Road and Coward Street and new Road alignment of Kent Rd road pavement, kerb and gutter, footpath, drainage system, street trees, landscaping and any associated works for the street frontage to Kent Road and Coward Street of the site, at the applicant's expense. All improvements shall be in accordance with specifications and requirements from Council's landscape and engineering sections and the approved civil works construction plans and landscape plans.
    - (iii) 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 Coward Street 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.
- 60 The Applicant is to submit payment for a Street Tree Maintenance Bond of \$10,000.00. The duration of the Bond shall be limited to a period of 12 months after final inspection of public domain works by Council's Landscape Architect. At the completion of the 12 month period the Bond shall be refunded pending a satisfactory inspection of the trees by Council. If a tree was found to be dead or dying then Council will forfeit all or part of the bond to replace or maintain the tree.
- 61 The applicant is to submit payment for a Public Works Defects Liability Bond of \$15,000.00. The duration of the Bond shall be limited to a period of 12 months after final Council approval of all public domain works. At the completion of the 12 month period the Bond shall be refunded pending a satisfactory inspection of the public domain work by Council. If rectification or maintenance work is required in this period then Council will forfeit all or part of the bond to undertake the required work.

The Applicant is to enter into an agreement with Council, to be prepared by Council's solicitors, at the applicant's expense, providing for the lodgement of a bond in the sum of \$7,500.00, for a period of five (5) years after practical completion of landscape works, to ensure establishment and maintenance of the landscaping in accordance with the plan. The lodgement of the bond shall not preclude the Council from initiating legal proceedings, should the landscaping not be established and maintained in accordance with this Consent, and is not intended to limit the period of compliance with the landscaping requirements to five (5) years.

The bond may be applied by Council to the establishment and maintenance of the landscaping in accordance with the plan and Council should be entitled to recover any monies expended in excess of the bond in establishing, re-establishing, or maintaining the landscape in accordance with the plan.

The applicant is to note that the bond specified under this condition must be remitted to Council, either in the form of monies held in trust, or as a certified banker's guarantee, together with a sum of \$550 (cash or cheque) for disbursements associated with the preparation of the agreement, prior to the issue of an Occupation Certificate by the Principal Certifying Authority.

62

- (a) A total of 296 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:

<b>Car Parking Rates</b>	<b>Required</b>
1 space per studio and 1 bedroom units	61 spaces
2 spaces per 2 or 3 bedroom units	214 spaces
1 visitor space per 7 dwellings	17 spaces
Retail Spaces (2 per retail area)	4
<b>TOTAL REQUIRED</b>	<b>296</b>

- 63 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.

- 64 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.
- 65 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.
- 66 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.
- 67 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 4.21:1 and height of 50.3m AHD as approved under this Development Consent No. 13/227, 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 1 in DP 1081391.

68 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.

69

- (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.

70 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 70(a) above.

71 Prior to the issue of the Occupation Certificate, landscaping within the private property shall be installed in accordance with the landscape plans by Iscape Landscape Architecture Landscape Plans Ref 15.14/026A dated May 2014.

72 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.

73 The Kent Road and Coward Street public footpaths shall be re-constructed in accordance with Council specifications and the final, approved public domain plan. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications only.

Note: Construction hold points and Council inspections are required at the following points:

- (i) after formwork installation and to prior pouring the concrete blinding slab,
- (ii) at the commencement of paving works, and
- (iii) at final completion.

Council approval of public domain works is required prior issue of an Occupation Certificate.

74 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.
- 75 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.
- 76 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.
- 77 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.
- 78 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).
- 79
- (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(d), 13(a), 29 and 56 to 79 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**

- 80 On site waste material removal and recycling collection is to occur from the Coward Street vehicular entry until the John Street extension to the rear of the site is built and dedicated to Council as a public road.
- 81 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.
- 82 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.
- 83 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.
- 84 Ongoing maintenance of the road verges and footpaths in Kent Road, and Coward Street 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.
- 85 The use of the premises shall not give rise to any of the following when measured or assessed at "sensitive" positions within any other property. These "sensitive" positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.
- (a) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
  - (b) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
  - (c) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
  - (d) For assessment purposes, the above  $L_{Aeq}$  sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.



- 86 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.
- 87
- (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 13, shall be monitored by CCTV cameras at all times.
- 88 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.
- 89 The Development must managed as follows:-
- (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. 13/227
  - (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. 13/227; and
- (xii) CCTV surveillance of all public areas within the development site.

90 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. 13/227 dated as 1 November 2013 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.