

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

JRPP No	2014SYE015
DA Number	DA 13/280
Local Government Area	City of Botany Bay
Proposed Development	Redevelopment of the site in the following manner: <ul style="list-style-type: none"> • Demolition of existing industrial buildings, excavation and site remediation. • Removal of seven (7) existing trees along the western boundary. • Construction of an 8 storey mixed use development comprising of 84 dwellings (36 x one bedroom units and 48 x 2 bedroom units), 235m² of commercial floor space fronting Gardeners Road and 151 car parking spaces. • Consolidation of four (4) allotments into one (1) Torrens allotment and Torrens stratum subdivision into two lots being Lot 1 (commercial floor area) and Lot 2 (residential levels and basement car parking) with further Strata subdivision of Lot 1 into two retail lots and further Strata subdivision of Lot 2 into eighty four (84) residential lots; • Relocation of the access driveways on Gardeners Road and relocation of the Sydney Water easement to the western boundary.
Street Address	581-587 Gardeners Road, Mascot
Lot & DP Nos.	Lots 13, 14, 15 and 16 in DP 11589
Applicant	Gardeners Road Pty Ltd
Capital Investment Value (CIV)	\$21,762,000.00
Number of Submissions	Four (4) submissions
Recommendation	Conditional Consent
Report by	Rodger Dowsett, Director Planning and Development

THE DIRECTOR OF PLANNING AND DEVELOPMENT REPORTS:

PRECIS

Background

Council received Development Application No. 13/280 on the 27 December 2013 seeking consent for the demolition of existing industrial buildings, removal of seven (7) existing trees along the western boundary that now stand on the development site, followed by excavation and site remediation; construction of an 8 storey mixed use development comprising of 84 dwellings (36 x one bedroom units and 48 x 2 bedroom units), 235m² of commercial floor space fronting Gardeners Road and 151 car parking spaces; consolidation of four (4) allotments into one (1) Torrens allotment and Torrens stratum subdivision into two lots being Lot 1 (commercial floor area) and Lot 2 (residential levels and basement car parking) with further Strata subdivision of Lot 1 into two retail lots and further Strata subdivision of Lot 2 into eighty four (84) residential lots; relocation of the access driveways on Gardeners Road and relocation of the Sydney Water easement.

The development application is required to be referred to the Joint Regional Planning Panel pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as the Capital Investment Value of the proposal is \$21,672,000.00.

The Development Application is also Integrated Development, pursuant to Section 91 of the EP&A Act as the development involves temporary construction dewatering and therefore requires approval from the NSW Office of Water and also involves the relocation of access driveways on Gardeners Road (a classified road) and requires approval from RMS. In a letter dated 11 February 2014, the NSW Office of Water has granted its General Terms of Approval to the proposed development. Under letter dated the 13 February 2014, NSW RMS provided conditions for the proposed development.

Council received additional information in respect of the proposed development as follows:

- On the 20 January 2014, a Construction Traffic Management Plan Prepared by Sydney Traffic Control Pty Ltd, dated 2013;
- On the 20 January 2014, an architectural plan of the proposed rear swimming pool;
- On the 21 March 2014, revised architectural plans, including amended shadow diagrams and the deletion of Level 7 awnings to the rear of the building, a cover letter from the Applicants town planning consultant in respect of the clarification of FSR, car parking calculation, proposed unit mix justification and a response to the submission received.

The development application was notified for a period of 30 days from 28 January 2014 to 28 February 2014. Four (4) submission were received which raise the issue of traffic impact, bulk, scale, height, FSR, overshadowing and amenity. The issues raised in the submissions have been addressed by the Applicant.

The developer has acquired all four subject allotments, which form the subject site. The Applicant proposes to consolidate all four allotments into one allotment to facilitate in the end, strata subdivision of the development.

In Council's view there are two (2) main issues for consideration with the amended proposal. These include the interface with residential dwellings in Miles street to the south and height, are discussed below.

Interface with Miles Street

The subject site falls within the Miles Street Precinct of BBDCP 2013. On the 22 May 2013, Council resolved to investigate alternative design options for Urban Block 2 (the Miles Street Precinct). As such, Part 9A does not apply to the subject site, however the principles of the Mascot Town Centre Precinct Masterplan need to be considered in respect of the interface with the residential dwellings located on Miles Street and the transition from the tower forms envisaged fronting Gardeners Road through to the medium density residential on the northern side of Miles Street through to the low density dwellings on the southern side of Miles Street.

The proposal seeks to retain the existing 8.6 metre high masonry wall of the existing industrial building on its southern boundary, which adjoins Nos. 36-48 Miles Street. The proposed building will setback 6.2 metres and will rise to four (4) storey above basement car parking, followed by terraced setbacks in the rise of the building above the fourth level.

Shadow diagrams submitted with the development application indicate that the primary private open space areas of these dwellings will be in shadow between 9:00am to 3:00pm on June 21. However, where Council is faced with other development applications for development of a similar scale on the eastern and western adjoining properties on Gardeners Road, the overshadowing impacts are exacerbated. Therefore, the cumulative overshadowing impacts have been addressed by the Applicant under a pre-determined goal that at the rear of each dwelling located on the northern side of Miles Street (an east/west aligned street), a space of unbuilt upon land 6m in width by 4m in depth that has access to 2 hours of solar access at the winter solstice will be provided.

Council has received amended shadow diagrams on the 21 March 2014, which indicated that that the proposed development maintains acceptable sunlight access to the rear private open space areas of the adjoining dwellings to the south between 9am and 3pm on June 21 to satisfy the solar access goal above. In addition, the Applicant has made further amendments to the design of the development to delete the awning on Level 7 to the rear of the development to further reduce overshadowing caused by the proposed building.

Height

The maximum height of buildings permitted under BBLEP 2013 for the subject site is 26m. The proposed development seeks a height of 28m, with the proposed building exceeding the 26m at its northern portion for proposed plant area and lift overruns.

As such, the Applicant has submitted a Clause 4.6 variation to development standard applying under Clause 4.3. The height variation is considered acceptable at the northern part of the building, as the additional height at this location does not result in any adverse impacts on the amenity of adjoining properties in terms of privacy or overshadowing.

Officer Recommendation

The application is referred to the Joint Regional Planning Panel (JRPP) for determination pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act as the proposed development has a Capital Investment Value of \$21,762,000.00.

The recommendation is for approval, as stated below:

It is recommended that the Joint Regional Planning Panel (JRPP), as the determining Authority in this instance, resolve to:

- (a) *Grant consent to the Clause 4.6 variation request under Botany Bay Local Environmental Plan 2013 to permit a maximum building height of 28 metres (RL36.920m); and*
- (b) *Approve Development Application No. 13/280 for the demolition of existing industrial buildings, excavation and site remediation; removal of seven (7) existing trees along the western boundary; construction of an 8 storey mixed use development comprising of 84 dwellings (36 x one bedroom units and 48 x 2 bedroom units), 235m² of commercial floor space fronting Gardeners Road and 151 car parking spaces; consolidation of four (4) allotments into one (1) Torrens allotment and Torrens stratum subdivision into two lots being Lot 1 (commercial floor area) and Lot 2 (residential levels and basement car parking) with further Strata subdivision of Lot 1 into two retail lots and further Strata subdivision of Lot 2 into eighty four (84) residential lots; relocation of the access driveways on Gardeners Road and relocation of the Sydney Water easement to the western boundary at 581-587 Gardeners Road, Mascot, subject to the Conditions imposed in the attached schedule.*

1.0 BACKGROUND

1.1 Site Description

The subject site is located between O’Riordan Street to the west and Botany Road to the east, with a frontage to Gardeners Road to the north. The site is regular in shape and is formed by the following four (4) allotments, which make up a total site area of 3,260m².

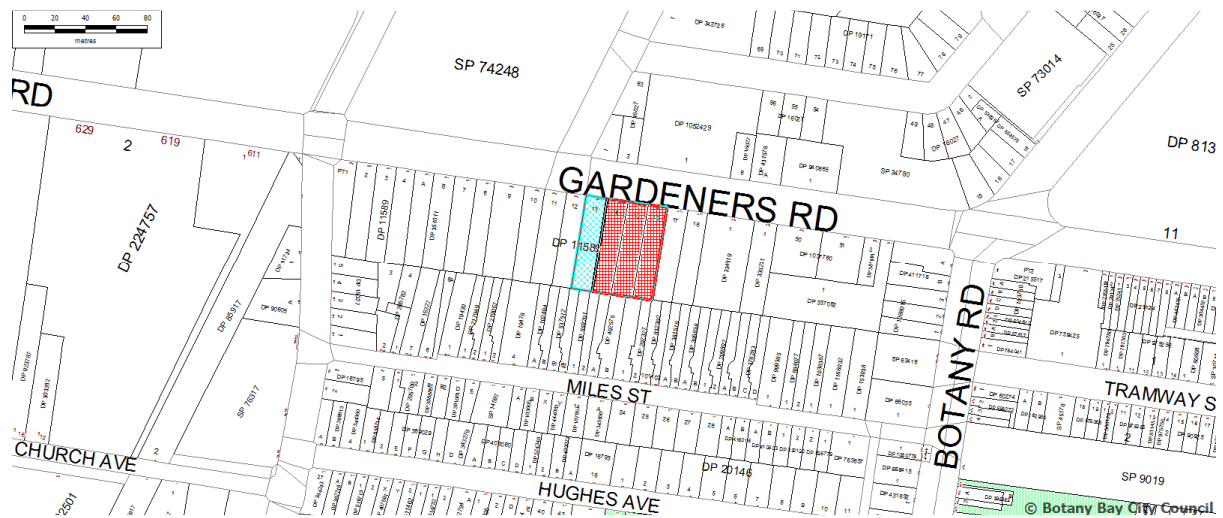
- Lots 13, 14, 15 and 16 in DP 11589

The majority of the site is covered by a two storey brick commercial building, sited on the Gardeners Road boundary and eastern boundary to the development site. At the southern boundary the building stands to the boundary at the eastern and western ends with a staggered setback in the centre of between 1.2m-2m. A hardstand area is located in the western part of the front setback and extending along the western boundary. Presently, there are limited landscape areas on site, nor any street trees. The building has a metal roof with a parapet along the Gardeners Road frontage accommodating signage.

Sydney Water easements traverse the subject site. Lots 15 and 16 are affected at their south-eastern portion by an Easement for sewer pipes from north-east to south-west. This easement benefits Sydney Water. A further easement benefiting Sydney Water burdens Lots 15 and 14, running from north to south through Lot 15 and onto Lot 14 at the southern boundary and onto adjoining allotments to the south.

The properties surrounding the site are commercial/warehousing in nature to the immediate north, east and west. Semi-detached residential dwellings adjoin the site to the south, facing Miles Street.

Locality Plan



Site Photos

Subject site as viewed from the north-west of Gardeners Road.



Subject site as viewed from the north east on Gardeners Road.



1.2 Description of the Locality

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

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

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

The site is situated within the Miles Street Sub Precinct which is bounded by O’Riordan Street to the west, Gardeners Road to the north, Miles Street to the south and Botany Road to the east. The precinct is comprised of a sequence of semi-detached dwellings fronting Miles Street to the south and commercial/warehouse buildings fronting Gardeners Road.

Directly to the east is located 577-579 Gardeners Road, currently comprising of a part one and part two storey warehouse building and currently used as a locksmith workshop. This building is constructed on the common boundary with the subject site, being setback approximately 2.5m from the northern boundary to Gardeners Road.

Further to the east are located warehouses and showroom uses.

Immediately to the west of site is located No. 589-591 Gardeners Road which comprises of a two storey warehouse building divided into two separate tenancies. These are occupied by a shutter company and automotive repair workshop.

To the north of the site on the opposite side of Gardeners Road is located the “Bourke Street” Bakery and the “Porsche” Centre in Alexandria.

To the south of the site are located low scale semi-detached residential dwellings. These allotments are generally up to 56m in depth and had a width of approximately 6 metres.

1.3 Site and Development History

Site and Development History

- Council approved Development Consent No. 869 on the 26 April 1985 to renovate the existing building for single occupancy, being the manufacture of electronic equipment. On the application form for this DA, it was noted that the building was constructed in 1952. This use was confined to Unit 2 and was conducted by “Benelec”.
- Council approved Development Application No. 00/604 on the 22 May 2000 for works to make provision for fire safety. A subsequent Section 96(2) application was approved by Council on the 26 May 2000 and permitted the subletting of the premises.

- Council approved Development Application No. 00/603 on the 26 June 2000 for the use of part of the premises manufacturing and finishing of golf apparel. This use was confined to Unit 1 and conducted by “Ralex”.
- Council approved Development Application No. 03/277 on the 5 February 2003, for minor external modifications to the facade of the premises and internal alterations so as to create three (3) individual tenancies and use of Unit 3 for the purpose of light engineering. This use was confined to Unit 3 and was conducted by “Riviera Pty Ltd”.

1.4 The Proposal

The development application requests consent for the demolition of existing industrial buildings, removal of seven (7) existing trees along the western boundary that now stand on the development site, followed by excavation and site remediation; construction of an 8 storey mixed use development comprising of 84 dwellings (36 x one bedroom units and 48 x 2 bedroom units), 235m² of commercial floor space fronting Gardeners Road and 151 car parking spaces; consolidation of four (4) allotments into one (1) Torrens allotment and Torrens stratum subdivision into two lots being Lot 1 (commercial floor area) and Lot 2 (residential levels and basement car parking) with further Strata subdivision of Lot 1 into two retail lots and further Strata subdivision of Lot 2 into eighty four (84) residential lots; relocation of the access driveways on Gardeners Road and relocation of the Sydney Water easement.

Residential Flat Component

The proposed development is comprised of one residential flat building, which is accessible to pedestrians and vehicles from Gardeners Road. The building contains one central pedestrian corridor entry with vehicular access at the western part of the frontage. Two lifts are located together within the entrance foyer. The upper levels are characterised by an open central communal area with apartments accessible from the central corridors which look down to the landscaped podium below. A communal landscaped terrace is proposed to the rear of Level 5, with a communal pool and gym to the ground floor. A total of 84 apartments are proposed (including nine (9) adaptable apartments).

The unit mix of the development is as follows:

	TOTAL	Unit Mix
Studio	36	43%
2 bedroom	48	57%
	84	100%

Table 1 – Unit Mix

Summary table:

This table contains a summary of the proposed development based a total of 113 dwellings.

Unit No.	No. of Bedrooms	Dwelling Size (m²)	Private Open Space (m² / dwelling)	Car parking provision	Cross Ventilation	2 Hours Sunlight
Unit 101	2 bedrooms	105m ²	155m ²	2	Yes	Yes
Unit 102	Studio	63m ²	47.41m ²	1	Yes	Yes
Unit 103	2 bedrooms	107m ²	63.68m ²	2	Yes	Yes
Unit 104	2 bedrooms	101m ²	108.3m ²	2	Yes	Yes

Unit No.	No. of Bedrooms	Dwelling Size (m ²)	Private Open Space (m ² / dwelling)	Car parking provision	Cross Ventilation	2 Hours Sunlight
Unit 105	Studio	64m ²	86m ²	1	No	Yes
Unit 106	2 bedroom	100m ²	199.25m ²	2	Yes	Yes
Unit 107	Studio	64m ²	10m ²	1	Yes	Yes
Unit 108	Studio	64m ²	10m ²	1	Yes	Yes
Unit 109	2 bedrooms	100m ²	199.25m ²	2	Yes	Yes
Unit 110	Studio	64m ²	86.1m ²	1	No	Yes
Unit 111	2 bedrooms	101m ²	108.3m ²	2	Yes	No
Unit 112	2 bedrooms	107m ²	63.68m ²	2	Yes	Yes
Unit 113	Studio	63m ²	47.41m ²	1	Yes	No
Unit 114	2 bedrooms	105m ²	155m ²	2	Yes	Yes
Unit 201	2 bedrooms	105m ²	16m ²	2	Yes	Yes
Unit 202	Studio	63m ²	16.3m ²	1	Yes	Yes
Unit 203	2 bedrooms	107m ²	15.24m ²	2	Yes	Yes
Unit 204	2 bedrooms	101m ²	29m ²	2	Yes	Yes
Unit 205	Studio	64m ²	11m ²	1	No	Yes
Unit 206	2 bedrooms	100m ²	11.25m ²	2	Yes	Yes
Unit 207	Studio	64m ²	12.76m ²	1	Yes	Yes
Unit 208	Studio	64m ²	12.76m ²	1	Yes	Yes
Unit 209	2 bedrooms	100m ²	11.25m ²	2	Yes	Yes
Unit 210 (adaptable)	Studio	64m ²	10.8m ²	1	No	Yes
Unit 211 (adaptable)	2 bedrooms	101m ²	29 m ²	2	Yes	No
Unit 212	2 bedrooms	107m ²	15.24m ²	2	Yes	Yes
Unit 213	Studio	63m ²	16.3m ²	1	Yes	No
Unit 214	2 bedrooms	105m ²	15.96m ²	2	Yes	Yes
Unit 301	2 bedrooms	105m ²	16m ²	2	Yes	Yes
Unit 302	Studio	63m ²	16.3m ²	1	Yes	Yes
Unit 303	2 bedrooms	107m ²	15.24m ²	2	Yes	Yes
Unit 304	2 bedrooms	101m ²	29m ²	2	Yes	Yes
Unit 305	Studio	64m ²	11m ²	1	No	Yes
Unit 306	2 bedrooms	100m ²	11.25m ²	2	Yes	Yes
Unit 307	Studio	64m ²	12.76m ²	1	Yes	Yes
Unit 308	Studio	64m ²	12.76m ²	1	Yes	Yes
Unit 309	2 bedrooms	100m ²	11.25m ²	2	Yes	Yes
Unit 310 (adaptable)	Studio	64m ²	10.8m ²	1	No	Yes
Unit 311 (adaptable)	2 bedrooms	101m ²	29 m ²	2	Yes	No
Unit 312	2 bedrooms	107m ²	15.24m ²	2	Yes	Yes
Unit 313	Studio	63m ²	16.3m ²	1	Yes	No
Unit 314	2 bedrooms	105m ²	15.96m ²	2	Yes	Yes
Unit 401	2 bedrooms	105m ²	16m ²	2	Yes	Yes
Unit 402	Studio	63m ²	16.3m ²	1	Yes	Yes

Unit No.	No. of Bedrooms	Dwelling Size (m ²)	Private Open Space (m ² / dwelling)	Car parking provision	Cross Ventilation	2 Hours Sunlight
Unit 403	2 bedrooms	107m ²	15.24m ²	2	Yes	Yes
Unit 404	2 bedrooms	101m ²	29m ²	2	Yes	Yes
Unit 405	Studio	64m ²	11m ²	1	No	Yes
Unit 406	2 bedrooms	100m ²	11.25m ²	2	Yes	Yes
Unit 407	Studio	64m ²	12.76m ²	1	Yes	Yes
Unit 408	Studio	64m ²	12.76m ²	1	Yes	Yes
Unit 409	2 bedrooms	100m ²	11.25m ²	2	Yes	Yes
Unit 410 (adaptable)	Studio	64m ²	10.8m ²	1	No	Yes
Unit 411 (adaptable)	2 bedrooms	101m ²	29 m ²	2	Yes	No
Unit 412	2 bedrooms	107m ²	15.24m ²	2	Yes	Yes
Unit 413	Studio	63m ²	16.3m ²	1	Yes	No
Unit 414	2 bedrooms	105m ²	15.96m ²	2	Yes	Yes
Unit 501	2 bedrooms	101m ²	38.16m ²	2	Yes	Yes
Unit 502	2 bedrooms	101m ²	33.6m ²	2	Yes	Yes
Unit 503	Studio	64m ²	11.52m ²	1	No	Yes
Unit 504	2 bedrooms	100m ²	11.25m ²	2	Yes	Yes
Unit 505	Studio	64m ²	12.76m ²	1	Yes	Yes
Unit 506	Studio	64m ²	12.76m ²	1	Yes	Yes
Unit 507	2 bedrooms	100m ²	11.25m ²	2	Yes	Yes
Unit 508 (adaptable)	Studio	64m ²	11.52m ²	1	No	Yes
Unit 509 (adaptable)	2 bedrooms	101m ²	33.6m ²	2	Yes	No
Unit 510	2 bedrooms	101m ²	38.16m ²	2	Yes	Yes
Unit 601	2 bedrooms	101m ²	76.46m ²	2	Yes	Yes
Unit 602	2 bedrooms	101m ²	33.6m ²	2	Yes	Yes
Unit 603	Studio	64m ²	11.52m ²	1	No	Yes
Unit 604	2 bedrooms	100m ²	11.25m ²	2	Yes	Yes
Unit 605	Studio	64m ²	12.76m ²	1	Yes	Yes
Unit 606	Studio	64m ²	12.76m ²	1	Yes	Yes
Unit 607	2 bedrooms	100m ²	11.25m ²	2	Yes	Yes
Unit 608 (adaptable)	Studio	64m ²	11.52m ²	1	No	Yes
Unit 609	2 bedrooms	101m ²	33.6m ²	2	Yes	Yes
Unit 610	2 bedrooms	101m ²	76.46m ²	2	Yes	Yes
Unit 701	2 bedrooms	99m ²	85m ²	2	Yes	Yes
Unit 702	Studio	64m ²	11.52m ²	1	No	Yes
Unit 703	2 bedrooms	100m ²	11.25m ²	2	Yes	Yes
Unit 704	Studio	64m ²	12.76m ²	1	Yes	Yes
Unit 705	Studio	64m ²	12.76m ²	1	Yes	Yes
Unit 706	2 bedrooms	100m ²	11.25m ²	2	Yes	Yes
Unit 707	Studio	64m ²	11.52m ²	1	No	Yes

Unit No.	No. of Bedrooms	Dwelling Size (m ²)	Private Open Space (m ² / dwelling)	Car parking provision	Cross Ventilation	2 Hours Sunlight
Unit 708	2 bedrooms	99m ²	85m ²	2	Yes	Yes

Table 2 – Apartment Summary

The following table provides a summary of compliance:

Control	Required	Proposal	Complies
FSR	2.5:1 (under BBLEP 2013 (8,150m ²))	2.46:1 (8,025m ²)	Yes
Height	26 metres (under BBLEP 2013)	28 metres	No – Clause 4.6 Variation submitted
Car Parking	155 spaces are required as follows for the proposal: <ul style="list-style-type: none"> • 132 residential; • 17 visitors; • 6 commercial. 	151 spaces are proposed as follows: <ul style="list-style-type: none"> • 132 residential; • 17 visitors; • 2 commercial 	No – A shortfall of four (4) retail car parking spaces, however each tenancy is provided with one space each
Deep Soil	25% of communal open space area	72m ² = 9%	Merit Based
Unit Sizes	Studio: 60m ² 1 bedroom: 75m ² 2 bedrooms: 100m ²	Studios = 63-54m ² 2 Bedroom = 99-107m ²	Yes

Table 3 – Summary of Compliance

Floor Space Ratio

The maximum FSR permitted by BBLEP 2013 is 2.5:1.

The development application seeks an FSR of 2.46:1 (8,025m²) which complies with Clause 4.4 of BBLEP 2013. On the 21 March 2014, the Applicant has confirmed that the original FSR calculation of 2.28:1 does not include the private open space areas at the entrance to units, which is enclosed by a floor to ceiling fixed louvre screen. As such, this area is required to be included in the FSR calculation and the FSR of the proposed development is 2.46:1 (8,025m²).

Basement Car Parking and Parking Allocation

The proposed development requires 155 parking spaces. The basement car park contains 151 spaces that will comprise of 132 resident spaces, 17 visitor spaces and 2 retail spaces. The car parking is provided over two basement levels.

Therefore a shortfall of four (4) spaces is proposed. Parking provision for residents and visitors is fulfilled, therefore the shortfall is confined to the commercial tenancy parking, with only two (2) spaces being provided for the commercial tenancies (ie. one each).

Note: the visitor parking requirements for Part 9A of BBDCP 2013 are one (1) visitor space per 7 dwellings. Therefore, the proposed development would require 12 visitor spaces and would be compliant with, and in excess of the parking requirements of Part 9A relating to Mascot Station Town Centre Precinct.

Subdivision

The proposed development involves the consolidation of the four (4) existing allotments into one (1) Torrens allotment and Torrens stratum subdivision into two lots being Lot 1 (commercial floor area) and Lot 2 (residential levels and basement car parking) with further Strata subdivision of Lot 1 into two (2) retail lots and further Strata subdivision of Lot 2 into eighty four (84) residential lots.

2.0 PLANNING CONSIDERATIONS

2.1 Section 79C(1) - Matters for Consideration

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

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

Environmental Planning and Assessment Act – Schedule 4A

The application is required to be determined by the Joint Regional Planning Panel pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act as the Capital Investment Value of the proposed development is \$21,762,000.

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

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

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

Before granting development consent to an application, the consent authority must, in accordance with the regulations, obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development. In this regard, the development application was referred to the NSW Office of Water. In a letter dated 11 February 2014, NSW Office of Water has provided its General Terms of Approval for the proposed development, which have been imposed upon the development in the Schedule of Consent Conditions section of this report.

The Development Application is also Integrated Development, pursuant to Section 138 of the Roads Act 1993 as it involves the relocation of the driveway. In a letter

dated the 13 February 2014, NSW RMS has provided conditions for the proposed development.

State Environmental Planning Policy (Infrastructure) 2007

Clause 104 - Traffic Generating Development

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

Plans and documentation were referred to the NSW RMS for consideration and comment. In a letter dated 13 February 2014, the RMS has advised that it has no objection to the proposed development and has provided conditions which have been imposed upon the development in the Schedule of Consent Conditions section of this report.

State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land

The provisions of SEPP No. 55 have been considered in the assessment of the development application. Clause 7 of SEPP No. 55 requires Council to be certain that the site is or can be made suitable for its intended use at the time of determination of an application. The applicant submitted a Preliminary Stage Environmental Site Assessment prepared by Environmental Investigation Services dated October 2013.

The report concludes that there are two underground storage tanks (UST's) and fill material across the site. Heavy metals were detected exceeding acceptable criteria as well as polycyclic aromatic hydrocarbons (PAH's). No asbestos was detected in the soil samples.

On this basis, it is recommended that a Detailed Stage 2 Investigation be undertaken during demolition with a Remedial Action Plan to be submitted prior to the issue of the Construction Certificate for the building.

A condition will also be required for a Site Audit Report (SAR) to be submitted to Council prior to the issue of the Occupation Certificate, which states that the site has been made suitable for the proposed development.

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

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

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

(a) to ensure that it contributes to the sustainable development of New South Wales:

(i) by providing sustainable housing in social and environmental terms, and

(ii) by being a long-term asset to its neighbourhood, and

(iii) by achieving the urban planning policies for its regional and local contexts, and

(b) to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and

(c) to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and

(d) to maximise amenity, safety and security for the benefit of its occupants and the wider community, and

(e) to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions.

The provisions of SEPP No. 65 have been considered in the assessment of the development application. The applicant has submitted a SEPP 65 assessment of the proposed development along with a design verification statement prepared by Brian Meyerson of MHND Union Architects, dated 20 December 2013, to verify that the plans submitted were drawn by a Registered Architect and achieve the design quality principles set out in Part 2 of SEPP No. 65.

Council's Design Review Panel has considered the proposed development prior to the lodgment of the application on 15 August 2013. The current plans which are the subject of this assessment have addressed the concerns raised by the Design Review Panel and along with other design changes to accommodate the concerns of the Council.

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

The ten design principles are addressed as follows:

Principle 1: Context

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

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

The site falls within the Miles Street Sub Precinct that has been identified for re-development in accordance with the Mascot Station Town Centre Precinct Masterplan. Whilst the BBDCP 2013 has been adopted by Council, the Miles Street Sub Precinct has been excluded from the DCP and as such, the controls of Part 9A of BBDCP 2013 do not apply. Notwithstanding, it is appropriate to consider the principles in the Masterplan and its accompanying DCP.

The surrounding built form context consists of residential development to the south and commercial/warehouse development to the north, east and west. The new zoning

for the subject site and adjoining site to the immediate east and west allow for the redevelopment of the land fronting Gardeners Road for higher density residential development and commercial use. Land adjoining to the immediate south fronting Miles Street has also been identified under BBLEP 2013 for medium density residential development of a maximum building height of 11m (or 4 storeys).

The subject site is relatively flat with a frontage to Gardeners Road. This road is subject to heavy traffic movement, with associated pollution and noise impacts from the identified traffic movement.

On this basis, it is considered that the proposed use of the subject site for the purposes of a residential flat development and commercial premises is consistent with its context.

Principle 2: Scale

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

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

The scale of the proposed development is that of a single storey podium fronting Gardeners Road with an eight storey tower above, whilst at the rear, the height is reduced to ameliorate overshadowing and privacy impacts on adjoining development. The podium fronting Gardeners incorporates a continuous solid balustrade at the first floor apartments to give the appearance of being a two storey podium element.

The height and scale of the existing 8.6m high masonry wall on the southern boundary (to be retained and incorporated into the design of the development) is effective in achieving privacy for both future occupants of the building and adjoining residents to the immediate south. The height of the proposed development is 28 metres at the northern portion of the building, being two (2) metres in excess of the maximum building height of 26m permitted under BBLEP 2013. Across the remainder of the site, the height is compliant and is progressively terraced to 18m and being between 2-20 metres below the maximum building height.

Principle 3: Built Form

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

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

The development form will comprise of a single residential tower accessible from Gardeners Road. Commercial premises comprising of two separate tenancies are proposed to the ground floor fronting Gardeners Road, within the podium. The proposal provides an interesting built form with a curved plan and angled blade walls that will assist in ameliorating road traffic noise.

The building facades are articulated through strong horizontal elements, detailed balcony treatments, and a modern and varied material/finishes selection to provide

visual interest. The overall built form is compatible with the adjacent developments and the emerging character of the area as it undergoes redevelopment. The building height and form steps down at the rear, reducing overshadowing and visual impact to the adjoining development to the south. The proposed modern architectural form will contribute to the public domain as it enhances the streetscape amenity.

Principle 4: Density

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

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

The proposed FSR of 2.46:1 (8,025m²) complies with the maximum FSR permitted for the subject site of 2.5:1.

A total of 84 apartments are proposed. This will comprise of 36 x studio apartments and 48 x 2 bedroom apartments. The number of units provided within the building is appropriate given that sufficient landscaping, car parking, private open space, appropriate internal layouts, and setbacks are integrated into the design.

Principle 5: Resource, energy and water efficiency.

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

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

The location, orientation and design of the development provides for adequate solar access and cross ventilation to the majority of apartments in accordance with SEPP 65. The Residential Flat Design Code (RFDC) recommends that at least 60% of the proposed units shall achieve flow through ventilation with the proposal indicating 84% of proposed units able to achieve cross flow ventilation. The applicant has confirmed that all habitable spaces are adequately ventilated.

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

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

Principle 6: Landscape

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

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

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

There are three distinct types of landscape open space provided to the development. This includes private open space balconies, communal open space terraces at Level 5 and at ground level along the southern boundary. A landscape plan has been submitted with the application which demonstrates that a quality landscaped setting for the proposed development will provide a significant level of amenity for future occupants and the adjoining properties, with street planting to enhance the streetscape.

Council's Landscape Officer has reviewed the proposal and provided conditions. The proposed landscape planting is commensurate with the building size and bulk; hence it is considered that the proposal is consistent with this design quality principle.

Principle 7: Amenity

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

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

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

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

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

The proposal complies with disability access requirements and incorporates sufficient service areas as required. It is considered that the development satisfies the provisions

with respect to layout and amenity, and therefore the development is consistent with this principle.

Principle 8: Safety and Security

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

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

The development provides for safe direct pedestrian access from Gardeners Road. Casual surveillance to the public domain area fronting Gardeners Road is available from the street, from upper level apartments and from the ground floor commercial tenancies. Pedestrian and vehicular entries are clearly separated and well defined. Safe internal access is available from the basement car park directly into the building and the public/private domain is clearly distinguished. The proposal satisfies the requirements of Crime Prevention Through Environmental Design (CPTED) as assessed by NSW Police (Mascot Local Area Command), and conditions have been provided in this regard.

Principle 9: Social Dimensions

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

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

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

The development provides a balanced mix of apartments to a site 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 Part 9A of BBDCP 2013, the proposed 43% studio apartments is considered appropriate as it reflects current market demand and future projections for increased demand for smaller apartments.

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

Principle 10: Aesthetics

Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly

to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.

Aesthetically and functionally, the development proposes quality internal and external design, having regard to built form, landscaping, setbacks, internal layouts and provision of underground parking. Particular emphasis has been placed on external appearance to enhance the streetscape and create visual interest in the architecture of the building for all elevations, along with a selection of appropriate finishes. The contemporary design of the building is compatible with the design and scale of the urban form for the Mascot Station Precinct. It is considered that the proposed rendered/painted masonry, glazed finishes, feature cladding and articulation contribute to the overall contemporary style. Therefore the proposed development is considered to be consistent with this design quality principle.

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

Botany Bay Local Environmental Plan 2013

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

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Landuse Zone	N/A	The site is zoned B4 – Mixed Use under BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed residential flat building and commercial premises are permissible with Council's consent under BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives in the BBLEP 2013: <ul style="list-style-type: none"> ▪ <i>To provide a mixture of compatible land uses;</i> ▪ <i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling</i>
Does Clause 2.6 apply to the site?	Yes	Clause 2.6 states that <i>land to which this Plan applies may be subdivided, but only with development consent.</i> The proposed development involves the consolidation of four (4) allotments into one (1) Torrens allotment and Torrens stratum subdivision into two lots being Lot 1 (commercial floor area) and Lot 2 (residential levels and basement car parking) with further

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		Strata subdivision of Lot 1 into two retail lots and further Strata subdivision of Lot 2 into eighty four (84) residential lots.
What is the height of the building? Is the height of the building below the maximum building height?	No	The proposed building height is 28m, which is greater than the 26 metres permitted by Clause 4.3 of BBLEP 2013. As such, the Applicant has submitted a Clause 4.6 variation to the height limit.
What is the proposed FSR? Does the FSR of the building exceed the maximum FSR?	Yes	The proposed FSR is 2.46:1, which complies with the maximum FSR of 2.50:1 permitted under Clause 4.4 of BBLEP 2013.
Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m ² min and maximum height of 22 metres and maximum FSR of 1.5:1?	N/A	The subject site is not located within an R3 or R4 zone.
Is the site within land marked "Area 3" on the FSR Map	N/A	The subject site is not identified as being within "Area 3" on the FSR map.
Is the land affected by road widening?	Yes	The subject site is not affected by road widening on the Land Acquisition Map.
Is the site identified on the Key Sites Map?		The subject site is within the Mascot Station Precinct. Refer to Clause 6.16 discussion 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.
The following provisions in Part 6 of the LEP apply to the development: 6.1 – Acid sulfate soils 6.2 – Earthworks	Yes	Clause 6.1 – Acid Sulfate Soils. The subject site is affected by both Class 2 and Class 4 Acid Sulfate Soils. The development application has not been accompanied by an Acid Sulfate Soils Assessment. In this instance natural ground level is 8.50-9.5m AHD. The likelihood of encountering ASS is low. The development is considered to be consistent with Clause 6.1 of BBLEP 2013. Clause 6.2 – Earthworks. The proposed development seeks to demolish the existing buildings and excavate the subject site for basement car parking. The development application is Integrated Development and as such, the NSW Office of Water has provided its General Terms of Approval for the proposed development. These conditions are included in the draft Schedule of Conditions. The development is considered to be consistent with Clause 6.2 of BBLEP 2013.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		<p>as proposed is contemporary in nature and presents an articulated façade providing enhanced interest to the streetscape and the precinct generally.</p> <p>On this basis, it is considered that the Applicant has adequately addressed the recommendations of the Design Review Panel and the proposed development is considered to be consistent with Clause 6.16 of BBLEP 2013.</p>

Table 4 – BBLEP 2013 Compliance Table

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

Note 1 – Clause 4.6 Variation to Maximum Height of Buildings

The maximum building height as required under the Clause 4.3 of BBLEP 2013 is 26m. The proposed building will have a height of 28 metres, being RL 36.920 metres.

The Applicant has submitted a Clause 4.6 Variation to the maximum height of buildings with the development application.

1. Is the requirement a development standard?

The 26m maximum height of buildings requirement is a development standard contained in Clause 4.3 of Botany Bay Local Environmental Plan 2013.

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

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

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

The Applicant has addressed each objective as follows:

a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,

The proposed development exceeds the maximum height by a minor amount (7.69% of the standard). The areas of the building that exceed the height limit are limited to areas consisting of services, plant equipment, lift overruns and small area of the roof. It should be noted that the portion of the roof that exceeds the height limit is 26.5m, which is the only visible component of the encroachment visible from the surrounding area. The primary bulk of the building is maintained within the LEP maximum height limit for the site.

The areas that exceed the height are primarily located in portions of the roof form that are not visible from the public domain or surrounding properties, due to their minor encroachment and location on the recessed roof. In this regard, the proposed development will not appear higher than the 26m height of the building. As such, in the context of the built form along Gardeners Road, the proposed development will be in keeping with the desired future character of development along Gardeners Road through the existing controls and transitioning character of the area.

As can be seen in the Architectural Plans, it is evident that the proposed encroachment of the height standard is limited to a small portion of the development. The building has been designed to step down accordingly towards the adjoining residential properties to the south of the site, to maintain their amenity and provide an adequate transition in height. As a result, the building does not maximise the current height control for the entire development and demonstrates a coordinated design for the character of development in the area.

The development is consistent with this objective.

b) to ensure that taller buildings are appropriately located

The proposed building is located in the B4 Mixed Use zone, which permits a height of 26m for the site and adjoining land. As discussed above, the proposed development has been designed to reflect the future character of the area. It has taken into consideration the zoning controls that exist in the area; particularly the controls for development within the B4 zone, as well as the residential zone adjoining the site to the south. The minor areas that encroach the height limit do not result in any adverse visual impacts, to the surrounding area, nor does it result in any additional adverse shadowing impacts to the surrounding development. It is considered that there are no adverse impacts as a result of the building, and is in keeping with the desired character of the area.

The portion of the development that exceeds the 26m height limit represents a minor portion of the overall building. These areas have been setback from the edge of the building by approximately 2m and located centrally on the roof to further reduce their impacts, and ensure it is not visually prominent.

Further to the above, the proposed height has been adopted by Council with consideration to surrounding land uses including the Sydney Kingsford Smith Airport and Gardeners Road. The minor encroachment will not affect any flight paths, as the encroachment is considered to be negligible in this regard. The areas that exceed the height limit will not be affected by pollution generated along Gardeners Road, as they consist of un-habitable areas including services for the building and lift overruns.

Therefore, this building form is appropriately located.

c) to ensure that building height is consistent with the desired future character of an area

The proposed height represents a minor encroachment to the existing height control for the site. The height controls under the current LEP, which was recently adopted by Council in June 2013, is a result of recommendations provided in the strategic vision for the subject area, provided under the Mascot Station Town Centre Precinct Masterplan. This plan set the strategic vision for the area that the site is located in, which recognised the height limit for the zone/site. As such, the current height limit represents a control that sets the desired future character of the area for the height of buildings. This height was determined on the proximity of the site to Mascot Station and surrounding land uses; regard was given to the proximity the site is to the Sydney Kingsford Smith Airport and Gardeners Road.

The desired future character of the area is for mixed used development up to eight (8) storeys in height with podium levels which encourage street activation and a centrally located tower above; this character is established via the existing zoning controls set under the BBLEP 2013. The proposed minor encroachment of the height standard under the LEP does not have any adverse impacts, and is consistent with the desired future character of the area. Moreover, the site has been identified as being flood prone under Council's draft flood study. As such, to achieve the desired future character as indicated above, the development has been designed to incorporate appropriate floor levels with regard to flooding; which has resulted in the minor encroachment of the height limit.

d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development

This subject clause is broken down into four categories of impacts to be considered to surrounding development, which are discussed below:

Visual Impact

The portion of the building that exceeds the height limit has been setback/recessed on the roof, and is not visually dominant from the public domain or surrounding areas. As such, there is no visual impact as a result of this minor encroachment. To reduce the visual impact of the development to residential land to the south, the building has been stepped down in height towards the southern boundary; as a result these areas are under the maximum height limit of the site.

Disruption of Views

As discussed above, the predominant area that exceeds the height limit has been setback from the front building line in excess of 2m and is not visually dominant from the surrounding area. As such, it does not result in any disruption of views.

Loss of Privacy

The portion of the building that exceeds the height limit does not result in any loss of privacy to the surrounding area. This section of the roof is not habitable, nor is it navigable by residents of the building. As such, the height encroachment does not result in any loss of privacy.

Solar Access

As demonstrated in the SEPP 65 Design Statement prepared by MHNDUNION, the subject development achieves high levels of solar access. Further to this, the land to the south is not adversely affected by overshadowing as a result of the portion of the roof exceeding the height limit. In this regard, this section of the roof has been located toward the front of the development, and overshadowing to the adjoining land is a result of the remaining bulk of the building.

The height encroachment does not result in any loss of solar access to the development or surrounding area.

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

This subject clause is broken down into three categories of impacts when viewed from adjoining roads and other public places, and community facilities.

Officer Comment:

The development application has been referred to the Sydney Airport Corporation Limited (SACL) and the Panel is asked to note that SACL is not a planning body but a referral body for matters of a technical nature. SACL have no objection to the proposed height of 36.920m AHD.

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

"The single storey podium with an eight storey tower above would produce an appropriate scale provided that the form of the podium is relatively assertive."

The height exceedence is confined to the northern part of the proposed building, for approximately 50% of the building. The additional height sought, is comprised of lift shaft overrun and plant rooms, which are proposed to be suitably screened by horizontal louvre screens. The extent of additional height beyond the roof level is setback from the parapet of Level 7 by approximately 4-5 metres. This assists in reducing visual impact from the plant rooms and ensures there is no adverse impact on adjoining properties in terms of overshadowing.

The building height has been designed to provide an appropriate visual relationship and transition in line with the existing developments to the south, by reducing the height as the building extends towards the southern boundary. This is required in order to reduce visual impact, privacy and overshadowing impacts on adjoining properties. Council received amended shadow diagrams on the 21 March 2014, which delete the awning from Level 7 at the rear of the building. The plans indicate that a minimum private open space area of approximately 4m x 6m has been identified and achieves adequate solar access on June 21 between 9:00am and 3:00pm.

In respect of privacy, the upper levels of the proposed development are setback and increase in separation as the building increases in height. Windows, which have been appropriately located at the rear of the building are living room/study windows. Balconies that are located on the southern elevation are proposed to be treated with increased setbacks and fixed masonry raised planter boxes to prevent overlooking to adjoining properties. A condition can be imposed that these are maintained at all times with species suitable for screening. The overall distance between the communal terraces on Level 5 to the adjoining dwellings is approximately 38 metres. The private open space area within this distance would be visible on an acute angle from Levels 3 and 4. Level 2 would be unable to see into the private open space area of the adjoining dwellings due to the masonry wall.

The Panel should note that privacy mitigation in respect of the low density development to the south of the development site dealt with by:

- boundary wall retention;
- terraced south elevation;
- balcony edge planter box construction;

In respect of the latter, planter boxes are required to be 1.2m high and 1.0m in width for adequate planting.

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

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

The Applicant claims that compliance with the maximum height of buildings standard of 28m is unreasonable and unnecessary in the circumstances of the case on the following grounds:

- *The desired future character of the locality is achieved, which is for high density mixed use development in an accessible location and within close proximity to Mascot Station;*
- *The site has been identified as being affected by flooding in Council's draft flood study for the area; as such, to achieve the desired future character of the area the building has been designed accordingly to*

accommodate appropriate floor levels resulting in a minor encroachment of the height limit;

- *Amenity is not compromised for the public domain or adjoining residential sites as a result of the non-compliance with the height standard;*
- *The proposed development has been designed to incorporate adequate setbacks, consistent with SEPP 65 and the RFDC, to ensure future development of surrounding sites are not compromised, whilst maintaining the amenity to existing development in the area;*
- *The development provides a stepping down of the building to the adjoining residential zone to the south to provide an appropriate transition in height to this area and maintain amenity to these areas;*
- *The objectives of the height standard, and the zone objectives, are achieved; and*

Moreover, the various technical reports and plans accompanying the development application provides a comprehensive assessment of potential environmental and amenity impacts associated with this project. Notwithstanding the height variation, the proposed development will not result in an adverse environmental or amenity outcome for the adjoining sites or the wider locality and therefore, strict compliance with the development standard would be unreasonable and unnecessary. Strict compliance would not result in any tangible benefits.

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

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

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

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

The underlying objective or purpose of the standard would not be defeated or thwarted if compliance was required.

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

The applicants Clause 4.6 Variation states that they do not rely on this reason.

4. Is the height variation well founded?

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

Botany Bay Development Control Plan (BBDCP) 2013

Council resolved on 11 December 2013, to adopt the BBDCP 2013 in accordance with the provisions of the *Environmental Planning & Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

However, on 22 May 2013 Council was presented with a recommendation to publicly exhibit the Botany Bay draft Comprehensive Development Control Plan 2013 which included Part 9A – Mascot Station Town Centre Precinct. Council resolved to investigate alternative development outcomes for Urban Block 2 of the Mascot Station Town Centre Precinct (Urban Block 2 is known as the Miles Street Sub-Precinct). The draft comprehensive DCP 2013 was amended prior to public exhibition to remove any reference to the Miles Street Sub-Precinct. The subject site is within the Miles Street Sub-Precinct, and therefore Part 9A of the Botany Bay DCP 2013 does not apply to the subject site.

A further report on the Miles Street Sub-Precinct was presented to Council at its Development Committee Meeting held 4 September 2013. Council adopted the report which recommended that Council undertake community consultation with the residents in the Miles Street Sub-Precinct and residents on the southern side of Miles Street to understand their desired future character for the Sub-Precinct. This consultation process has now commenced.

Notwithstanding the above points, the principles in the Mascot Station Town Centre Precinct Masterplan dated April 2012 and its accompanying DCP should be considered in the assessment of the application:

Part	Control	Proposed	Complies
3E.3. Subdivision	C1 Strata subdivision is to be consistent with the Desired Future Character of the area	The proposed Torrens stratum subdivision and subsequent Strata subdivisions will consolidate four existing allotments to facilitate the proposed commercial premises and residential apartments.	Yes
	C2 Development Applications must provide and demonstrate compliance with a development consent for the development proposed to be subdivided.	The proposed Strata subdivision will be subject to conditions of consent.	Yes
	C3 Any proposal must not contravene any conditions of consent applied to the development or building which is the subject of the proposed subdivision.	As above.	Yes
	C4 Any communal areas (common driveway or footpaths) or right of way easements must be shown within the common property of the development to be managed wither by a body corporate or strata body.	The access driveways to basement car parking and aisles are proposed to be common property on the proposed plan of subdivision.	Yes
	C5 Any car parking associated	A condition can be imposed to	N/A

	with the development must be allocated to each individual strata lot to be created and shown on the plan of subdivision to be submitted with the application.	require an amended strata plan prior to the issue of the Subdivision Certificate.	
	C6 Subdivision is not permitted in areas identified to be affected by projected 2100 sea level rise by NSW Government unless it can be demonstrated that potential impacts can be mitigated.	N/A – The subject site is not affected by the 2100 sea level rise policy.	N/A
Part	Control	Proposed	Complies
3A.2 Car Parking	<p>C7 – Bicycle parking equivalent to 10% of the required car parking shall be provided.</p> <p>Table – Specific Parking Requirements for specific land uses.</p> <p>Residential Flat Buildings:</p> <p>1 space for studio or one bedroom units 2 spaces for two (2) or more bedroom units; 1 designated visitor space per 5 dwellings</p>	<p>Eighteen bicycle parking spaces are proposed within the basement parking area. This equates to 11.7% of required car parking.</p> <p>A total of 151 parking spaces are proposed as follows:</p> <ul style="list-style-type: none"> • 132 residential; • 17 visitors; • 2 commercial 	<p>Yes</p> <p>No – Refer to Note 1 below</p>
3A.3.1 – Car Park Design	<p>C1 – All off -street parking facilities shall be designed in accordance with current Australian Standards AS2890.1 and AS2890.6 (for people with disabilities). The design of off -street commercial vehicles facilities (including parking) shall be in accordance with AS2890.2.</p> <p>C2 - Vehicle access points, loading /unloading area and the internal circulation of an off-street parking facility shall be designed in a manner that entry to and exit from the site is made in a forward direction (except for dwelling houses).</p> <p>C3 - Parking spaces for small cars shall comply with AS2890.1 and only be permitted to the off-street parking facilities that are open to the general public.</p> <p>C4 - For mixed use development, residential off-street parking facilities shall be separated from the other uses and security roller doors shall be installed to provide security to residents;</p> <p>C6 - All parking bays shall be clearly</p>	<p>All car parking areas have been designed to comply with AS2890.1 and AS2890.6. A condition can be imposed on any consent granted to ensure compliance is met.</p> <p>Vehicle access to the car parking areas is by way of a two lane access driveway of 6 metres width.</p> <p>No small car parking spaces are proposed or required.</p> <p>The commercial spaces are combined with resident spaces. The Applicant has advised in a letter dated 21 March 2014, that only two (2) commercial spaces will be available, being one space per tenancy.</p> <p>Condition for all parking bays to be</p>	<p>Condition to comply</p> <p>Yes</p> <p>N/A</p> <p>No – Refer to Note 1 below</p> <p>Condition to</p>

	<p>designated, sign posted and line marked. Signage and line marking shall comply with AS2890.1. These markings shall be maintained at all times.</p> <p>Basement Car Parking</p> <p>C20 - Basement car parking facilities are preferred for large scale development.</p> <p>C21 - Basement parking areas are to be located directly under building footprints to maximize opportunities for deep soil planting.</p> <p>C22 - Ventilation grills and screening devices of car park openings are to be integrated into the overall façade and landscape design of the development.</p> <p>C26 – the minimum width of the access driveway shall be 5.5 metres for 6m inside the circulation roadway</p> <p>C34 - All off-street parking facilities shall allocate accessible parking spaces for people with disabilities at the rate in accordance with Part 3C - Access and Mobility.</p> <p>C37 - For residential development, accessible car parking spaces are to be allocated to adaptable unit, or as visitor parking</p>	<p>clearly signposted and marked.</p> <p>Two levels of basement car parking are proposed.</p> <p>Basement parking is located directly beneath the building footprint.</p> <p>The basement car park will be mechanically ventilated.</p> <p>6m width proposed for 9 metres.</p> <p>In accordance with Part 3C and AS2890.6, 1 disable car parking space is required. Six (6) disabled car parking spaces are proposed, one being located adjacent to the commercial tenancy access.</p> <p>Condition for five (5) spaces to be allocated to the adaptable units and one (1) disable space as a visitor space.</p>	<p>comply.</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Condition to comply</p>
3A.3.4 – On Site Loading and Unloading	<p>C1 - Service bays and parking area for commercial vehicles shall be designed in accordance with AS2890.2 and AUSTROADS guidelines.</p> <p>C2 - The number of service bays shall be provided in accordance with Table 2 . Where calculated provision of servicing bays numbers results in a fraction, the requirements shall be rounded up to the nearest whole number.</p> <p>C3 - For land uses not specifically listed, number of service bays shall be provided as per the most similar use of equivalent intensity; evidence in support of such provision shall be provided to Council for assessment</p>	<p>The proposal incorporates three (3) service bays (tradesman spaces/courier spaces) within the ground floor level car parking area. The DCP requires that access and aisle are capable of accommodating a Medium Rigid Vehicle (MRV), however the application seeks to engage a private waste collection company and only seeks access for a Small rigid vehicles (SRV) in this instance.</p>	<p>Considered acceptable</p>
3C.2 – Access and Mobility	<p>C1 - All development including community events must comply with Table 1.</p>	<p>The commercial tenancies are designed to be fully accessible.</p>	<p>Yes</p>

	<p>C2 - All development must comply with the provisions of the Disability Discrimination Act 1992, BCA, the Premises Standards and the relevant Australian Standards.</p> <p>C3 - All residential development must comply with AS4299 - 1995 Adaptable Housing for those developments required to provide adaptable housing.</p>	<p>The development can be conditioned to comply.</p> <p>10% of the total number of proposed dwellings (ie. 9 dwellings) are proposed to be adaptable.</p>	<p>Condition to comply</p> <p>Yes</p>
3G.2 – Stormwater Management	<p>C1 - Development shall not be carried out on or for any lands unless satisfactory arrangements have been made with and approved by Council to carry out stormwater drainage works.</p> <p>C5 - Development shall incorporate site constraints/limitations as described below:</p> <ul style="list-style-type: none"> (i) Existing on site public stormwater drainage infrastructures; (ii) Flooding and overland stormwater flows, particularly related to natural depressions, adjacent or over the existing public stormwater structures and impact from climate change; and (iii) Flood prone lands as indicated on Section 149(5) Planning Certificates 	<p>The proposal incorporates the relocation of the existing box culvert for the conveyance of stormwater through the site from Gardeners Road to the existing stormwater easement which runs west along the rear of the property.</p> <p>Yes as mentioned above, the proposal will replace the existing stormwater system with a new system along the western boundary with the same capacity as the existing system.</p>	<p>Yes</p> <p>Yes</p>
3I.2 –Safer By Design	<p>C1 - Developments are to provide connections to existing activity centres, neighbourhoods and street networks. Isolated residential developments or gated communities are discouraged.</p> <p>C2 - Developments shall facilitate a diverse range of activities that attract people, encourage interaction and provide a community focus.</p> <p>C4 - Mixed use and higher density developments are to be located in close proximity to activity centres or public transport networks</p> <p>C5 - For new development located along major arterial and main roads, active street frontages and uses are to be located on the ground floor to attract pedestrian traffic.</p> <p>C6 - Pathways shall be direct with all barriers along pathways being</p>	<p>The ground floor commercial tenancies will assist in providing a connection with the street.</p> <p>Te development is mixed use in nature, providing both residential and commercial uses.</p> <p>Public transport networks are located on Gardeners Road, Botany Road and O’Riordan Street.</p> <p>An active street frontage is proposed at the frontage to Gardeners Road.</p> <p>A detailed landscape plan has been submitted, which indicates that the</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

	<p>permeable including landscaping and fencing.</p> <p>C7 - Provide pedestrians and cyclists with a choice of formal pathways and routes.</p> <p>C8 - No entrapment spots should be included in any path.</p> <p>C9 - All paths shall be well lit.</p>	<p>pathway into the building and along the street frontage is direct.</p> <p>As above.</p> <p>No entrapment spaces are proposed.</p> <p>Condition for lighting to comply with Australian Standards.</p>	<p>Yes</p> <p>Yes</p> <p>Condition to comply</p>
3J.2 Aircraft Noise Exposure Forecast	C2 Where building site is classified as "conditional", development may take place, subject to Council consent and compliance with AS2021-2000.	The subject site is located within the 20 ANEF contour. An acoustic report has been submitted with the development application which indicates that the design of the building alterations have been designed to comply with the requirements of AS2021-2000.	Yes
3K - Contamination – Preliminary Investigation	<p>C7 - Before determining a Development Application that involves a change of use or rezoning of land where it is proposed to carry out development for a more sensitive land uses, Council must consider the results of a preliminary investigation. Consideration shall be given to the following:</p> <p>(i) Is the information about the site's history adequate?</p> <p>(ii) Are the descriptions of activities on the site detailed enough to identify a potentially contaminating land use?</p> <p>(iii) Are there any gaps in the history that might mask a potentially contaminating land use?</p> <p>(iv) Are the sources reliable?</p> <p>(iv) Is the information verifiable?</p> <p>(v) Does the information conform to the Managing Land Contamination: Planning Guidelines (EPA)?</p>	<p>The application has been accompanied by a Preliminary Stage 1 Environmental Site Investigation prepared by Environmental Investigation Services, dated 3 October 2013.</p> <p>This report concludes that site can be made suitable for the proposed development, subject to remediation works being undertaken to remove the underground storage tanks and contaminated soils.</p> <p>On this basis, it is recommended that a Detailed Stage 2 Investigation be undertaken during demolition with a Remedial Action Plan to be submitted prior to the issue of the Construction Certificate for the building.</p> <p>A condition will also be required for a Site Audit Report (SAR) to be submitted to Council prior to the issue of the Occupation Certificate, which states that the site has been made suitable for the proposed development.</p>	Yes
3L.1 - Landscaping General Requirements	<p>C1 - Landscaping must comply with Council's Technical Guidelines for Landscaping on Development Sites.</p> <p>C2 - Existing trees including street trees must be preserved.</p> <p>C3 - Landscaping shall be designed to reduce the bulk, scale and size of buildings, to shade and soften hard paved areas, to create a comfortably scaled environment for pedestrians in</p>	<p>The development application has been accompanied by a detailed landscape design, which is consistent with Council's Technical Guidelines.</p> <p>There are no existing street trees.</p> <p>The bulk and scale of the building is appropriate and will be further softened by the proposed street trees and landscaping in the front, side and rear setbacks.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

	<p>the public domain, or from within the site, and to screen utility and vehicle circulation or parking areas. Emphasis should be placed landscaped setbacks designed to soften buildings.</p> <p>C4 - Landscape screening or buffers are to be included and designed so as to enhance privacy between properties and softening of walls and facades.</p> <p>C5 - Street tree planting is a Council requirement with most large developments. The species and size will be to Council specification. Landscaping in the public domain shall reinforce existing streetscape planting themes and patterns. Council may require street tree planting, grassing, shrub and accent planting or any combination of these.</p> <p>C7 - Fire booster valve assemblies, electrical kiosks/substations and waste collection/storage areas must not be located in landscaped areas not in the street setback/s of a development. All such utility and ancillary areas shall be screened with either a built structure or landscaping</p> <p>Deep Soil Zones C15 - Where possible, deep soil zones are to be contiguous with deep soil zones on neighbouring sites so as to enhance tree canopy continuation and wildlife corridors.</p> <p>Planter Beds C16 - All planter beds shall be a minimum 1 metre wide except where otherwise stipulated in boundary setbacks for individual development types</p>	<p>Landscape setbacks are proposed to the eastern, western and southern boundaries to assist in reducing privacy impacts to adjoining properties. The existing southern boundary masonry wall is to be filled in and retained.</p> <p>The submitted landscape plans have been assessed by Council's Landscape Architect and appropriate conditions are recommended to be imposed on any consent granted.</p> <p>All propose utilities and services are appropriately located on the northern elevation.</p> <p>The deep soil zone is located along the southern boundary which is contiguous with adjoining sites.</p> <p>Podium level planter beds are located within private open space terraces, which are of varied sizes/dimensions, however generally exceeding 1m in width.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
4C.6.1 Adaptable Housing	<p>C3 - Disabled access to all common areas shall be provided even if the development has less than five (5) dwellings and does not contain an adaptable dwelling.</p> <p>C 4 - Where a development includes five (5) or more dwellings at least one (1) dwelling must be constructed to meet either Class A or B adaptable housing standards under AS 4299-</p>	<p>The proposed development accommodates nine (9) adaptable apartments, being 10% of the total number of apartments proposed.</p>	<p>Yes</p>

	1995 Adaptable Housing.		
9A.4.3.1 Height	C1 The maximum height of buildings must be in accordance with the Height of Buildings Map and Clause 4.3 of the Botany Bay Local Environmental Plan 2013.	The building height proposed is 28m. As such, a Clause 4.6 variation has been submitted.	No – Refer to Clause 4.6 variation above.
9A.4.3.2 Floor Space Ratio (FSR)	C1 The maximum FSR of buildings must be in accordance with the Floor Space Ratio Map and Clause 4.4 and 4.4B of the Botany Bay Local Environmental Plan 2013.	Proposed FSR is 2.46:1 (8,025m ²)	Yes
9A.4.3.3 Site Amalgamation and Subdivision	C1 The redevelopment of lots within Urban Blocks 1, 3 and 4 must conform to the amalgamation pattern in Figures 21, 22, 24 and 25.	Whilst not applicable to the subject site (Urban Block 2), the proposed development site comprises of four (4) separate allotments of land for consolidation in an orderly and economic manner.	Yes
9A.4.3.4 Street Setbacks	C1 All development within Urban Block 1 must comply with the street setbacks identified in Figures 30 and 31.	Whilst not applicable to the subject site (Urban Block 2), a varied 3m setback is proposed to Gardeners Road. This is consistent with the Masterplan setbacks and is consistent with the setbacks for similar development fronting Gardeners Road in Mascot Station Precinct.	Yes
9A.4.3.6 – Building Separation	C1 Mixed Use developments containing residential units must comply with the principles and provisions of State Environmental Planning Policy No. 65 (SEPP65) and the RFDC.	A minimum side and rear boundary setback of 6 metres is proposed for the development, which is half of the required building separation distance for buildings of 5-8 storeys in height.	Yes
9A.4.4.4 Active Street Frontages and Awnings	C1 All development within Urban Blocks 1, 3 and 4 must provide retail or commercial street frontages where shown in Figures 49, 50, 51 and 52.	Whilst not applicable to the subject site (Urban Block 2), the subject site is required to have an active street frontage under BBLEP 2013. The proposed development incorporates two (2) commercial tenancies at ground level directly fronting Gardeners Road.	Yes
	C2 All development within Urban Blocks 1, 3 and 4 must provide awnings where shown in Figures 53, 54, 55 and 56.	Whilst not applicable to the subject site (Urban Block 2), no awning is proposed. The lack of an awning allows for the establishment of street trees and landscaping along the north facing commercial frontage at ground level. This is considered acceptable and will enhance the streetscape. Presently there is a limited building setback and no street trees at the frontage.	No – Considered acceptable
9A.4.4.6 Building Articulation	C2 Blank external walls of greater than 100m ² must be avoided.	The existing rear masonry wall along the southern boundary is to be retained, and filled in to match existing. This will protect and enhance the amenity of the adjoining residential dwellings to the south.	No – Considered acceptable
9A.4.4.7 Dwelling Size and Mix	C1 Dwellings are to have the following minimum areas: Studio: 60m ² 1 bedroom: 75m ²	The proposed sizes are as follows: Studios = 63-54m ² 2 Bedroom = 99-107m ²	Yes

	2 bedrooms: 100m ² 3 bedrooms: 130m ²		
	C2 The combined total number of studio units and one-bedroom apartments/dwellings must not exceed 35% of the total number of apartments/ dwellings within any single site area.	The combined total of studios and 1 bedroom units is 43%. (studios and two bedroom units proposed)	No – Refer to Note 2
9A.4.4.9 Private Open Space and Communal Open Space	C2 The minimum private open space requirement per dwelling for multi dwellings and residential flats are as follows: Studio/1 bedroom= 12m ² ; 2 Bedrooms: 15m ²	Studio = 11m ² 2 bedrooms = 15-25m ²	Yes
9A.4.5.4 Solar Access and Shadow	C3 Development must demonstrate: (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 (ii) 30% of any common open space will obtain at least two hours of direct sunlight between 9am and 3pm on 21 June.	To the south are currently located low scale residential dwellings located at the street frontage of Miles Street.	Yes
9A.4.5.7 Wind Mitigation	C1 All new buildings are to meet the following maximum wind criteria: (i) 10 metres/second along commercial/retail streets; (ii) 13 metres/second along main pedestrian streets, parks and public places; and (iii) 16 metres/second in all other streets	A Wind Impact Assessment has been submitted with the application prepared by Vipac Engineers and Scientists dated 5 December 2013. The design of the building has incorporated a curved form to alleviate wind impact and balconies up the height to increase roughness and reduce downwash, together with the main entrance being setback and the extensive ground floor landscaping assist in reducing wind impact.	Yes

Table 5 – BBDCP 2013 Compliance Table

Note 1 – Car Parking

Control C2 of Part 3A.2 – Parking for specific uses states that car parking for residential flat buildings and commercial premises is as follows:

- Commercial = 1 space per 40m² of GFA;
- Studio or 1 bedroom dwelling = 1 parking space
- 2 bedroom dwelling = 2 parking spaces

1 space per 5 dwellings for visitors

Based on the above requirements, the proposed development would therefore require 155 (rounded up from 154.4) off street car parking spaces, being 132 resident spaces, 17 visitor spaces and 6 retail spaces.

The proposed development only provides a total of 151 car parking spaces. Therefore a shortfall of four (4) spaces is proposed. Parking provision for residents and visitors is fulfilled, therefore the shortfall is confined to the commercial tenancy parking, with only two (2) spaces being provided for the commercial tenancies (ie. one each).

Note: the visitor parking requirements for Part 9A of BBDCP 2013 are one (1) visitor space per 7 dwellings. Therefore, the proposed development would require 12 visitor spaces and would be compliant with, and in excess of the parking requirements of Part 9A relating to Mascot Station Town Centre Precinct.

The subject site has a direct frontage to Gardeners Road with public transport bus routes passing the site and on both Botany Road and O’Riordan Street. 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.

Note 2: Unit Mix

The following table indicates the proposed unit mix.

	TOTAL	Unit Mix
Studio	36	43%
2 bedroom	48	57%
	84	100%

Table 6 – Unit Mix

Control C2 of Section 4.4.7 of BBDCP 2013 states that *the combined total number of studio units and one bedroom apartments/dwellings must not exceed 35% of the total number of apartments/dwellings within any single site area.*

The applicant has submitted additional information on the 21 March 2014 in response to the unit mix proposed. The Applicant states the following:

The dwelling mix is responsive to market demand, which has been demonstrated to have a higher trend towards higher density forms of development as a result of the pressure of population growth. In this regard, the draft East Subregional Strategy, which translates objectives of the NSW Governments Metropolitan Strategy and State Plan to the local level, has identified a housing target of 6,000 additional dwellings for the Botany Bay LGA. In addition, the subject site is located in the Mascot Station Precinct which has been specifically identified to support the demand of higher density development due to its location to the airport, and the accessibility of the area in regards to major transport corridors, public transportation and planned infrastructure projects.

Further to the above, it is understood that a development application for the JRPP at 19-33 Kent Road, Mascot was supported by a Mascot Residential Demand Assessment Report prepared by Hill PDA dated February 2014.

A summary of the key findings of this report in respect of the demographic trends of the report include:

- *The suburb of Mascot has experienced significant population growth between 2001 and 2011 and population projections indicate that this will continue;*
- *The proportion of flat-unit-apartments in Mascot has increased between 2001 and 2011 as has the proportion of households comprising lone persons and couples with no children. Mascot has experienced declining dwelling occupancy rates over the same period;*
- *The improved accessibility and attraction of Mascot to a wider market has led to a changing socio-economic character with a growing share of residents employed in white collar occupations and a declining proportion employed in blue collar occupations.*

The key findings in relation to market trends of the report are:

- *Demand for studio and 1 bedroom dwellings in Mascot is particularly strong;*
- *Demand for smaller units is likely to remain strong owing to declining household sizes in Mascot, a reduced fertility rate and increasing house prices;*
- *Housing affordability is a key demand driver for the purchase or rental of studios and 1 bedroom units in Mascot. A household with a median income for Greater Sydney (\$75,000p/a in 2011) could not afford to purchase a new 1 bedroom apartment in Mascot without being subject to mortgage stress;*
- *There is a strong relationship between the size of residential units and their price. A 25sqm increase in size of apartments in the Botany LGA was shown to lead to well over \$100,000 (over 20%) price increase; Strict enforcement of the unit mix/size control will lead to a fall in demand for apartments in the order of 30-40%.*

Comment: The rationale of the Applicant is generally agreed with. The proposed unit mix is considered a minor variation. The proposed units comply with the minimum units sizes stipulated under Section 4.4.7 of BBDCP 2013 (except for a small number of two bedroom units, which are only 99m² and for which compliance can be achieved by way of a consent condition). The unit mix will be a positive contribution to the social mix of the precinct and will assist to some extent in supporting affordable housing in Mascot. The submitted report is therefore considered acceptable and therefore the proposed unit mix of 43% studio/one bedroom units is supported.

Note 3: Solar Amenity

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

diagrams demonstrate that the proposal complies with relation to adjoining properties solar access.

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

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

Comment: The subject site is located within the Miles Street Sub-Precinct, an area which has been identified for redevelopment for high density mixed use commercial/residential with a transition to medium density residential development fronting Miles Street to the south of the subject site and retention of the low density residential development on the southern side of Miles Street. It is therefore necessary to ensure that adjoining properties to the south of the subject site will retain a compliant level of solar access on June 21.

Shadow diagrams submitted with the development application indicate that the primary private open space areas of these dwellings will be in shadow between 9:00am to 3:00pm on June 21. However, where Council is faced with other development applications for development of a similar scale on the eastern and western adjoining properties on Gardeners Road, the overshadowing impacts are exacerbated. The cumulative overshadowing impacts have been addressed by the Applicant under a pre-determined goal that at the rear of each dwelling located on the northern side of Miles Street (an east/west aligned street), a space of unbuilt upon land 6m in width by 4m in depth that has access to 2 hours of solar access at the winter solstice will be provided.

Council has received amended shadow diagrams on the 21 March 2014, which indicate that that the proposed development maintains acceptable sunlight access to the rear private open space areas of the adjoining dwellings to the south between 9am and 3pm on June 21. In addition, the Applicant has made further amendments to the design of the development to delete the awning on Level 7 to the rear of the development to further reduce overshadowing caused by the proposed building.

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

Comment: The proposal is of quality design and is appropriate in context given its location on Gardeners Road in an area identified for redevelopment under BBLEP 2013. The width of the shadow, whilst excessive would not be significantly reduced should the development be required to fully comply with built form controls of the

Mascot Station Town Centre Precinct Masterplan. The amended plans incorporate the deletion of the awning to Level 7 and the preservation of a 4m x 6m unimpeded private open space are to each adjoining dwelling to the south.

- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.*

Comment: As submitted on the perspective shadow analysis received by Council on 21 March 2014, the north facing glazed areas of adjoining dwellings to the immediate south will be in direct sunlight from 10:00am to 3:00pm on June 21, being five (5) hours of direct sunlight.

- *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:

Directly to the east is located 577-579 Gardeners Road, currently comprising of a part one and part two storey warehouse building and currently used as a locksmith workshop. This building is constructed on the common boundary with the subject site, being setback approximately 2.5m from the northern boundary to Gardeners Road. Future redevelopment of this site is likely to be of a similar scale to that currently proposed at the subject site. It is anticipated that any future building at this adjoining site will achieve adequate solar access to future private open space balconies and communal areas.

Directly to the west is located No. 589-591 Gardeners Road which comprises of a two storey warehouse building divided into two separate tenancies. These are occupied by a shutter company and automotive repair workshop. Again, any future building at this adjoining site will achieve adequate solar access to private open space balconies on June 21.

As detailed above, the adjoining residential properties to the immediate south have been addressed by the Applicant. Amended shadow diagrams received on 21 March 2014, indicate that the proposed development maintains acceptable sunlight access to the rear private open space areas of the adjoining dwellings to the south between 9am and 3pm on June 21, by identifying a 4m x 6m private open space area directly adjacent to the rear of each dwelling. In addition, the Applicant has made further amendments to the design of the development to delete the awning on Level 7 to the rear of the development to further reduce overshadowing caused by the proposed building.

- *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: The southern boundary adjoining the site to the south on Miles Street has an existing 8.6 metre high masonry wall along its full length. This is proposed to be retained and filled in part to accommodate the proposed development and to screen the lower levels. Its retention will assist in protecting the aural and visual amenity of the adjoining residents. The upper levels of the proposed building at the rear have an increasing setback relative to the increase in building height.

- *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 land to the immediate south has been identified for medium density residential development. As detailed above, the Applicant has addressed overshadowing to the northern elevations of the dwellings to the immediate south and has also addressed the private open space areas. In terms of future development for medium density residential development, Council is currently in the process of developing specific development controls for inclusion in the BBDCP in the future. This will need to consider overshadowing impacts from sites fronting Gardeners Road.

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

These matters have been considered in the assessment of the Development Applications. It is considered that the proposed development will have no significant adverse environmental, social or economic impacts on the locality. Any likely impacts of the proposed development are considered to have been adequately dealt with in the assessment of the Development Application.

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

These matters have been considered in the assessment of the development application. The subject site is currently a commercial warehouse building. Pockets of contamination have been identified on the site however adequate information has been submitted to confirm that the site can be made suitable for the proposed residential and commercial development. In addition, the subject site is affected by the 20-25 ANEF contour and also affected by road traffic noise from Gardeners Road. In this regard, the applicant has submitted an acoustic report which demonstrates that the development can meet the acoustic requirements of both affectations. It is essential that all works forming part of this application be undertaken in an appropriate manner to ensure the ongoing health and safety of adjoining residents and future occupants of the site.

Accordingly, it is considered that the site is suitable for the proposed development. The proposed development being for demolition of existing industrial buildings, excavation and site remediation; removal of seven (7) existing trees along the western boundary; construction of an 8 storey mixed use development comprising of 84 dwellings (36 x one bedroom units and 48 x 2 bedroom units), 235m² of commercial floor space fronting Gardeners Road and 151 car parking spaces; consolidation of four (4) allotments into one (1) Torrens allotment and Torrens stratum subdivision into two

lots being Lot 1 (commercial floor area) and Lot 2 (residential levels and basement car parking) with further Strata subdivision of Lot 1 into two retail lots and further Strata subdivision of Lot 2 into eighty four (84) residential lots; relocation of the access driveways on Gardeners Road and relocation of the Sydney Water easement to the western boundary, at 581-587 Gardeners Road, Mascot located within the B4 – Mixed Use zone is considered to be a suitable development in the context of the site and the locality.

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

These matters have been considered in the assessment of the development application. In accordance with Botany Bay Development Control Plan 2013 Part 2 – Notification and advertising, the development application was notified to surrounding property owners for thirty (30) days from 28 January 2014 to 28 February 2014. Four (4) submissions were received in response to the proposed development, which raises the following issues:

- ***Overshadowing -The size of the proposed development on the north side of ours and adjoining properties, its width and height (8 storeys) would have a serious impact on our property leaving a significant area without any natural light.***

Comment

Shadow diagrams submitted with the development application indicate that the primary private open space areas of dwellings to the south will be in shadow between 9:00am to 3:00pm on June 21. However, where Council is faced with other development applications for development of a similar scale on the eastern and western adjoining properties on Gardeners Road, the overshadowing impacts are exacerbated. Therefore, the cumulative overshadowing impacts have been addressed by the Applicant.

Council has received amended shadow diagrams on the 21 March 2014, which indicate that that the proposed development maintains acceptable sunlight access to the rear private open space areas of the adjoining dwellings to the south between 9am and 3pm on June 21. A dedicated private open space area approximately 4m x 6m directly off the main living areas of these dwellings has been identified. In addition, the Applicant has made further amendments to the design of the development to delete the awning on Level 7 to the rear of the development to further reduce overshadowing caused by the proposed building.

- ***Flooding – the proposed development is located in a known flood area. There was flooding within the last 12-18 months where the deepest part of flooding on Gardeners Road was at the subject site. The flooding caused the factory at the rear of our property to flood (the factory on the subject site)***

Comment

Gardeners Road is subject to frequent flooding at O’Riordan Street. The development application has been accompanied by a Preliminary Flood Statement prepared by Brown Consulting, dated 20 December 2013. The report indicates that the peak 100 year ARI flood level of RL9.5m AHD in Gardeners Road has been modelled from the Mascot West Flood Study 2013. The development proposes a finished floor level of

RL10.00m AHD and RL 9.8m AHD. This is compliant with the requirements of the City of Botany Bay Stormwater Management Technical Guidelines 2013, which requires ramps to basement car parking to be 300mm above the 100year ARI flood level and habitable floors to be 500mm above the 100 year ARI flood level.

The application involves the deviation of the existing stormwater box culvert. Its relocation will remove the culvert from beneath the building and align it with the proposed overland flow path, providing access for maintenance where required. It is proposed to be replaced by a new box culvert along the western boundary (beneath the overland flow path). The proposed culvert will have the capacity of the existing culvert. The stormwater easement will be 2.5 metres wide.

At present, flows in excess of capacity of the drainage lines generate overland flow, which ponds in Gardeners Road. When the driveway at 571 Gardeners Rd spills, (RL9.26m) water then flows to the lots on Miles Street. On this basis, it is considered that the proposed stormwater design, with its deviation and relocation of the stormwater assets and easement will match the capacity of the existing assets and will therefore not create any additional loads on the proposed system. The proposed design is acceptable and will assist in managing overland flow through the site.

- ***Security – the proposed development being an open apartment complex with street access that will allow inhabitants, visitors and intruders to enter the complex to access the rear of our property. What measures would be in place to ensure that there is no reduction in security or negate the increased risk of trespassing or crime to our property.***

Comment

The entrance to the complex will be access controlled at ground level from Gardeners Road for both resident pedestrian access and vehicle access to basement car parking. There are limited opportunities for climbing to the upper levels to gain unlawful entry. Communal terrace areas are located to the rear upper levels to maintain security for adjoining properties to the south. The resident swimming pool at ground level is located behind an 8.6m high boundary wall, which is proposed to be retained as part of the development. Therefore, it would be problematic for anyone to traverse from the subject site to the properties at the rear. The proposed overland flow path is access controlled from Gardeners Road and is below podium level. Access cannot be gained to adjoining properties due to the proposed boundary wall. Along the stormwater easement, access will again be restricted and limited to maintenance access only.

- ***Noise – with the additional dwellings proposed, the potential for increased noise will arise from the proposed two levels of basement parking, the large rear balconies and any air conditioning units that may be located on the balconies.***

Comment

The proposed basement car parking is fully enclosed. The rear swimming pool is located behind a solid 8.6m high masonry boundary wall and is partially enclosed by a cantilevered awning above. The communal terrace on Level 5 would be subject to the rules of the Strata Corporation, which would limit its use. Conditions can be imposed

on any consent granted to require specific hour restrictions on its use. Noise from resident balconies would be subject to a standard amenity condition, limiting noise, which is a condition imposed on all residential development. At this stage, no air conditioning units are proposed, however it will be necessary to comply with AS2021-2000, therefore mechanical ventilation would be required for the proposed apartments. Again, a condition can be imposed on any consent granted to restrict the location and noise which is produced from any future air conditioning units and such details to be submitted prior to the issue of the Construction Certificate.

- ***Privacy – The proposed design has numerous apartments up to eight storey with large glazed area windows facing the rear backyards of adjoining and adjacent residential properties to the south. What right to privacy do the existing residents have? What measures or restrictions will imposed on the proposed development to ensure privacy to adjoining dwellings?***

Comment

The upper levels of the proposed development are setback and increase in separation as the building increases in height. Windows, which have been appropriately located at the rear of the building are living room/study windows. Balconies that are located on the southern elevation are proposed to be treated with increased setbacks and fixed masonry raised planter boxes with minimum dimensions of 1.2m height by 1.0m in width to accommodate a suitable plant zone and to prevent overlooking to adjoining properties. A condition can be imposed that these are maintained at all times with species suitable for screening. The overall distance between the communal terraces on Level 5 to the adjoining dwellings is approximately 38 metres. The private open space area within this distance would be visible on an acute angle from Levels 3 and 4. Level 2 would be unable to see into the private open space area of the adjoining dwellings due to the masonry wall.

Height & Desired Future Character

- ***The proposed development exceeds the height limit by +2 metres which is not acceptable given that the height proposed doubles the shadow cast by the existing factory building, that the height of the ground floor is 1.76 metres above natural ground level (RL8.24m) at the southern boundary. If the basement level were to be lowered, this may assist in overcoming the height issue.***
- ***It can be easily seen that the scale and bulk of the proposed development is out of character with adjoining sites. The predominant building heights of the adjacent mixed use sites along Gardeners Road are well under 10 metres. With a proposed height of 28m, the development will clearly stand on its own with a much larger scale. The adjoining sites to the south are zoned medium density with the dominant height at present of single storey. The proposed height will be 5-6 times that of these adjoining sites.***

Comment

The proposed height is 28m above existing ground level. This is two (2) metres above the maximum height of 26 metres permitted under Clause 4.3 of BBLEP 2013. The height exceedence is limited to the northern part of the proposed building, within the roof plane of Level 7 and is limited to lift overruns and plant rooms, which are suitably screened behind horizontal screening. The additional height does not result in

any adverse impacts on adjoining development in terms of overshadowing, as the plant screening is setback from the parapet of Level 7 below.

The additional height does not involve additional levels to the building. The FSR for the proposed development at 2.46:1 is compliant with the 2.5:1 permitted for the subject site and the bulk and scale of the building with its curved form and blade walls is considered acceptable in this instance and contributes to the streetscape amenity of Gardeners Road. Adjoining sites to the east and west are likely to be developed to a similar height and scale to that currently proposed for the subject site. Development controls are currently being prepared for the precinct through community consultation, which will include transition controls for the land to the immediate south, being the transition between the tower forms envisaged fronting Gardeners Road and the low density scale currently seen on the southern side of Miles Street.

- ***Rear wall – The rear wall built on our boundary currently with a top of RL 16.98m, would be reduced to an amount equal to the reduction in ground floor RL. The proposed demolition and reconstruction of the rear wall raises the issue of ongoing management/maintenance and access.***

Comment

The existing rear masonry wall along the southern boundary is to be retained. Part of the wall is to be filled in to match existing. The retention of the wall will assist in maintaining amenity for adjoining properties. Any required access for construction and maintenance will be a civil matter to be addressed between the respective owners.

- ***Sydney Water Easement – Our neighbour and I also have a sewer easement through our properties, which link into that on the subject site. Given that access is required to this easement at all times, the proposal to construct a building and rear boundary wall will hinder, if not stop access to the sewer easement on the subject site and will make it necessary to gain access to the easement from our properties on Miles Street.***

Comment

The stormwater easement/assets affecting the subject site leave the site at the southern boundary and then traverse over the rear of Nos. 42-48 Miles Street. The proposed deviation would require separate approval from Sydney Water following formal consent being granted. In a letter dated 10 February 2014, Sydney Water has advised that any proposed deviation of the stormwater easement/assets will need to meet specific criteria.

In addition, a sewer main/easement traverses the subject site and then affects Nos. 38-40 Miles Street. Sydney Water have also advised that the developer will be required to liaise with Sydney Water in respect of this sewer main.

- ***Construction timeline/impacts – There is no construction timeline provided with the DA documents, which outline demolition through to completion. What is the likely period of intrusion of noise/dust etc?***
- ***Do the existing buildings contain asbestos elements or other hazardous materials? If so, how will this be managed during demolition?***

- ***The construction hours are Mon-Fri 7:00am to 5:00pm and Sat 7:00am to 3:00pm. How will this be enforced?***

Comment

The timeframe for demolition and construction is not known. Generally a timeframe of 12 months would be expected for a development of this size, however delays from remediation or dewatering may be expected. Should consent be granted, it is appropriate for a hazardous materials survey to be submitted prior to commencement of demolition, which outlines the presence of asbestos elements in the building and how this will be managed/disposed.

Standard construction hours for development sites are Monday to Friday 7:00am to 6:00pm and Saturday 8:00am to 4:00pm. No work is permitted on Sunday or public holidays. Construction hours are subject to a standard noise condition, restricting construction to these hours and the level of noise transmission to adjoining residential boundaries.

- ***Parking – There is a shortfall of parking for the proposed development. The proponent suggests that visitor parking could be increased by extending visitor spaces with spaces allocated to commercial uses on site. How will this be enforced? Overflow parking will be forced onto local streets. Gardeners Road has no on street parking, therefore overflow parking would be parking on Miles Street.***

Comment

The proposed development requires 155 off street car parking spaces in accordance with the requirements of BBDCP 2013. The proposed development provides for 151 car parking spaces, which is a shortfall of four (4) spaces. The shortfall is confined to the commercial tenancy parking, where only two (2) spaces are provided instead of six (6). An additional visitor space is proposed. Each proposed apartment has complying car parking. After hours, the two commercial spaces, would be available for additional visitor parking. The parking shortfall is considered minor. Visitor parking spaces are in excess of the DCP requirements. Therefore, any overflow visitor parking would be minimal. It could also be expected that visitors may park on the northern side of Gardeners Road after hours or in Ellis Avenue (opposite the site), which would be a more direct route, than parking in Miles Street. There are no pedestrian through links along Miles Street through to Gardeners Road, so this would require visitors to park and then walk around to Gardeners Road.

(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.

2.2 Other Matters

2.2.1 External Referrals

- *Sydney Water*

Sydney Water, by letter dated 10 February 2014, has raised an objection to the proposed development as Sydney Water believes that the building will be located above existing stormwater easements/assets. The proposed development, which was referred to Sydney Water for assessment, involves the deviation/relocation of the existing stormwater channel to the western boundary of the site. Details of the stormwater channel relocation were provided to Sydney Water and were supported by:

- Flood Report prepared by Brown Consulting dated 20 December 2013;
- Integrated Water Cycle Plan by Floth Consulting dated 20 December 2013;
- Stormwater Concept Plans prepared by Floth Consulting dated 20 December 2013.

On this basis, the concerns of Sydney Water have been addressed by the Applicant and conditions provided by Sydney Water under the same letter dated 10 February 2014 are recommended to be imposed on any consent granted.

- *NSW Police – Botany Bay Local Area Command*

The application was referred to the NSW Police for a ‘Safer by Design’ Assessment in accordance with the Protocol established between Botany Bay City Council and the NSW Police Force.

The NSW Police identified a ‘medium’ crime risk rating for the proposed development on a sliding scale of low, moderate, high, extreme crime risk.

The key recommendations from the assessment include:

- Installation of CCTV Cameras within and around the development;
- Improved lighting around the car park areas and building within the development;
- Ensuring that building design minimises the potential for climbing onto balconies;
- Landscaping that promotes natural surveillance of all areas;
- Underground car park that does not have hidden areas or dark spots;
- Security measures in place for entry doors and lifts (security passes).

A comprehensive condition is proposed on the consent requiring compliance with the recommendations made in the NSW Police Safer by Design assessment, dated 17 March 2014.

- *NSW Office of Water*

Groundwater levels encountered across the site vary between 5.9m-7.2m AHD. This is approximately 2.3m below ground surface within sandy soils. The proposed basement level will be constructed with a finished floor level of 6.8m AHD. As such, the proposed development is Integrated Development and requires a Controlled Activity Approval for construction dewatering pursuant to the provisions of Section 91 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

In a letter dated 11 February 2014, NSW Office of Water has provided its General Terms of Approval for the proposed development, which have been imposed upon the development in the Schedule of Consent Conditions section of this report.

- *Sydney Airports Corporation Limited (SACL)*

The subject site lies within an area defined in 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 development application was therefore referred to SACL for consideration. Under letter dated 27 March 2014 SACL provided concurrence for the development, subject to conditions, and on the following basis:

- Building height permitted to a maximum of 36.920m AHD; and,

The conditions provided by SACL have been imposed upon the development in the Schedule of Consent Conditions section of this report.

- *Roads and Maritime Services (RMS) / Sydney Regional Development Advisory Service (SRDAC)*

The Application is “Traffic Generating Development” and was referred to RMS. The proposal was considered by RMS and in a letter dated the 13 February 2014, RMS have advised that they have no objection to the proposed development and have provided conditions to be imposed on any consent granted.

2.2.2 Internal Referrals

The development application was referred to relevant internal departments within Council, including the Development Engineer, Traffic Engineer, Landscape Officer, Environmental Scientist and Environmental Health Officer for consideration. Relevant conditions have been imposed into the recommendation of the operational consent.

Design Review Panel (DRP)

The design concept now forming part of this development application currently before the Panel was referred to the DRP, which met on 15 August 2013. The DRP made the following recommendations:

The application is of good quality and is supported in principle, subject to the issues identified being resolved before proceeding to DA stage.

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

	Issue	Officers Response
1	<i>The challenge is to resolve the interface between the two zones, which will be difficult because taller buildings which are permissible on the subject site will overshadow these neighbouring properties;</i>	The Applicant has submitted amended shadow diagrams on the 21 March 2014, which indicate the proposed development maintains acceptable sunlight access to the rear private open space areas of the adjoining dwellings to the south between 9am and 3pm on June 21. In addition, the Applicant has made further amendments to the design of the development to delete the awning on Level 7 to the rear of the development to further reduce overshadowing caused by the proposed building.
2	<i>The single storey podium with an eight storey form above would</i>	The podium fronting Gardeners Road has incorporated a continuous balcony balustrade at

	Issue	Officers Response
	<i>produce an appropriate scale provided that the form of the podium is relatively assertive. It would be desirable for the podium to be further emphasised by including a continuous screening/framing element at the first floor along the frontage to be read as a two storey element. A continuous awning along the frontage would also improve amenity.</i>	the floor to give the appearance of two storey podium element. This is a solid masonry balustrade. The podium also responds to the scale of street trees proposed and this will assist in improving amenity.
3	<i>The scale of the wall on the common boundary to the south, although 2-3 storeys high, should be acceptable, given that it is intended to minimise overshadowing/privacy impacts.</i>	The existing 8.6m height wall on the southern boundary has been retained and incorporated into the design of the development to provide privacy for future occupants and for the adjoining residential development to the immediate south.
4	<i>The building form as proposed is the outcome of addressing the desired future character of the locality and amenity issues relating to separation distances and overshadowing to the south. The extent of stepping to the south is based on the angle of the mid-winter, mid day sunlight and is accepted as a reasonable proposition.</i>	As detailed above, amended shadow diagrams were submitted on the 21 March 2014, which indicate that the rear north facing private open space areas adjoining to the south achieves adequate solar access between 9:00am and 3:00pm on June 21. Privacy impacts have also been reduced by the inclusion of planter boxes to the rear balcony balustrades, increasing setbacks as the building increases in height and selective location of windows and glazing.
5	<i>The curved plan and angled blade walls would assist in reducing the impacts of road noise as units are distanced further from the northern boundary and the resulting building form should be attractive in its context.</i>	The curved plan form and angled blade walls remain unaltered.

Table 7 – Design Review Panel comments

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

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:

- DA13/280 = 84 units @ \$20,000.00 each = \$1,680,000.00

Credit: The Application is entitled to a Section 94 credit based on historic industrial use of the land. This is calculated based on the number of employees that would occupy the floor areas based on previous consents and the rates within the Section 94 Contributions Plan 2005-2010. On this basis a total of \$71,488.00 can be deducted from the total contribution.

Therefore a total Section 94 Contribution of **\$1,608,512.00** is required to be paid to Council in accordance with the draft schedule of Conditions attached to this report.

3.0 Conclusion

The Joint Regional Planning Panel, Sydney East Region (JRPP) is the consent authority for the development application. A total of four (4) submissions were received as a result of the public exhibition process and matters raised have been addressed in this report. The design currently before the Panel has been the subject of a design review process. It is the opinion of the Council as the planning body that the current design has addressed the concerns of local residents and on this basis the proposed development is supported.

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

4.0 RECOMMENDATION

It is recommended that the Joint Regional Planning Panel (JRPP), as the determining Authority in this instance, resolve to:

- (a) Grant consent to the Clause 4.6 variation request under Botany Bay Local Environmental Plan 2013 to permit a maximum building height of 28 metres (RL36.920m); and
- (b) Approve Development Application No. 13/280 for the demolition of existing industrial buildings; removal of seven (7) existing trees along the western boundary that now stand on the development site, followed by excavation and site remediation; construction of an 8 storey mixed use development comprising of 84 dwellings (36 x one bedroom units and 48 x 2 bedroom units), 235m² of commercial floor space fronting Gardeners Road and 151 car parking spaces; consolidation of four (4) allotments into one (1) Torrens allotment and Torrens stratum subdivision into two lots being Lot 1 (commercial floor area) and Lot 2 (residential levels and basement car parking) with further Strata subdivision of Lot 1 into two retail lots and further Strata subdivision of Lot 2 into eighty four (84) residential lots; relocation of the access driveways on Gardeners Road and relocation of the Sydney Water easement to the western boundary at 581-587 Gardeners Road, Mascot, subject to the Conditions imposed in the attached schedule.

5.0 CONDITIONS OF CONSENT

Premises: 581-587 Gardeners Road, Mascot

DA No: 13/280

SCHEDULE OF CONSENT CONDITIONS

GENERAL CONDITIONS

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

Drawing No.	Author	Dated Received
Project No. 13041	MHN Design Union	
DA100 (Rev B)		27 December 2013
DA1000 (Rev B)		27 December 2013
DA1100 (Rev B)		27 December 2013
DA1101 (Rev B)		27 December 2013
DA1102 (Rev B)		27 December 2013
DA1103 (Rev B)		27 December 2013

Drawing No.	Author	Dated Received
DA1104 (Rev B)		27 December 2013
DA2000 (Rev B)		27 December 2013
DA2001 (Rev C)		21 March 2014
DA2002 (Rev B)		27 December 2013
DA2003 (Rev A5)		27 December 2013
DA2003 (Rev B)		27 December 2013
DA2004 (Rev B)		27 December 2013
DA2005 (Rev C)		21 March 2014
DA2006 (Rev B)		27 December 2013
DA2300 (Rev C)		21 March 2014
DA2301 (Rev C)		21 March 2014
DA2400 (Rev C)		21 March 2014
DA2501 (Rev B)		27 December 2013
DA2502 (Rev B)		27 December 2013
DA2503 (Rev B)		27 December 2013
DA2504 (Rev B)		27 December 2013
DA2506 (Rev B)		27 December 2013
DA2507 (Rev A)		20 January 2014
DA2601 (Rev C)		21 March 2014
DA2602 (Rev B)		27 December 2013
DA2610 (Rev C)		21 March 2014
DA2611 (Rev C)		21 March 2014
DA2643 (Rev A)		21 March 2014
DA2644 (Rev A)		21 March 2014
DA2645 (Rev A)		21 March 2014
DA2646 (Rev A)		21 March 2014
DA2647 (Rev A)		21 March 2014
DA2648 (Rev A)		21 March 2014
DA2649 (Rev A)		21 March 2014
Landscape Plans, Issue A LAN_A_000 LAN_A_001 LAN_D_100	380Q	27 December 2013

Drawing No.	Author	Dated Received
LAN_A_101 LAN_F_200 LAN_F_201 LAN_F_202 LAN_D_300 LAN_D_301		
Survey Plan, Reference No. 2205/13	Eric Scerri & Associated Pty Ltd	27 December 2013
Stormwater Concept Plans, Project No. S13429, Drawing Nos.: HD01 (Rev P1) HD02 (Rev P1) HD03 (Rev P1) HD04 (Rev P1) HD05 (Rev P1) HD06 (Rev P1) HD07 (Rev P1) HD08 (Rev P1) HD09 (Rev P1) HD10 (Rev P1)	Emerson Associates Pty Ltd	27 December 2013
Subdivision Plans, Project No. S13429, Drawing Nos.: Draft Torrens DP, Issue A Sheets 1-5, Ref No. 2025DP Draft Strata SP of Lot 1, Issue A, Sheets 1-2, Ref No. 2205SP Draft Strata SP of Lot 2, Issue A, Sheets 1-7, Ref No. 2205SP	Eric Scerri	27 December 2013

Reference Document(s)	Author	Date Received
Statement of Environmental Effects	City Plan Services	27 December 2013
Clause 4.6 Variation	City Plan Services	27 December 2013
DCP Compliance Table	City Plan Services	27 December 2013

Reference Document(s)	Author	Date Received
SEPP 65 Design Verification Statement	Brian Meyerson	27 December 2013
Residential Flat Design Code Compliance	MHN Design Union	27 December 2013
SEPP 65 Report	MHN Design Union	27 December 2013
BASIX Certificate No. 521540M	NSW DoPI	27 December 2013
Waste Management Plan	RMS Projects Pty Ltd	27 December 2013
Wind Impact Assessment, dated 5 Dec 2013	VIPAC Engineers & Scientists Ltd	27 December 2013
Preliminary Stage 1 Environmental Site Assessment, Ref E26796KBrpt	Environmental Investigation Services	27 December 2013
Preliminary Geotechnical Investigation, dated 16 September 2013	JK Geotechnics	27 December 2013
Traffic & Parking Assessment Report, Ref 12471	Varga Traffic Planning Pty Ltd	27 December 2013
Noise Impact Assessment, dated 19 December 2013	VIPAC Engineers & Scientists Ltd	27 December 2013
Construction Management Plan, Ref No. A-7006	MHN Design Union	27 December 2013
BCA & DCP Accessibility Report, dated 21 December 2013	Christopher Summers & Associates	27 December 2013
Preliminary Floor Statement, dated 20 December 2013	Brown Consulting (NSW) Pty Ltd	27 December 2013
BCA Compliance Assessment Report, dated 18 December 2013	Building Certificates Australia Pty Ltd	27 December 2013
Quantity Surveyors Estimate, dated December 2013	Haymann Cohen Pty Ltd	27 December 2013
Construction Traffic Management Plan	Sydney Traffic Control Pty Ltd	20 January 2014
Letter from City Plan Services dated 21 March 2014	City Plan Services	21 March 2014

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

- 2 The applicant must prior to the issue of the Construction Certificate, pay the following fees:

(a)	Builders Security Deposit	\$50,000.00;
(b)	Development Control	\$11,011.00;
(c)	Section 94 Contributions	\$1,608,512.00;
(d)	Subdivision Certificate (Torrens)	\$660.00;
(e)	Strata Subdivision Certificate (Lot 1)	\$610.00;
(f)	Strata Subdivision Certificate (Lot 2)	\$11,270.00.
(g)	Linen Handling Fee (Torrens)	\$495.00.

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

- 3 This Consent relates to land in Lots 13, 14, 15, and 16 in DP 11589 and as such, building works must not encroach on to adjoining lands or the adjoining public place, other than public works required by this consent.

- 4 It is a condition of consent that the applicant shall, at no costs or expense to Council, comply with the following:
 - (a) Replace all the existing above ground electricity and telecommunication cables to underground cables within the site and road reserve area fronting Gardeners Road in accordance with the guidelines and requirements of the relevant utility authorities. The applicant shall bear all the cost of the construction and installation of the cables and any necessary adjustment works. These works and payments shall be completed prior to the issue of the Occupation Certificate; and
 - (b) Provide appropriate and suitable street lighting to a high decorative standard to the Gardeners Road street frontage of the site, so as to provide safety and illumination for residents of the development and pedestrians in the area. All street lighting shall comply with relevant electricity authority guidelines and requirements.

- 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

- (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.

8 Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the each building in the development are fulfilled.

(a) Note:

Relevant BASIX Certificate means:

- (i) A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 96 of the Act, a BASIX Certificate that is

applicable to the development when this development consent is modified); or

- (ii) If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.
- (iii) BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

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

Stormwater

- (a) All direct connections to Sydney Water's stormwater channel are required to comply with Sydney Water's connection requirements and on site detention requirements.
- (b) Direct connections to Sydney Water's stormwater channels are also required to meet contemporary stormwater quality targets. Sydney Water's requirements are that the water quality improvement should meet the target as described in the "Botany Bay & Catchment Water Quality improvement Plan" which was prepared by the Sydney Metropolitan Catchment Management Authority in April 2011.

Water

- (c) The 150 mm drinking water main in Gardeners Road fronting the proposed development 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.
- (d) The proponent will be required to amplify the existing system, providing a 200mm water main frontage to service the proposed development.
- (e) Preliminary investigation shows that the preferred option would be to amplify the existing 150mm drinking water main in Gardeners Road to a 200mm water main off the existing 375mm main in Botany Road, to provide full frontage to the proposed development.

Wastewater

- (f) The wastewater main available for connection is the 450mm main traversing the property constructed under DL 1815.
- (g) 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

- (h) 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.
 - (i) 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 132092 or Sydney Water's website at www.sydneywater.com.au.
- 10 The following conditions are imposed by the NSW Roads and Maritime Service (RMS).
- (a) Ensure that the post development stormwater discharge from the subject site into the RMS drainage system does not exceed the pre development discharge;
- The post development stormwater discharge from the subject site into the RMS drainage system should not exceed the pre development discharge.
- Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to RMS for approval, prior to commencement of any works.
- Details should be forwarded to:
- The Sydney Asset Management
Roads and Maritime Services
PO Box 973 Parramatta CBD 2124
- A plan checking fee will be payable and a performance bond may be required before RMS approval is issued. With regard to the Civil Works requirements please contact the RMS Project Engineer, External Works Ph: 8849 2114 of Fax: 8849 2766
- (b) 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);
 - (c) The 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 NSW Environmental Protection Authority's (EPA's) Environmental Criteria for Road Traffic Noise;
 - (d) All vehicles are to enter and exit in a forward direction;
 - (e) 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;

- (f) The number of car parking and bicycle spaces should be provided to Council's satisfaction;
- (g) 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;
- (h) 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;
- (i) 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;
- (j) All works and regulatory signposting associated with the development are to at no cost to RMS or Council.

11 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 building must prevent any take of groundwater after the authorisation has lapsed by making any below ground level that may be impacts by any water table watertight for the anticipated life of the building. 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.

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

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

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

- (a) The PROPERTY DEVELOPMENT at 581-587 GARDENERS ROAD, MASCOT lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations, which limit the height of structures to 50 feet (15.24 metres) above existing ground height (AEGH) without prior approval of this Corporation.
- (b) The Civil Aviation Safety Authority (CASA) have no objection to the erection of the building to a height of 37 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.

PRIOR TO COMMENCEMENT OF DEMOLITION WORKS

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

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

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

- (c) A copy of the dilapidation report together with the accompanying photographs shall be given to all immediately adjoining properties owners and public utility authorities. The report shall be agreed by all affected parties as a fair record of existing conditions prior to commencement of any works;
- (d) A second dilapidation report, including a photographic survey shall then be submitted at least one month after the completion of demolition/excavation works. A copy of the second dilapidation report together with the accompanying photographs shall be given to Council, public utilities authorities and all adjoining properties owners;
- (e) It is a condition of consent that should demolition, site clearing and site remediation works cause rise to public safety and/or workplace safety; works shall halt until absolute safety is restored;

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

15

- (a) There shall be no loss of support to the Council's nature strip area as a result of the construction within the site. Details prepared by a practicing Structural Engineer of how this support will be maintained during the demolition works shall be submitted to Council prior to the commencement of works.
- (b) Council's property shall be supported at all times. Where any shoring is to be supporting (or located on) Council's property, certified engineering drawings showing all details including the extent of encroachment, the type of shoring and the method of removal, shall be submitted prior to the issue of the Construction Certificate. If the shoring cannot be removed, it shall be cut to 150mm below footpath level and the gap between the shoring and any buildings shall be filled with a 5Mpa lean concrete mix.

16

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

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

- (a) Enclosing and making the site safe, any temporary protective structures must comply with the “Guidelines for Temporary Protective Structures (April 2001)”;
- (b) Induction training for on-site personnel;
- (c) Inspection and removal of asbestos, contamination and other hazardous materials (by appropriately licensed contractors);
- (d) Dust control – Dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site;
- (e) Disconnection of Gas and Electrical Supply;
- (f) Fire Fighting – Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed;
- (g) Access and Egress – No demolition activity shall cause damage to or adversely affect the safe access and egress of this building;
- (h) Waterproofing of any exposed surfaces of adjoining buildings;
- (i) Control of water pollution and leachate and cleaning of vehicles tyres – Proposals shall be in accordance with the “Protection of the Environmental Operations Act 1997”;
- (j) Working hours, in accordance with this Development Consent;
- (k) Confinement of demolished materials in transit;
- (l) Location and method of waste disposal and recycling in accordance with the “Waste Minimisation and Management Act 1995”;
- (m) Sewer – common sewerage system;
- (n) On site monitoring both during asbestos removal and the remainder of demolition activities.

17 To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:

- (a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities to determine the position and level of services;
- (b) Negotiate with the utility authorities (eg Energy Australia, Sydney Water and Telecommunications Carriers) and Council in connection with:
 - (i) The additional load on the system; and
 - (ii) The relocation and/or adjustment of the services affected by the construction.

Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.

- 18 Prior to demolition of any building constructed before 1970, the person acting on this consent shall ensure compliance with Australian Standard *AS2601-2001, Demolition of Structures* by a person with suitable expertise and experience. This may involve a Work Plan that identifies any hazardous materials including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimize any dust nuisance and the disposal methods for hazardous materials, including:
- (a) Removal, cleaning and disposal of lead-based paint shall conform to the current EPA guidelines. Demolition of materials incorporating lead is to be conducted in strict accordance with sections 1.5, 1.6, 1.7, 3.1 and 3.9 of the *AS2601-1991 Demolition of structure*.
 - (b) Hazardous dust shall not be allowed to escape from the site. Any existing accumulations of dust (e.g.; ceiling voids and wall cavities) shall be removed by the use of an industrial vacuum fitted with a high efficiency particulate air (HEPA) filter. All dusty surfaces and dust created from work is to be suppressed by a fine water spray. Water shall not be allowed to enter the street and stormwater systems. Demolition is not to be performed during high winds, which may cause dust to spread beyond the site boundaries.
 - (c) All contractors and employees directly involved in the removal of hazardous dusts and substances wearing protective equipment conforming to Australian Standard *AS1716 Respiratory Protective Devices* and shall adopt work practices in accordance with the requirements of WorkSafe's *Control of Inorganic Lead At Work* (NOHSC: 102(1994) and NOHSC: 2015(1994).
 - (d) All lead-contaminated materials being disposed of in accordance with the Environment Protection Authorities Environmental Guidelines; *Assessment, Classification and Management of Liquid and Non Liquid Wastes (1999)* and *The Protection of the Environment Operations Act 1997 (NSW)*.
- 19 Prior to commencement of any works, the following approvals and permits on Council's property/road reserve under Roads Act 1993 and Local Government Act 1993 shall be made and obtained from Council's Customer Services Counter:
- (a) Permit to erect hoarding on or over a public place, including Council's property/road reserve;
 - (b) Permit for roads and footways occupancy (long term/ short term);
 - (c) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / re-adjustments of utility services;
 - (d) Permit to place skip/waste bin on footpath and/or nature strip;
 - (e) Permit to use any part of Council's road reserve or other Council lands;
 - (f) 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.)

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

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

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

- 20 Erosion and sediment control devices shall be installed and in function prior to the commencement of any demolition works upon the site in order to prevent sediment and silt from site works being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines. These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.
- 21 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.
- 22 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.

- 23 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 Traffic Authority) for approval prior to commencement of any works. The plan shall:
- (a) be prepared by a RTA 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.
- 24 Toilet facilities are to be provided at or in the vicinity of the work site on which work involves the erection of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
- (a) Each toilet provided:
 - (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.
 - (ii) The provisions of toilet facilities in accordance with this clause must be completed before any other work is commenced.
- 25 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 of 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.
- 26 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.
- 27 During demolition, excavation, remediation and construction, the applicant shall ensure that all works and measures have been implemented in accordance with following approved plans at all times:
- (a) Approved Erosion and Sediment Control Plan;
 - (b) Approved Traffic Management Plan and;
 - (c) Approved Construction Management Plan.

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

- 28 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 **\$1,608,512.00** is required as follows:

(a)	Community Facilities	\$173,152.00
(b)	Administration	\$5,376.00
(c)	Open Space & Recreation	\$1,337,584.00
(d)	Transport Management	\$92,400.00

The Section 94 Contribution of **\$1,608,512.00** is to be paid to Council prior to the issue of the first Construction Certificate.

- 29 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.
- 30 Prior to the issue of the Construction Certificate, the planter boxes at the rear upper levels of the building shall have minimum dimensions of 1.2 metres in height and 1.0 metres in width. Details shall be submitted with the Construction Certificate.
- 31 Prior to the issue of the Construction Certificate, the concept landscape plans submitted by *360 degrees, Issue A* shall be the subject of **detailed, amended landscape documentation** to be submitted to and approved by the **City of Botany Bay's Landscape Architect**. The following amendments to the concept plan are to be incorporated in the detailed documentation :
- (a) Additional at-grade or raised planters and 2.5 metres in width shall be provided in the Gardeners road setback across the frontage of the commercial tenancies, to provide a minimum 50% coverage of the street setback with soft landscaping and reduce the dominance of paving. These areas are to include suitable canopy trees;
 - (b) Indicate all tree and shrub spacings ensuring a dense planting of trees and palms in all landscape areas;
 - (c) Incorporate sufficient additional canopy tree planting on Level 1 surrounding the building to ameliorate the development and provide a positive outlook for residents and surrounding properties. The proposed palms are to be supplemented with other suitable evergreen canopy trees;
 - (d) Include small canopy trees in the central communal open space area Level 1 additional to the tree ferns;
 - (e) Ensure cascading plants are incorporated into the planting scheme to soften walls as reflected in the various elevations;
 - (f) All planter beds must be no less than 1 metre in width;

- (g) The public footpath width and location in the road reserve and its construction shall be in accordance with Council landscape specification only;
 - (h) The street tree species are to be substituted with 400 litre *Corymbia maculata* (Spotted Gum) at max. 10 metre spacings.
- 32 A Stage 3 – Remedial Action Plan (RAP) shall be prepared by a suitably qualified and experienced contaminated land consultant and shall be in accordance with:
- (a) NSW Office of Environment and Heritage (OEH) ‘Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites’;
 - (b) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
 - (c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land.
- The RAP shall incorporate all findings and recommendations in the Phase1 Preliminary Site Assessment and Phase 2 Detailed Site Assessment for the site, it shall clearly state proposed cleanup objectives, and demonstrate how the site will be made suitable for the proposed residential use.
- The RAP shall be submitted to Council for review and concurrence prior to commencement of any remedial action works or any excavation, demolition or other building works undertaken that are not associated with the preparation of the RAP.
- 33 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.
- 34 Prior to the issue of a Construction Certificate, the construction drawings shall indicate the following:
- (a) That water will be prevented from penetrating behind fittings/linings and into concealed spaces in laundry, sanitary areas and bathrooms etc;
 - (b) That floor to ceiling in laundry and bathroom areas to be tiled;
 - (c) That timbers used in the development are plantation, recycled or regrowth timbers of timbers grown on Australian farms or State forest plantations and that no old growth or rainforest timbers are to be used in any circumstances; and

- (d) That plumbing to each dwelling will be separated and adequately contained to prevent noise transmission and vibration.

35

- (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.

36 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.

37 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.

38 Prior to the issue of the Construction Certificate, the measures required in the Noise Impact Assessment Report No. 20E-13-0257-TRP-515838-0 prepared by VIPAC Engineers and Scientists Ltd dated 19 December 2013 shall be undertaken in accordance with the provisions of *AS2021-2000: Acoustics – Aircraft Noise Intrusion – Building Siting and Construction* to establish components of construction to achieve indoor design sound levels in accordance with Table 3.3 of AS2021-2000 shall be incorporated into the construction of the building:

39

- (a) 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 dwelling, as detailed in the NSW Road Noise Policy 2011 in accordance with AS 3671-1989 – Acoustic – Road Traffic Intrusion;

- (b) Prior to the issue of the Construction Certificate details are to be provided on acoustic treatment to the entry and exit roller door to driveway of the development to comply with the Office of Environment & Heritage's Industrial Noise Policy and Noise Control Guidelines.
- 40 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.
- 41 Plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Principal Certification Authority with the application for the Construction Certificate. Storage of Waste and recycling shall meet the following requirements:
- (a) The rooms for the storage of garbage and recyclable materials shall be:
- (i) fully enclosed;
 - (ii) adequately ventilated;
 - (iii) Constructed with a concrete floor, concrete or cement rendered walls coved to the floor;
 - (iv) The floor shall be graded to an approved sewer connection incorporating a sump and galvanized grate cover or basket in accordance with the requirements of Sydney Water Corporation.
 - (v) Washing facilities shall be provided within close proximity to the garbage and recycling storage area.
- 42 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.
- 43 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).

- 44 Prior to the issue of the Construction Certificate, detailed construction plans in relation to the development shall be revised and submitted to Council for approval. The plan shall be revised to include the following:
- (a) 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.
- 45 Prior to the issue of the Construction Certificate, detailed construction plans in relation to the stormwater management and disposal system for the development shall be submitted to the Council and Principal Certifying Authority for approval.
- 46 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 Concept Plans prepared by Floth Pty Ltd, Project No. S13429, Drawing Nos. HDA01 to HDA10 and received by Council on the 27 December 2013.
- With the following issues to be complied with and shown on the plans:
- (a) 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.
- (b) 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.
- (c) 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.
- (d) Additional access grates shall be provided to each corner of the OSD tank.
- (e) In order to protect the buildings from stormwater inundation, the OSD tank shall be water-tight.
- (f) The outlet pipes of the OSD system and the GPT shall be minimum 300mm diameter.
- (g) Rainwater tanks shall be provided with a minimum 5,000 L capacity and shall service any landscape systems.
- (h) 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.

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.

- 47 Prior to the issue of the Construction Certificate, design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the car parking area shown on the construction plans has been designed in accordance with AS 2890.1, AS2890.2 (for loading area) and AS2890.6.
- 48 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.
- 49 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.
- 50 The development shall make provision for the following car parking allocations:

Car Parking Rates	Required
1 space per studio unit	36 spaces
2 spaces per 2 bedroom unit	96 spaces
1 visitor space per 7 dwellings	17 spaces
Commercial spaces	2
TOTAL REQUIRED	151

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.

DURING WORKS

- 51 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.
- 52
- (a) Any new information that comes to light during demolition, excavation, remediation and or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council;
 - (b) Results of the monitoring of any field parameters such as soil, groundwater, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the remediation and construction works.
- 53 The land to which this Consent relates must be fenced and enclosed to protect the entry or access to the land and site by lawful persons. The fencing must be in place before demolition works commence.
- 54 Throughout the demolition and 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.
- 55 During demolition and construction works, the applicant/builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.
- 56 The Applicant shall conduct all demolition, construction and related deliveries wholly on site. If any use of Council's road reserve is required then separate applications are to be made at Council's Customer Services Department.
- 57 All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
- 58
- (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.

59 If the land to which the application relates is served by a common sewerage system that is also used by others, then measures must be placed in effect and prior to the commencement of work to ensure the operation of the sewerage system is without disruption to other joint users.

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

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

61

- (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.
- (f) 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.
- (g) 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.

62 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.

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

64

- (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).

65 If any material containing asbestos is found on site during the demolition process the material is to be removed and disposed of in accordance with WorkCover requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m² of bonded asbestos and/or any friable asbestos.

66 Following the completion of the removal of asbestos from the site, an Asbestos Clearance Certificate is to be provided to Council following the final asbestos clearance inspection by a licensed inspector.

67

- (a) Demolition work shall be carried out in accordance with Australian Standards AS 2601-1991 Demolition of Structures and the requirements of the NSW WorkCover Authority; and

- (b) The demolisher shall comply with Australian Standard 2601 - 1993 *"Demolition of Structures"*.
- 68 Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the Department of Environment and Climate Change and Water and with the provisions of:
- (a) New South Wales Occupational Health and Safety Act, 2000;
 - (b) The Occupational Health and Safety (Hazardous Substances) Regulation 2001;
 - (c) The Occupational Health and Safety (Asbestos Removal Work) Regulation 2001;
 - (d) Protection Of the Environment Operations Act 1997 (NSW); and
 - (e) Department of Environment and Climate Change Waste Classification Guidelines (2008).
- 69 The following shall be complied with:
- (a) The construction of the premises shall not give rise to transmission of vibration at any affected premises that exceeds the vibration in buildings criteria outlined in the NSW Environmental Noise Control Manual;
 - (b) Vibration levels induced by the demolition and construction activities shall not exceed 1mm/sec peak particle velocity (ppv) when measured at the footing of any occupied building.
 - (c) Vibration levels induced by the demolition and construction activities shall not exceed 3mm/sec peak particle velocity (ppv) when measured at the footing of any unoccupied building.
 - (d) The upper noise level from the demolition and construction operations measured over a period of 10 minutes must not exceed the background noise level by more than 10dB(A).

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

70

- (a) Prior to the issue of the Occupation Certificate, the development is to be constructed to meet the requirements detailed in the Noise Impact Assessment Report No. 20E-13-0257-TRP-515838-0 prepared by VIPAC Engineers and Scientists Ltd dated 19 December 2013, received by Council 27 December 2013; and
- (b) All acoustic work including that acoustic work required at Condition No. 38 shall be completed prior to the issue of the Occupation Certificate and validated by a person with appropriate qualifications and experience.

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

- (a) Replace all the existing above ground electricity and telecommunication cables to underground cables within the site and road reserve area fronting Gardeners Road in accordance with the guidelines and requirements of the relevant utility authorities. The applicant shall bear all the cost of the construction and installation of the cables and any necessary adjustment works. These works and payments shall be completed prior to the issue of the Occupation Certificate;
- (b) Provide appropriate and suitable street lighting to a high decorative standard to both street frontages of the site, 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;
- (c) The public domain shall be upgraded with new paving and street tree planting, to be installed by the Applicant at the Applicant's expense in accordance with the approved landscape documentation. All improvements shall be in accordance with Council Landscaping and Engineering specifications and requirements, and shall be constructed and complete prior to the issue of an Occupation Certificate;
- (d) New street trees at min. 400 litre pot size specified shall be installed in the Gardeners Road verge in accordance with the approved landscape documentation plans. The trees shall be sourced from a reputable nursery/supplier that grows trees in accordance with the NATSPEC requirements. A Dial-Before-You-Dig enquiry is required prior planting - Council is not liable for any damage to subsurface infrastructure during public domain works. NOTE: Three (3) hold point inspections are required: during construction of tree pits, prior-planting street trees to ensure plant stock is suitable and post-planting to verify final finishes; and
- (e) The public footpath in Gardeners Road shall be re-constructed in accordance with Council specifications. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specification and the approved landscape documentation. Construction hold points and Council inspections are required at the following minimum points:
 - (i) at the commencement of paving works, and
 - (ii) at final completion.

Council approval of public domain works is required prior issue of the Occupation Certificate. NOTE: Pavers shall be ordered accounting for adequate lead time for manufacture (10-12 weeks). No paver substitutes will be permitted.

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

- (a) All residential unit size excluding balconies as minimum must be as following:

- (i) Studio = 60m²
- (ii) 2 bedroom = 100m²

73

- (a) The 151 car parking spaces shall be made available to residents and visitors at all times, with such spaces being clearly marked and signposted prior to issue of the Occupation Certificate;
- (b) Allocation of the car parking shall be as follows:
 - (i) Each studio/one (1) bedroom unit shall be allocated 1 car parking space;
 - (ii) Each two (2) bedroom unit shall be allocated 2 car spaces;
 - (iii) Seventeen (17) visitors car spaces shall be provided. Such spaces being located nearby the entrance to the development.
 Note: Five (5) of the disabled car parking spaces are to be allocated to adaptable dwellings.
 - (iv) One (1) space per commercial tenancy.

74 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.

75 Prior to the issue of the Construction Certificate, the retaining 8.6 metre high masonry wall at the rear boundary line must:

- (a) Be self supporting under the most adverse loading conditions;
- (b) Be finished to a standard commensurate with its residential interface.

76 Street numbers shall be clearly displayed with such numbers being of contrasting colour and adequate size and location for viewing from the footway and roadway. Details of street numbering shall be submitted to Council for approval prior to the issue of the Construction Certificate.

77 Prior to the issue of the Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the car parking area has been constructed generally in accordance with the approved construction plan(s) and comply with AS2890.1, AS2890.2 and AS2890.6 requirements. The internal parking facilities shall be clearly designated, sign posted and line marked. Signage and line marking shall comply with the current Australian Standards.

78 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 Small Rigid Vehicle (SRV) 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.

79 Prior to the issue of the Occupation Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority to the effect that all reduced levels shown upon the approved plans, with relation to drainage, boundary and road reserve levels, have been strictly adhered to.

80 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.

81

- (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.

82 Prior to the issue of the Occupation Certificate:

- (a) the construction of the stormwater drainage system of the proposed development shall be generally in accordance with the approved stormwater management construction plan(s), Council's 'Guidelines for the Design of Stormwater Drainage Systems within City of Botany Bay', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. All downpipes shall be located within the property boundaries; and
- (b) documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and accepted practice.

83 Any damage not shown in the dilapidation report required under Condition No. 14 submitted to Council before site works have commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense, prior to the issue of the Occupation Certificate.

84 The Council nature strips shall be suitably replaced in accordance with Council Specification and the approved landscape documentation at the completion of construction work and at the Applicant's expense.

85 The public area of the residential parts of each building must be designed by a practicing Interior Designer or other appropriately qualified person and include (but not limited to) colour schemes, artwork surface finishes, timber mid rails/skirting boards etc.

86 Prior to the issue of the Occupation Certificate, landscaped areas on the property and in the public domain shall be installed and maintained in accordance with the Council approved amended, detailed landscape documentation, the conditions of consent (inclusive of the above landscape amendments required) and Council's DCP at all times. An experienced Landscape Contractor shall be engaged to undertake the landscaping work and shall be provided with a copy of both the approved amended

landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements. The contractor shall be engaged weekly for a minimum period of 26 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.

87 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.

88 New street trees at min. 400 litre pot size specified shall be installed in the Gardeners Road verge in accordance with the approved landscape documentation plans. The trees shall be sourced from a reputable nursery/supplier that grows trees in accordance with the NATSPEC requirements. A Dial-Before-You-Dig enquiry is required prior planting - Council is not liable for any damage to subsurface infrastructure during public domain works. NOTE: Three (3) hold point inspections are required: during construction of tree pits, prior-planting street trees to ensure plant stock is suitable and post-planting to verify final finishes.

89 The public footpath in Gardeners Road shall be re-constructed in accordance with Council specifications. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specification and the approved landscape documentation. Construction hold points and Council inspections are required at the following minimum points:

- (a) at the commencement of paving works, and
- (b) at final completion.

Council approval of public domain works is required prior issue of the Occupation Certificate. NOTE: Pavers shall be ordered accounting for adequate lead time for manufacture (10-12 weeks). No paver substitutes will be permitted.

90 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.

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

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

- 92 Prior to the issue of the Occupation Certificate:
- (a) Lighting (lux) levels for this development must include the installation of low glare/high uniformity lighting levels in line with Australian Standard AS:1158. Lighting sources should be compatible with requirements of any surveillance system installed within the development. (Poor positioning choices in relation to light can cause glare on the surveillance screens). The luminaries (light covers) should be designed to reduce opportunities for malicious damage. Lighting within the development needs to be checked and maintained on a regular basis. A limited amount of internal lighting should be left on at night to enable patrolling police, security guards and passing people to monitor activities within the premises;
 - (b) Any lighting on the site shall be designed so as not to cause nuisance to other residences in the area or to motorists on nearby roads, and to ensure no adverse impact on the amenity of the surrounding area by light overspill; and,
 - (c) All lighting shall comply with AS4282-1997 Control of the obtrusive effects.
- 93 Prior to the issue of the Occupation Certificate, a Stage 4 – Site Validation Report (SVR) shall be prepared by a suitably qualified contaminated land consultant and shall be in accordance with:
- (a) NSW Office of Environment and Heritage (OEH) ‘Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites’; and
 - (b) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land.
- The site validation report shall provide a notice of completion of remediation works, whether there are any ongoing site management requirements and a clear statement on the suitability of the likely proposed site use. The report shall be submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal Certifying Authority for review and concurrence).
- 94 To ensure that the site is suitable for the proposed use, a Site Audit Statement (SAS) completed by an accredited site auditor under the *Contaminated Land Management Act 1997* shall be submitted to Council clearly demonstrating that the site is suitable for the proposed development. This shall be provided prior to the release of the Occupation Certificate.
- Any conditions imposed on the SAS shall form part of this consent. The accredited site auditor shall provide Council with a copy of the Site Audit Report (SAR) and Site Audit Statement (SAS) prior to the issuing of the Occupation Certificate. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, a Section 96 application pursuant to the *Environmental Planning & Assessment Act 1979* shall be submitted to ensure that they form part of the consent conditions.
- 95 Prior to the issue of the Occupation Certificate and filling of water or use of the pool:

- (a) The provision of a suitable poster showing the details of resuscitation techniques shall be erected. This poster should also contain the advice that "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL", together with details of resuscitation techniques (for adults, children and infants) set out in accordance with the relevant provisions of the document entitled "Cardio Pulmonary Resuscitation", according to the AS 1926.1 2012 and the Swimming Pool Regulation 2008;
- (b) An approved resuscitation poster, outlining life-saving resuscitation procedures, shall be erected and displayed in a prominent position adjacent to the pool.

Note: The above notices shall be kept in a legible condition and at a visible location on the pool side at all times.

- 96 The swimming pool shall be fenced in accordance with Section 7 of the *Swimming Pools Act 1992* and Australian Standard AS1926 (2012), prior to the filling of water in the pool or use of the pool. Such fence shall be provided with a self-latching and self-closing gate, opening outwards, capable of being opened from the poolside only and with provision for permanently locked when not in use. The fence shall be installed to the satisfaction of the Principal Certifying Authority, prior to the filling of water in the pool/use of the pool.
- 97 Prior to issue of any Occupation Certificate, certification from a licence plumber shall be submitted to the Principal Certifying Authority certify that the high-level overflows from the swimming pool shall be gravity fed and connected to Sydney Water's sewer via an approved system has been connected in accordance with the Sydney Water's requirements and the current plumbing codes.
- 98 Prior to the issue of the Occupation Certificate, the pool owners are required to self-register free-of-charge on www.swimmingpoolregister.nsw.gov.au and certify that their pool barrier complies with the regulations. Documentation must be provided to the Principal Certifying Authority to demonstrate the registration.
- 99
 - (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 4, 12 and 70 to 99 of this consent are pre-conditions to the issue of the Occupation Certificate.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

- 100 Prior to the issue of Subdivision Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority showing all the structures are wholly located within the property boundary.

- 101 Positive Covenant and Restriction on Use of the land shall be created to all proposed lots to ensure that car parking for the residential part is not to be to sublet or used for any other purposes.
- 102 In order to ensure that the required on-site detention system will be adequately maintained, Positive Covenant and Restriction on the Use of Land on the Title under Section 88B of the Conveyancing Act 1919 shall be created in favour of Council as the benefiting authority for the as-built on-site detention system on proposed Lots 1 and 2. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are attached. The relative location of the on-site detention system, in relation to the building footprint, shall be shown on a scale sketch, attached as an annexure to the plans/ forms.
- 103 A copy of the Building Management Statement and By-Laws for each of the proposed lots shall be submitted to Council for approval prior to the issue of the Subdivision Certificate. The Building Management Statement and By-Laws shall address all conditions associated with the ongoing use of the development of Development Consent No. 13/280 and include:
- (a) Responsibilities with regard to the ongoing maintenance of the building and landscaped areas at the property in accordance with the plans and details approved under Development Consent No. 13/280;
 - (b) Responsibilities with regard to the maintenance of artificial features at the property in accordance with the plans and details approved under Development Consent No. 13/280;
 - (c) Responsibilities regarding the maintenance of the car wash bay the Owners Corporation / building owner;
 - (d) Responsibilities for ensuring owners and/or tenants have adequate and hygienic waste sterile, 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;
 - (e) Responsibilities to ensure that receptacles for the removal of waste, recycling etc. are put out for collection between 4.00pm and 7.00pm the day prior to collection, and, on the day of collection, being the day following, returned to the premises before 12.00 noon;
 - (f) The Owners Corporation/Executive Committee obligations under clauses 177, 182, 183, 184, 185 and 186 of the Environmental Planning and Assessment Regulation 2000;
 - (g) 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;

- (h) The linen plan must include details of any easements, encroachments, rights of way, including right of footway, restriction as to user or positive covenants and include a Section 88B Instrument under the *Conveyancing Act, 1919*. Council is to be nominated as the only authority permitted to release, vary or modify any easements, encroachments, rights of way, restriction as to user or positive covenants;
- (i) A graffiti management plan for the removal of graffiti and similar vandalism within seven (7) days of its occurrence and surface re-instatement;
- (j) The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines;
- (k) CCTV surveillance of all public areas within the development site; and
- (l) Maintenance of inbuilt acoustic measures for aircraft noise.
- (m) Maintenance of the swimming pool and its ongoing compliance with the standard applying to swimming pools.

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

- 104 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.
- 105 To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscape areas, installed by a qualified landscape contractor. The system shall provide full coverage of all planted areas with no more than 300mm between drippers, automatic controller and backflow prevention device and shall be connected to a recycled water source, where provided. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.
- 106 Planter boxes constructed over a concrete slab shall be built in accordance with the following requirements:

- (a) Ensure soil depths in accordance with Council's DCP Part 3L. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes;
 - (b) A concrete hob or haunch shall be constructed at the internal joint between the sides and base of the planter to contain drainage to within the planter;
 - (c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil;
 - (d) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns;
 - (e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
- 107 Vehicles making deliveries (including goods, merchandise and the like) and accessing the site shall comply with the following requirements:
- (a) The maximum size of vehicles making deliveries and accessing to the site shall be limited to B99 vehicles (5.2m in length, as denoted by the current version of AS/NZS 2890.1) only.
 - (b) All loading and unloading of vehicles shall be carried out wholly within the site. No deliveries to the premises shall be made direct from a public places, public streets or any road related areas (eg. footpath, nature strip, road shoulder, road reserve, public car park, service station etc).
 - (c) Should the external fabric of the building(s), walls to landscaped areas and like constructions be subject to graffiti or similar vandalism, then within seven (7) days of this occurrence, the graffiti must be removed and the affected surface(s) returned to a condition it was in before defilement.
- 108 The ongoing maintenance of the nature strip shall then be undertaken by the occupier/owner/strata body. Maintenance shall include mowing, watering and maintaining an even coverage of grass at all times. Maintenance does not include pruning, trimming, shaping, or any work to street trees located on the road verge/nature strip at any time the removal of weeds and rubbish and maintaining a good, even coverage of grass at any time.
- 109 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.

- 110 New street trees shall be maintained by the Applicant/Owner/Strata Corporation for a twelve (12) month period after planting. Maintenance includes watering twice weekly within the first four months then weekly thereafter to sustain adequate growth and health, annual feeding, weed removal within the mulched base and mulch replenishment at three (3) monthly intervals (to 75mm depth). It does not include trimming or pruning of trees under any circumstances.
- 111 No roller shutters are to be installed to any of the commercial shopfronts that front Gardeners Road.
- 112 The hours of operation of any future commercial use must be restricted to the hours of 7:00am to 10:00pm Monday to Saturday and 7:00am to 8:00pm Sunday and public holidays.
- 113 The use of the premises shall not give rise to any of the following when measured or assessed at “sensitive” positions within any other property. These “sensitive” positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.
 - (a) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
 - (b) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
 - (c) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
 - (d) For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.
- 114 Any air conditioning units shall comply with the following requirements:
 - (a) Air conditioning units are not to be visible from the street or public place and are not to obscure windows/window frames or architectural features of the dwelling.
 - (b) A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a

habitable room in any other residential premises (regardless of whether any door or window to that room is open):

- (i) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
- (ii) Before 7 am or after 10 pm on any other day.
- (c) The transmission of vibration to any place of different occupancy above the requirements of AS2670, Australian Standard AS2021- 2000: Acoustics, Aircraft Noise Intrusion, Building Siting and Construction. Australian Standard AS2107 2000: Recommended Design Sound levels and Reverberation levels for Building Interiors.
- (d) Any air-conditioning unit shall comply with the City of Botany Bay's General Noise Criteria detailed in Condition 113 above.

115

- (a) The noise emitted from a domestic swimming pool pump, spa and related fixed equipment should not exceed the background level (LA90) by more than 5dB(A) when measured on any neighbouring property. The measured level (LA90), measured for not less than five (5) minutes, should be made at a time when the equipment is intended to be operated and the background levels are lowest.
- (b) A correction of 5dB(A) should be added to the measured level if the noise is tonal.
- (c) The noise emitted from the swimming pool and spa equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq40dB(A) night time.
- (d) A time switch should be installed on the equipment to control its operating hours.

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.

116

- (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 12, shall be monitored by CCTV cameras at all times.

- 117 New street trees shall be maintained by the Applicant/Owner/Strata Corporation for 12 months after planting (ie. final hold-point inspection). Maintenance includes watering twice weekly to enable good establishment and sustain adequate growth. There shall be two (2) fertilizer applications using a suitable product for natives applied at manufacturer's recommendations, ongoing weed removal, mulch replenishment (minimum of 2) maintaining a 1 metre wide mulch ring at all times and removal of grass/weeds within the mulch ring. Maintenance does not include trimming or pruning the trees under any circumstances. Formative pruning will be undertaken by Council.
- 118 The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation and to Council's satisfaction at all times. The automatic drip irrigation system shall be maintained in working order at all times.
- 119
- (a) The pool must not be filled with bore water or groundwater;
 - (b) Access to an area in which a swimming pool is located shall not be through any garage, outbuilding or dwelling;
 - (c) The construction that encloses the swimming pool for reasons of 'child safety', viz the access gates, fencing and the like must at all times maintained in a state of good repair and condition; and
 - (d) The resuscitation chart required under Condition No. 95 shall be visible at all times and maintained in good repair and condition.
- 120 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. 13/280 dated as 27 December 2013 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.