

JOINT REGIONAL PLANNING PANEL (Sydney East Region)

JRPP No	2014SYE107
DA Number	14(146)
Local Government Area	City of Botany Bay
Proposed Development	<p>Integrated Development – The proposal comprises:</p> <ul style="list-style-type: none"> ▪ Demolition of the existing commercial building, removal of trees and construction of two 14 storey mixed use buildings containing 1440sqm of retail and 499 residential apartments. ▪ Three basement levels and one ground level of car parking will be provided below Building A, linking with the basement for the adjoining building at 39 Kent Road. Building B includes one basement level and three above ground parking levels. ▪ The proposal provides a total of 792 car parking spaces plus a public car park for 93 car parking spaces. ▪ A Voluntary Planning Agreement under S93F of the Environmental Planning and Assessment Act, 1979 accompanies the development application for the proposed works which include: <ul style="list-style-type: none"> - Dedication and embellishment of a through site link to provide public pedestrian access from Coward Street to John Street. - Provision of a public car park accommodating 93 car parking spaces.
Street Address	<p>256-280 Coward Street Mascot NSW 2020</p> <p>Lot 1 DP 805156; Lot 1 DP 1081391</p>
Applicant/Owner	<p>Applicant – Krikis Tayler Architects P/L</p> <p>Owner – JKN Coward P/L</p>
Number of Submissions	<p>6 August 2014 to 5 September 2014</p> <p>No public submissions were received.</p>
Regional Development Criteria (Schedule 4A of the Act)	<p>The development application is referred to the JRPP pursuant to Clause 3 of Schedule 4A of the Act as the Capital Investment Value (CIV) of the proposal is over \$20 million.</p> <p>The CIV of this development \$128,000,000.00.</p>

List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • Environmental Planning & Assessment Act 1979, Part 4 • Environmental Planning & Assessment Regulation 2000, Part 6 – Procedures relating to development applications • State Environmental Planning Policy No. 55 – Contaminated Land • State Environmental Planning Policy 2004 (BASIX); • State Environmental Planning Policy No. 65 – Design Quality of Residential Flat buildings • Botany Bay Local Environmental Plan 2013 • Botany Bay Development Control Plan 2013
List all documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> • Architectural Plans – Krikis Tayler Architects • Statement of Environmental Effects – LJB Urban Planning • Clause 4.6 Exception – LJB Urban Planning
Recommendation	Refusal
Report by	Heather Warton, Director, City Planning & Environment City of Botany Bay Council

EXECUTIVE SUMMARY

This is a report to the Joint Regional Planning Panel (JRPP) in relation to a Development Application for the following works at 256-280 Coward Street Mascot:

- Demolition of the existing commercial building, removal of trees and construction of two 14 storey mixed use buildings containing 1440sqm of retail and 499 residential apartments. Three basement levels and one ground level of car parking will be provided below Building A, linking with the basement for the adjoining building at 39 Kent Road. Building B includes one basement level and three above ground parking levels. The proposal provides a total of 792 car parking spaces plus a public car park for 93 car parking spaces.
- A Voluntary Planning Agreement under S93F of the Environmental Planning and Assessment Act, 1979 accompanies the development application for the proposed works which include:
 - Dedication and embellishment of a through site link to provide public pedestrian access from Coward Street to John Street.
 - Provision of a public car park accommodating 93 car parking spaces.

The application includes a portion of the site at 39 Kent Road Mascot, which has an existing approval for a 14 storey mixed use development with an FSR of 4.2:1. The basement of the subject application will be joined to the approved and constructed

basement of 39 Kent Road Mascot, and the subject building is designed to continue the built form of the approved 14 storey tower along Coward Street.

The 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 \$128,000,000.00.

The application is classified as Integrated Development, pursuant to Section 91 of the EP&A Act as the development involves construction dewatering (a temporary process) and therefore requires approval from the NSW Office of Water. In a letter dated 18 August 2014, the NSW Office of Water granted its General Terms of Approval to the proposed development.

The application was lodged with Council on 30 June 2014 by Krikis Tayler Architects (the applicant). The application was notified from 6 August 2014 to 5 September 2014. No public submissions were received.

Under the Botany Bay Local Environmental Plan 2013 (BBLEP 2013), the site is zoned B2 Local Centre, has an FSR of 3.2:1 and a height control of 44 metres. The site is located within the Mascot Town Centre, and the built form is governed by the Mascot Station Town Centre Precinct Master Plan, which forms part of the Botany Bay Development Control Plan 2013 (BB DCP 2013).

Originally, the development application comprised 542 apartments in the form of two 14 storey towers, with minimal building breaks, setbacks or articulation. The applicant submits that the Floor Space Ratio (FSR) of the proposal was 4.68:1, however the calculation of the GFA did not include the internal corridors. The definition of GFA in BBLEP 2013 does not omit corridors. Inclusion of the corridors would likely result in an FSR of about 5:1.

The application includes the delivery of a public benefit in the form of a 93 car space car park that will be dedicated to council via a stratum subdivision, and the dedication of a through site link. The applicant has submitted an offer to enter into a Voluntary Planning Agreement (VPA) and a Draft VPA as part of the application. Regarding the through site link, Council does insist that it be dedicated to Council. With regards to the car park, entry to the public car park is proposed via private land (owned by Meriton) that is not part of the subject site and there is no documentation to demonstrate how such access will function. Therefore, there is limited certainty as to how the car park will be accessible.

As a result of discussions with Council staff, between December 2014 and January 2015, the applicant undertook amendments to the application, resulting in the deletion of 43 apartments, by reducing the height of the central portion of the towers to 12 storeys and introducing setbacks to the centre of the towers, which formed a podium-like structure.

These amendments resulted in 499 apartments, which the applicant submits has an FSR of 4.28:1. However, the internal corridors have also been excluded from this FSR calculation and therefore the FSR is actually in the order of 4.65:1. Supplementary documentation in support of this scheme was lodged between January 2015 and March 2015.

Whilst the amended scheme is considered an improvement to the original application, the scheme retains non-compliances, to the extent that Council officers cannot support the application.

The key issues are:

- Excessive bulk and scale
- Excessive FSR
- Non-compliant height
- Poor resolution of built form and streetscape presentation.

Council formally advised the applicant on 17 April 2015 that it cannot support the application in its current form, and that unless amendments were made, the application will be recommended for refusal.

In an attempt to resolve the issues, meetings were held with the applicant on 17 April 2015, 24 April 2015 and 1 May 2015. At a meeting on 1 May 2015, the applicant submitted preliminary documentation to demonstrate that further amendments could be undertaken to address the issues raised by Council. On 5 May 2015, the applicant submitted amended architectural plans and an amended Clause 4.6 Exception in support of the amended scheme. The amended scheme has reduced the total number of apartments to 474 and reduced the height of the podium.

The amended documentation indicates that the applicant is willing to resolve the outstanding planning issues. However, the scheme retains a non-compliant FSR. It is also noted that the applicant has not had sufficient time to submit documentation in support of this scheme. Therefore, it is not possible to carry out an assessment of the scheme that was issued on 5 May 2015. Council will require further information to justify the extent of FSR, compared to the public benefit provided in the form of the proposed public car park.

Council's officers advised the applicant that it would be more appropriate to consider the amendments to a future JRPP meeting, possibly a date in early June 2015, but the applicant was insistent that the matter be referred to the 20 May 2015 meeting.

Therefore, an assessment can only be carried out on the documentation that is available, which is the scheme of 499 apartments. This application does not comply with the FSR standard and the impact of this non-compliant FSR is acceptable bulk, scale and streetscape presentation. The application also has significant non-compliances with the amenity provisions of SEPP 65.

The application is therefore **recommended** for refusal.

RECOMMENDATION

It is recommend that the Joint Regional Planning Panel (JRPP) for the Sydney East Region, as the Consent Authority, resolve to **refuse** Development Application No. 14/146 for the following reasons:

1. The proposed development is inconsistent with the objectives and development standards of Clause 4.3 of the Botany Bay Local Environmental Plan 2013 as it exceeds the Maximum Height of Buildings for the subject site, which results in adverse impacts on the streetscape amenity and the amenity of adjoining developments.. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).
2. The proposed development is inconsistent with the objectives and standards of Clause 4.4 of Botany Bay Local Environmental Plan 2013 as it exceeds the Maximum FSR of Buildings for the subject site, which results in adverse impacts in terms of bulk, scale, parking and traffic and streetscape amenity. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
3. The proposed development fails to adequately justify the contravention of height and floor space ratio of buildings under Clause 4.3 and 4.4, and has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and there are insufficient environmental planning grounds to justify contravening the development standard. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
4. The contravention of the Height and FSR development standard will not be in the public interest as it is not consistent with the objectives of the standard for the zone. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
5. The proposed development fails to satisfy the requirements of Parts 9A of the Botany Bay Development Control Plan 2013, in relation to non-compliance with building height, unit mix, setbacks, and bulk and scale. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(iii)*).
6. The proposed development is not in the public interest as the proposed design in its current form results in adverse impacts on the amenity of the locality as a result of non-compliance with building height, unit mix, setbacks, which are inconsistent with the built form envisaged for the subject site. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(e)*).
7. The proposed development is inconsistent with the objectives and requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings, in that it does not fulfil the requirements of Part 2 - Design Quality Principles in respect of scale, built form, density, amenity and social dimensions. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).

8. The proposed development is not in the public interest as the proposed design in its current form inconsistent with the future desired character of the subject site. (Environmental Planning & Assessment Act 1979 Section 79C(1)(e)).

1. SITE DESCRIPTION

The subject site is known as 256-280 Coward Street Mascot and is located within the Mascot Town Centre. The subject application includes a minor portion of the adjoining site at 39 Kent Road Mascot. The legal description of the allotments are described below.

- Lot 1 DP 805156 – 256-280 Coward Street Mascot, being 10,525 m².
- Lot 1 DP 1081391 – 39 Kent Road Mascot, being 3,712 m².

256-280 Coward Street is located on the northern side of Coward Street, to the east of the Kent Road and Coward Street intersection. The site is an irregular shaped allotment with an area of 10,525 m² and a frontage of 182.825 metres to Coward Street. The site is zoned B2 Local Centre under the BB LEP 2013.

The site has a fall of approx. 3.6 metres from east to west along Coward Street and approx. 700mm to 2.5m south to north across the site. The site accommodates an existing part 1, 2 & 3 storey concrete building with basement car parking that is accessed from Coward Street. The building is large and extends along Coward Street some 150m, with at grade car parking positioned at the western end of the site. The majority of the site is covered by the existing building. Presently, there are limited landscape areas on site along the boundary of the Coward Street frontage. The existing improvements shall be demolished as part of the application.

The subject site is one of the last remaining un-developed allotments within the Mascot Town Centre.



Figure 1 – The subject site.

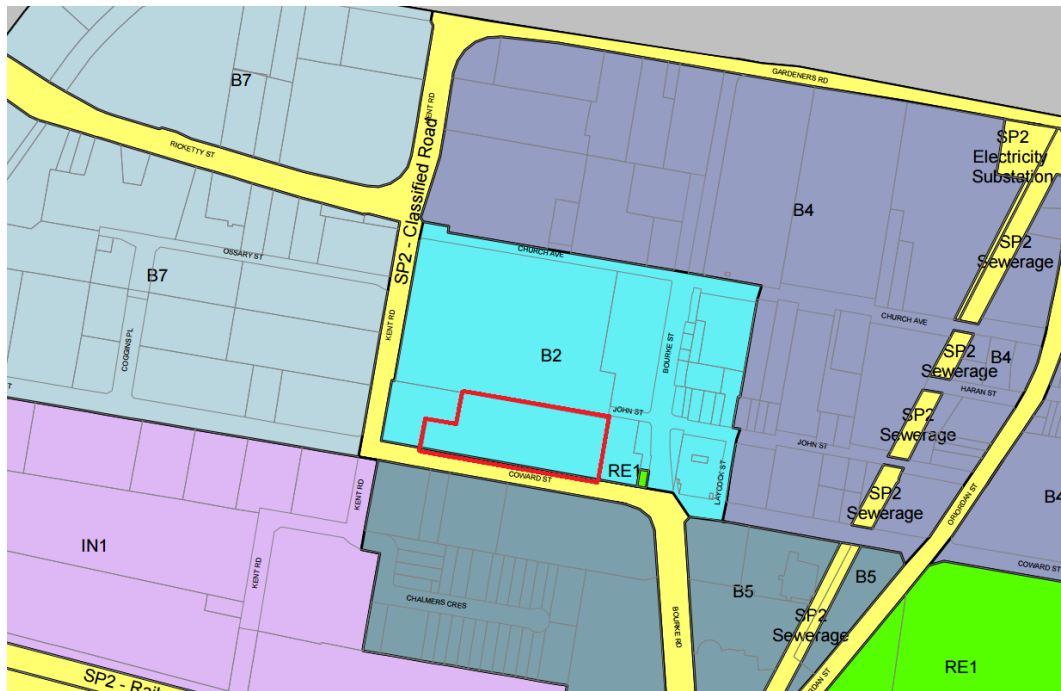


Figure 2 – Zoning Map of the development site



Photo 1: Existing building, as viewed from Coward Street



Photo 2: Existing building, as viewed from Coward Street



2. SURROUNDING DEVELOPMENT

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

The site is located within the Mascot Station Precinct Town Centre and is in close proximity to the underground Mascot station. The precinct is located in close proximity to major regional road networks and Port Botany. As such the site has superior 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.

The site is located within the traditionally industrial part of Mascot. The Botany Bay LEP 2013 resulted in rezoning of industrial land to Mixed Use land being: B2, B4, B5 and B7 zoned land.

The site is situated within the Mascot Station Precinct (Urban Block 1) which is bounded by Kent Road Street to the west, Gardeners Road to the north, Coward Street to the south and Bourke Street to the east. The precinct is comprised of a variety of land uses including commercial/warehousing, distribution centres offices and mixed use residential/retail.

To the north of the site is the recently approved 19-33 Kent Road development currently under construction by Meriton (DA 13/200). To the west of the site is 39 Kent Road, which has an approval for a 14 storey building (DA 13/227).

To the south of the site and outside of the Mascot Station Town Centre Precinct is the Qantas Headquarters and other office/commercial activities generally related to Sydney Airport including TNT.



Photo 3: Adjoining development along Bourke Street Mascot



Photo 4: Development along Coward Street Mascot



Photo 5: View of John Street, from Bourke Road



Photo 6: TNT Building along Coward Street

3. THE PROPOSAL

The development application in its amended form requests consent for the following:

- Demolition of the existing commercial building, removal of trees and construction of two 14 storey mixed use buildings containing 1440sqm of retail and 499 residential apartments. Three basement levels and one ground level of car parking will be provided below Building A, linking with the basement for the adjoining building at 39 Kent Road. Building B includes one basement level and three above ground parking levels. The proposal provides a total of 792 car parking spaces plus a public car park for 93 car parking spaces.
- A Voluntary Planning Agreement under S93F of the Environmental Planning and Assessment Act, 1979 accompanies the development application for the proposed works which include:
 - Dedication and embellishment of a through site link to provide public pedestrian access from Coward Street to John Street.
 - Provision of a public car park accommodating 93 car parking spaces.

The assessment in this report is based upon the above scheme.

Originally, the development application comprised 542 apartments in the form of two 14 storey towers, with minimal building breaks, setbacks or articulation. The Floor Space Ratio (FSR) of the proposal was 4.68:1, however the GFA calculation did not include internal corridors, GFA as defined in BBLEP 2013 does not exclude corridors. If the internal corridors were included, then the FSR would be closer to 5:1. A discussion regarding FSR is provided in this report.

The development is designed as two buildings (Building A and Building B), with the towers at either end being 14 storeys. The towers include a 4 storey central portion that setbacks 2.5 metres on the upper levels up to level 9, with a further 7 metre setback from level 9 to level 12. Level 13 and 14 of the towers provide a book-end structure at either side of the development. The development is designed in a u-shape manner, with communal open space provided in the central opening.

The ground floor retail level is designed with a double height providing a void area above. Some apartments are provided adjacent to the void on level 1. The development includes retail spaces fronting along Coward Street and the through site link, providing an active edge at the street level.

Building A has been designed to marry up to the adjoining approved 14 storey building at 39 Kent Road, essentially providing a uniform building. The basement of Building A will be connected to the basement of the building at 39 Kent Road, providing a shared basement level, with all vehicular access to Building A via the basement of 39 Kent Road, which is from the new proposed road (John Street extension).

Building B is designed as a 14 storey building, with a central podium and 14 storey tower at either end. Building B includes a proposed public car park, which has approximately 93 car parking spaces. Building B includes retail and resident parking in a partially above ground car park that forms part of the podium for the development.

The public car park entry is proposed to be accessed via land associated with the development at 19-33 Kent Road (Meriton site), from John Street. There is no documentation to demonstrate that there is an agreement for access to the basement between Meriton and the subject developer. Without such an agreement, it is not possible to determine if access to the public car park is possible. The access to the car park and the ongoing management of the car park are yet to be resolved.

The proposal includes a 1630 sqm through site link between the two buildings. The applicant proposes to dedicate this link to Council, at no cost. The through link provides a 26 metre separation between the two buildings, and shall provide a link to the future development at 19-33 Kent Road. Council does not require dedication of this land necessarily, but a public ROW will be required. This land has been included as part of the site for the purposes of calculation of FSR.

A summary of the previous, current and potential scheme is provided below

Original DA Lodged



Figure 3: 3D View along Coward Street.



Figure 4: Coward Street elevation.

- Description: Two x 14 storey towers in a u-shape building with no building breaks, other than a through site link in-between the two forms.
- FSR: 4.68:1 or GFA of 49,331 sqm, but this did not include corridors (actual is closer to 5:1).
- GFA departure from 3.2:1 – 15,651 sqm, if FSR was 4.68

- Units: 542 units
- Height: 46.8 metres or 14 storeys
- VPA: Dedication of through site link and construction of and dedication of 93 car space public car park.

Amended scheme / application assessed in this report



Figure 5: 3D view along Coward Street, with central podium setback



Figure 6: Coward Street elevation

- Description: Two x 14 storey towers, with central podium reduced in height to 12 storeys. The central podium has a nil setback for 4 storeys, then a setback of 2.5 metres up to level 9, with a further 7 metre setback from level 9 to level 12.
- FSR: Applicants submits 4.28:1 or GFA of 45,099 sqm (not including corridors). However, corridors should be included and therefore the FSR would approximately be 4.65:1 or 48,941.25 sqm.
- GFA departure from 3.2:1 – 11,419 sqm (not including corridors); actual departure is higher
- Units: 499 units
- Height: 46.8 metres or 14 storeys (no change)
- VPA: Dedication of through site link and construction of and dedication of 93 car space public car park.

Amendments submitted by applicant on 05/05/15

Whilst no assessment of these amendments are provided within this report, it is considered that there is planning merit in further investigating this scheme for the site.



Figure 7: 3D view of potential amendments



Figure 8: Coward Street elevation

- Description: Two x 14 storey towers, with central podium reduced in height to 8 storeys. The central podium is 8 storeys with a nil setback up to 4 storeys, then a setback (distance to be confirmed) from level 5 to level 8. Building A tower has been re-designed into a curved building. The building elevations shall incorporate new building breaks on either side. The buildings are to be designed to appear as two separate buildings that shall look different.
- FSR: 4.45:1 including internal corridors. Approx GFA of 46,836.25 sqm
- GFA departure from 3.2:1 – 13,156.25 sqm
- Units: Approx 474 units.
- Height: 46.8 metres or 14 storeys (no change)
- VPA: Dedication of through site link and 93 car space public car park (retained)
- Main amendment: the podium has been reduced to 8 storeys, providing a break between the 14 storey towers.

Numeric Overview

The numeric overview of the proposed development is as follows:

Control	Required	Proposal	Complies
FSR	3.2:1 (under BBLEP 2013 (7,920m ²))	Applicant submits: 4.28:1 or 45,099 m ² – corridors have been excluded. Definition of FSR includes corridors Therefore, FSR is more likely to be 4.65:1 or 48,941.25 sqm.	No – Clause 4.6 Variation submitted
Height	44 metres (under BBLEP 2013)	46.8 metres	No – Clause 4.6 Variation submitted
Car Parking	796 spaces are required as follows for the proposal: <ul style="list-style-type: none"> • 707 residential; • 71.2 visitors; • 18 commercial. 	798 spaces are proposed as follows: <ul style="list-style-type: none"> • 707 residential; • 72 visitors; • 19 commercial 	Yes
Communal Space	20% for residential flat buildings	31% (includes public park dedication total of 3,676 m ²) Communal open space for the development itself was not provided.	No, space for residents will be less than 20%
Unit Sizes	Studio: 60m ² 1 bedroom: 75m ² 2 bedrooms: 100m ² 3 bedrooms: 100m ²	Studio = 60m ² 1 Bedroom = 75m ² 2 Bedroom = 100m ² 3 bedrooms: 100m ²	Yes

Table 1 – Summary of Compliance

The unit mix of the development is as follows:

	TOTAL	Unit Mix
Studio	9	2%
1 bedroom	282	56.5%
2 bedroom	206	41%
3 bedroom	2	0.5%
	499	100%

Table 2 – Unit Mix

Floor Space Ratio

The BBLEP 2013 provides for a maximum Floor Space Ratio (FSR) of 3.2:1.

The application includes part of the adjoining land at 39 Kent Street Mascot, which has an existing approval for a 14 storey mixed use development with an approved FSR of 4.2:1 (DA 13/227). This building is under construction. This land has not been included in the FSR calculation.

39 Kent Road has a site area of 3,712 m² with an approved FSR of 4.2:1 or GFA of 15,622 m². This FSR calculation did not include the internal corridors.

256-280 Coward Street has a site area of 10,525 m², and based upon an FSR of 3.2:1, equates to a permissible GFA of 33,680 m².

The applicant submits that the proposed FSR is 4.28:1 or a GFA of 45,099 m², wholly based upon 256-280 Coward Street. However, the FSR calculation must include internal corridors. Upon inclusion of the corridors, the FSR is approximately 4.65:1 or a GFA of 48,941.25sqm. This exceeds the permissible GFA by 15,261.25 m².

The applicant has submitted a Clause 4.6 Exception.

Height of Building

The application proposes a height of 46.8 metres, representing a non-compliance of 2.8 metres. The development is in the form of two 14 storey towers, with 12 storey central podiums.

The applicant has submitted a Clause 4.6 Exception in support of the proposed non-compliance.

Public Domain Works and Open Space

AS discussed above, the application includes a letter of offer to enter into a Draft Voluntary Planning Agreement (VPA) with Council to provide a public benefit in the form of the dedication of the through site link and the provision of a public car park accommodating 93 car parking spaces. However, public access to the public car park has not been resolved.

4. PLANNING CONSIDERATIONS

SECTION 79C CONSIDERATIONS

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

- (a) **The provisions of any EPI and DCP and any other matters prescribed by the Regulations. (S.79C(1)(a)(i)and(iii))**

Environmental Planning and Assessment Act 1979 – Integrated Development

The proposal constitutes Integrated Development as it involves the construction of a basement that will transect the water table. The application was referred to the NSW Office of Water for its approval under the *Water Management Act 2000*.

Before granting development consent to an application, the consent authority must, in accordance with the regulations, obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development. In this regard, the development application was referred to the NSW Office of Water. In a letter dated 18 August 2014, NSW Office of Water has provided its General Terms of Approval for the proposed development.,

Environmental Planning and Assessment Act 1979 – 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 \$128,000,000.

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 and Impact Assessment Report prepared by Thompson Stanbury Associates, dated June 2014.

Plans and documentation were referred to the NSW RMS for consideration and comment. In a letter dated 17 September 2014, the RMS has advised that it has no objection to the proposed development and has provided conditions which could be applied if the development was to be approved.

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

A BASIX Certificate has been submitted with the application.

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 Phase 1 Environmental Site Investigation prepared by Environmental Investigations. The investigation concluded that the site has been

historically utilised for residential purposes with some farming and market, after which the site was commercial and industrial in nature, and that the potential risk for contamination on the site is moderate to low. The report recommends that a Phase 2 Site Environmental Assessment Report and Acid Sulfate Soil Assessment be carried out.

Further, the applicant submits that further detailed analysis could not be undertaken due to the location of the existing buildings on the site, and that post demolition of the buildings, further assessment can be undertaken.

If the application was to be approved, a Phase 2 Site Environmental Assessment Report and Acid Sulfate Soil Assessment report would be required to be submitted to confirm that the site can be made suitable for the intended residential use,

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.

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, 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 during the assessment of the application on September 2014. The DRP concluded that it cannot support the proposal for the reasons relating to built form and density.

The ten design principles are addressed as follows:

Design Quality Principles

The ten design principles identified in the Residential Flat Design Code (RFDC) are addressed below and where relevant, include the specific comments raised by Council's Design Review Panel (from their report dated 13 March 2013) together with a commentary provided by the Applicant.

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 Mascot Station Town Centre, Urban Block 1 being the urban core of the precinct which has been identified for re-development in accordance with the Mascot Station Town Centre Precinct Masterplan. The controls of Part 9A of BB DCP 2013 apply.

The site a sloping topography of 4 metres from east to west. Coward Street is subject to heavy traffic movement, with associated pollution and noise impacts from the identified traffic movement.

Urban Block 1 includes the 19-33 Kent Road, 39 Kent Road and 246 Coward Street, which all range in height and mass, with buildings up to 14 storeys in height. However, the proposal does not contribute to the context as its density is much greater than surrounding development and generates an undesirable streetscape character.

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 14 storey building with a central 12 storey podium. The central podium is designed as a 4 storey central portion that setbacks 2.5 metres on the upper levels up to level 9, with a further 7 metre setback from level 9 to level 12. Level 13 and 14 of the towers provide a book-end structure at either side of the development.

The scale and density of the proposed development is greater than several of the approved developments located in close proximity to the site, particularly on Kent Road, Church Avenue and Coward Street (some of these are yet to be constructed or are under construction). Recently approved and constructed developments attain a height of 6 to 13 storeys with podium level commercial premises upon which is erected residential towers. However, the FSR of approved development in the vicinity is less than the proposed FSR within the development.

To the east is 246 Coward Street, which was approved by the JRPP for the construction of a 13 storey residential flat building.

To the west is 39 Kent Road which was approved by the JRPP for the construction of a 14 storey residential flat building.

The following extracts indicates the scale of the development in the immediate context.



Figure 0: 3D view of subject development in context with adjoining development within Mascot Town centre



Figure 10: 3D view of subject development in context with adjoining development within Mascot Town centre

The scale of the proposed development is considered to be greater than the scale of recently approved development in the immediate vicinity.

This issue is a combination of non-compliant height, FSR and subsequent density, bulk and scale.

The height of the proposed development is 46.8 metres, and the FSR proposed is in excess of 4.65:1, which both exceed the standards contained in BB LEP 2013.

Significant amendments to the bulk and scale of the development are considered necessary.

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 will comprise of two buildings that are up to 14 storeys, with a central podium. The building facades are articulated through horizontal and vertical elements, detailed and varied balcony treatments, and a modern and varied material/finishes selection.

The overall built form is not compatible with the adjacent developments and the emerging character of the area. Although the building height and form unifies with the adjoining approved development at 39 Kent Road, the resulting bulky built form along Coward Street compromises the streetscape presentation.

Overshadowing as a result of the development is concentrated to the road and business zone to the south and visual impact to the adjoining development to the south.

Principle 4: Density

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

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

The proposed FSR of 4.65:1 (48,941.25 m²) does not comply with the maximum FSR permitted for the subject site of 3.2:1.

The FSR departure is substantial and exceeds the permissible GFA by 15,261.25 sqm.

The resulting bulk and scale due to the excessive FSR is not considered appropriate for the site. The DRP stated that the FSR variation was excessive and that it had “strong reservations about many aspects of the design and excessive FSR is a substantial contributor to these concerns”. The FSR of current scheme cannot be supported.

This is discussed in the Clause 4.6 assessment.

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 site is substantially overshadowed in mid-winter as a result of recent approvals to the north of the site. This constraint, limits the opportunity for effective solar access to living areas between 9am to 3pm in mid-winter.

The applicant has submitted an Expert Report prepared by Steve King, which states that 59% of the apartments will receive 2 hours of solar access in mid-winter. The Expert Report further indicates that if earlier or later times are taken into account, then 62% of the apartments will receive 2 hours of sun in mid-winter. Some departure from the 70% requirement is likely, but amendments are required to the design to improve this aspect of the development.

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.

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 two types of landscape open space provided to the development. This includes private open space balconies and communal open space terraces on the podium and the roof terrace.

In addition, a pedestrian through link is provided in between the two buildings that provides a landscaped public setting.

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.

If Council were to approve the application, then conditions from Council's Landscape Officer shall be included.

Principle 7: Amenity

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

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

The apartments achieve a satisfactory level of amenity with regards to privacy, ventilation, and access to sunlight.

62.5% of the apartments receive cross ventilation by openings to opposite and adjacent facades.

The proposed design provides housing choice to future residents, with the units ranging in size and number of bedrooms. However, the proposed unit mix does not comply. 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 or terraces 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.

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 Coward Street and through to the surrounding street network. The through site link provides for activation at the ground level. Casual surveillance to the public domain area fronting Coward Street, the through site link and John Street 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).

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. It is noted that the proportion of studio and one bedroom apartments does not comply with the requirements under the BB DCP 2013. However, the JRPP has varied this provision for other developments in the Mascot Precinct.

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, it is considered that the façade of Building B should be re-designed to have a different finish and style to that of Building A. A wider palette of materials should be considered to provide visual interest and mitigate the visual bulk of the development.

The contemporary design of the building is compatible with the design of other buildings, but could still be improved. There is excessive glass and rendered elements. The bulk and scale is excessive and inappropriate even given the scale of development already approved and under construction.

The proposal does not satisfy the ten design principles and is inconsistent with the aims and objectives of 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 an assessment of the application is provided at Appendix A.

The main areas of non-compliance are addressed as follows:

1. Height of buildings – Clause 4.6 Exception

A maximum height of 44m is permitted under the provisions of the BBLEP 2013. The proposed building height at its greatest point is 46.8m (to the top of the lift overrun). The proposal results in a non-compliance of 2.8 metres.

The development application is seeking a departure from Clause 4.3 Height of Buildings.. An assessment of the Clause 4.6 Exception is provided below. In summary, Council officers do not support the proposed height departure for the reasons listed in this section.

A copy of the applicant's Clause 4.6 Exception to the Development Standard is attached at Appendix C.

Consent may be granted for the proposal subject to Clause 4.6, notwithstanding that the proposal would contravene this development standard, as the FSR development standard is not expressly excluded from this Clause (Cl 4.6(2)). The applicant has provided a written request justifying the contravention of the development standard pursuant to Clause 4.6(3) of BBLEP 2013, which is considered below. The matters for consideration pursuant to Clause 4.6(4) and (5) are also considered below. Clause 4.6 (6), (7) and (8) are not relevant to the current proposal.

In assessing the proposed departure, consideration has been given to the objectives of the standard, the objectives of the zone, and the objectives of BBLEP 2013 (including Clause 4.6(1)).

This Clause 4.6 variation has been assessed in accordance with the principles of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (Wehbe) in which the Hon. Brian Preston, Chief Justice of the Land and Environment Court, set out a new test (the long-standing 5 part test was set out in *Winten Property v North Sydney* (2001) 130 LGERA 79). This test sets out the following assessment process:

1. *The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
2. *The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and*
3. *It is also important to consider:*
 1. *whether non-compliance with the development standard raises any matter of significance for State or regional planning; and*

2. *the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

The Chief Justice then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

These matters are considered below.

A. Objection well founded and compliance with the development standard is unreasonable or unnecessary in the circumstance of the case (Cl 4.6(3)(a))

- 1) *The objectives of the standard are achieved notwithstanding noncompliance with the standard*

The objectives Clause 4.3 Height of Buildings are outlined 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.*

The proposal is considered to be inconsistent with the objectives of the Height standard for the following reasons:-

- The proposal does not appropriately locate taller buildings. The development appears as a continuous 14 storey built form, with minimal building breaks and relief. The central podium of the development should be further reduced in height.

- Given the site is a large development site, there is no planning reason as to why it cannot comply with the height control. Any reduction in height will result in a reduction in FSR, thereby reducing the overall bulk and scale.
- The proposed height is not compatible with the bulk and scale of the existing development in the area and the future desired character of the locality, given the mixed use nature of the site and locality. Whilst there are numerous tall buildings in the precinct, the proposal, in its continuous 14 storey form, does not provide a height that is consistent with the desired future character of the area.
- The proposed 12 storey central podium does not provide a sufficient building break or separation between the 14 storey towers. Independent Urban Design advice has been obtained, which recommends that the central portion of Building B be reduced to a maximum 6 storeys.
- The proposed 12 and 14 storey continuous building form provides an overbearing visual impact. The height impacts upon any possible solar access to the through site link and compromises the spatial amenity of the space.
- The buildings will adversely affect the streetscape and skyline. The building bulk and scale, including its height contribute to an overbearing streetscape and skyline that will dominate the Coward Street streetscape. The streetscape when viewed from other public spaces will be of a form that is overbearing and dominating.

2) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

The underlying objective and purpose of the Height control has not been achieved as stated above, therefore the standard is relevant and strict compliance with the numerical requirement of 44 metres is considered necessary in this instance as the proposal does not meet all the objectives of Clause 4.4. The proposed development is not compatible with the existing and desired future character of the area.

3) The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

The underlying objectives and purposes of the height control remain relevant to the proposed development. The proposed development is not consistent with the objectives of the height control in the BBLEP 2013 as detailed above.

4) The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

While the height control has been varied within the precinct, the development standard has not been abandoned. This development standard remains relevant in the area, and a variation to the standard is not warranted as discussed above.

5) The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone

It has been established that the proposed development is not appropriate and strict adherence to the development standard in this instance is considered to be reasonable and

necessary. The proposed development does not provide a high quality development that facilitates the orderly and economic development of the land in a manner that is appropriate in this area.

Accordingly, since the proposal does satisfy all the objectives of the height development standard pursuant to Clause 4.4 of BBLEP 2013, the proposed development is considered to be inappropriate and strict adherence to the development standard in this instance is reasonable and necessary.

It is considered that the applicant's Clause 4.6 is not well-founded and the departure is not in the public interest given the non-compliance with the height control will generate a building bulk and scale that is excessive.

- B. Consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and

The Policy referred to in this instance is SEPP 1 which is not relevant in this case since Clause 4.6 is the applicable instrument, however, the objectives of both are similar in that flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances is desirable.

The objects specified in section 5 (a) (i) and (ii) of the Act are:-

a) *to encourage:*

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land.*

It is considered that in this instance, non-compliance with the planning controls is not acceptable in this instance as the proposal does not achieve the objectives of the development standard and in this instance will not allow for the co-ordination of the orderly and economic use and development of land, as the development generates an excessive building bulk, scale and mass. A compliant height can readily be developed on this site. Compliance with the controls results in a more orderly outcome.

- C. Sufficient Environmental Planning Grounds (Cl 4.6(3)(b))

It is considered that there are insufficient environmental planning grounds arising from the proposal to support this variation to the height development standard given:-

- The development will adversely impact on the surrounding streetscape via an excessive building bulk, scale and mass;
- The proposal has a non-compliant FSR standard, which demonstrates that the non-compliant height is self-propelled from the non-compliant FSR.

Therefore, it is considered that there are insufficient planning grounds for a variation to the height and the variation is not in the public interest.

D. Other Matters For Consideration (Cl 4.6(1), (4) & (5))

The following matters pursuant to Clause 4.6 also need to be considered:-

- Objectives of Clause 4.6;
- Public interest and public benefit of maintaining the development standard Cl 4.6(4)(a)(ii) and (5)(b) of BBLEP 2013); and
- Any matters of state or regional importance (Cl 4.6(5)(a) of BBLEP 2013)

Objectives of Clause 4.6

The objectives of Clause 4.6 (pursuant to Cl 4.6(1) of BBLEP 2013) are:

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

It is considered that the proposed development will not achieve a better outcome for the site in that the proposal will adversely impact on the visual amenity and streetscape. The building provides minimal building breaks and visual relief.

Therefore, for the reasons outlined this assessment, it is considered that flexibility cannot be applied to this development, as it does not achieve a better outcome for the site, in that it provides for a development that is non-compliant with the FSR and generates adverse streetscape impacts.

Public Interest and Public Benefit

In terms of public benefit, it is noted that the proposal will provide a public car park and dedicated land for a through site link. However, entry into the public car park has not been resolved, as it is accessed via private land. Further, the public benefit arising from the development is not sufficient to justify a non-compliant building height. The proposed development is not compatible with the existing development and the approved development surrounding the site.

Preston CJ noted that there is a public benefit in maintaining planning controls and a SEPP 1 objection should not be used in an attempt to effect general planning changes throughout the area. It is considered that in the current case, the planning control should not be varied as it will affect the general planning change in the area, as it will not be consistent with other development already approved and construction in the area.

On the basis of this assessment, it is concluded that the variation is not in the public interest and can be supported.

Matters of State or Regional Importance

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

Summary

The Clause 4.6 Exception to the height control has been assessed in accordance with relevant case law, being the principles of *Wehbe v Pittwater Council* [2007] NSW LEC 827. It is considered that the proposal is not consistent with the underlying objectives of the standard identified.

The proposed development provides for a development that does not comply with the FSR and Height standard, and therefore, it is considered the proposal is an over-development of the site, rather than an orderly and economic development of land in a manner that is appropriate for the site and the locality.

While it is acknowledge that the development will provide increased employment and housing opportunities for the area, it is considered that the resulting built form will impact on the streetscape of Coward Street.

The impacts from the proposed development on the amenity of surrounding properties resulting from the departing height are adverse as they it will not be consistent with the existing and future amenity of the area. Council officers disagree that the proposal will result in a public benefit.

It has been established that the proposed development is inappropriate and strict adherence to the development standard in this instance is reasonable and necessary. Maintaining and enforcing the development standard in this case is reasonable and does not prevent the orderly and economic development of this site.

It is considered that the applicant's Clause 4.6 is not well-founded and the departure in height is not in the public interest. On this basis of, it is recommended that the development standard relating to the height for the site pursuant to Clause 4.3 of the BBLEP 2013 should not be varied in the circumstances as discussed above.

2. Clause 4.4 Floor Space Ratio

The maximum floor space ratio ("FSR") permitted under BBLEP 2013 for the subject site is 3.2:1. A summary of the FSR pursuant to the BBLEP 2013 is provided in the table below:

Botany Bay LEP 2013	
Permitted FSR under Clause 4.4	Proposed FSR
3.2:1 (33,680m ²)	4.65:1 or 48,941.25 sqm including internal corridors

Table 3 - FSR

It is noted that the application results in a substantial departure from the FSR standard.

An assessment of the Clause 4.6 Exception is provided below. In summary, Council officers do not support the proposed FSR departure for the reasons listed in this section. An assessment is provided below.

Consent may be granted for the proposal subject to Clause 4.6, notwithstanding that the proposal would contravene this development standard, as the FSR development standard is not expressly excluded from this Clause (Cl 4.6(2)). The applicant has provided a written request justifying the contravention of the development standard pursuant to Clause 4.6(3) of BBLEP 2013 (Appendix C), which is considered below. The matters for consideration pursuant to Clause 4.6(4) and (5) are also considered below. Clause 4.6 (6), (7) and (8) are not relevant to the current proposal.

In assessing the proposed departure, consideration has been given to the objectives of the standard, the objectives of the zone, and the objectives of BBLEP 2013 (including Clause 4.6(1)) as outlined below. The applicant's justification is provided at Appendix C.

This Clause 4.6 variation has been assessed in accordance with the principles of *Wehbe v Pittwater Council [2007] NSW LEC 827* (Wehbe) as noted above. This test sets out the following assessment process:

A. Objection well founded and compliance with the development standard is unreasonable or unnecessary in the circumstance of the case (Cl 4.6(3)(a))

1) *The objectives of the standard are achieved notwithstanding noncompliance with the standard*

The objectives of Clause 4.4 Floor Space Ratio of the Botany Bay LEP 2013 are:

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

The proposal is considered to be inconsistent with the objectives of the FSR development standard for the following reasons:-

- The intensity and density of the development is greater than what would be reasonably contemplated for the site. The proposed FSR is substantially higher than the FSR standard and is higher than any development within the Mascot Town

Centre. The FSR generates a bulk and scale that is not in keeping with the desired future character of the area. The proposed bulk and scale is excessive and generates a building of excessive length, height, width and mass.

- The proposed building is not compatible with the bulk and scale of existing and desired future development. The absence of building breaks generates an incompatible bulk and scale.
- The proposal has not maintained an appropriate visual character in that the bulk and scale of the 14 storey development will over-bear and dominate the Coward Street streetscape. Amenity impacts on adjoining development, both visual and overshadowing will result.
- There will be adverse impacts on to the streetscape and skyline when the development is viewed from the road or public areas. The overbearing nature of the development will compromise the amenity of the street and visually dominate the street, with limited visual relief.
- It is likely there will be significant adverse impacts from the additional floor space proposed on the amenity of adjoining properties in terms of increased traffic. The proposal would generate an increase in traffic movements, above what would be reasonably contemplated from a development that were more in-line with the FSR control.
- The proposal does not provide for an appropriate correlation between size of the site and the extent of the development site as the additional floor space generates an adverse bulk and scale.

2) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

The underlying objective and purpose of the floor space ratio control has not been achieved as stated above, therefore the standard is relevant and strict compliance with the numerical requirement of 3:1 is considered necessary in this instance as the proposal does not meet all the objectives of Clause 4.4. The proposed development is not compatible with the existing and desired future character of the area.

3) The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

The underlying objectives and purposes of the FSR control remain relevant to the proposed development. The proposed development is not consistent with the objectives of the FSR control in the BBLEP 2013 as detailed above.

4) The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

While the FSR control has been varied previously for development within the precinct, the development standard has not been abandoned. It is accepted that there are some developments within the precinct with an FSR of up to 4:1 and 4.2:1. It is noted that the development of 4.2:1 (39 Kent Road) did not include the internal corridors in the calculation, and the FSR was more likely to be 4.6:1. The FSR standard has not been abandoned and a variation of up to 4.65:1 is excessive. Further, the proposed variation generates an adverse bulk and scale.

To provide a favourable consideration to vary the standard, the application would require a re-design to reduce the bulk and scale, and provide greater articulation.

The FSR development standard remains relevant in the area, and a variation to the standard is not warranted as discussed above.

- 5) *The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone*

It has been established that the proposed development is not appropriate and strict adherence to the development standard in this instance is considered to be reasonable and necessary. Furthermore, the additional floor space does result in adverse impact to adjoining properties in terms of bulk and scale, streetscape impact, visual impact and potential increases in traffic. The proposed development does not provide a high quality development that facilitates the orderly and economic development of the land in a manner that is appropriate in this area.

Accordingly, since the proposal does satisfy all the objectives of the FSR development standard pursuant to Clause 4.4 of BBLEP 2013, the proposed development is considered to be inappropriate and strict adherence to the development standard in this instance is reasonable and necessary.

It is considered that the applicant's Clause 4.6 is not well-founded and the departure is not in the public interest given the non-compliance with both the FSR and height, generates an adverse bulk, scale and streetscape presentation.

- B. Consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and

The Policy referred to in this instance is SEPP 1 which is not relevant in this case since Clause 4.6 is the applicable instrument, however, the objectives of both are similar in that flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances is desirable.

The objects specified in section 5 (a) (i) and (ii) of the Act are:-

- b) *to encourage:*
- (iii) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
 - (iv) *the promotion and co-ordination of the orderly and economic use and development of land.*

It is considered that in this instance, non-compliance with the planning controls is not acceptable in this instance as the proposal does not achieve the objectives of the development standard and in this instance will not allow for the co-ordination of the orderly and economic use and development of land. A compliant building can be built, with compliant FSR and height. Compliance with the controls results in a more orderly outcome.

C. Sufficient Environmental Planning Grounds (Cl 4.6(3)(b))

It is considered that there are insufficient environmental planning grounds arising from the proposal to not support of this variation to the FSR development standard given:-

- The development will adversely impact the surrounding streetscape and desired future character of the area;
- The FSR results in a height non-compliance under the BB LEP 2013 and a building height non-compliance under the BB DCP 2013.
- The excessive FSR may set an undesirable precedent for future development within the precinct.

Therefore, it is considered that there are insufficient planning grounds for a variation to the FSR and the variation is not in the public interest.

D. Other Matters For Consideration (Cl 4.6(1), (4) & (5))

The following matters pursuant to Clause 4.6 also need to be considered:-

- Objectives of Clause 4.6;
- Public interest and public benefit of maintaining the development standard Cl 4.6(4)(a)(ii) and (5)(b) of BBLEP 2013); and
- Any matters of state or regional importance (Cl 4.6(5)(a) of BBLEP 2013)

Objectives of Clause 4.6

The objectives of Clause 4.6 (pursuant to Cl 4.6(1) of BBLEP 2013) are:

- c) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- d) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

It is considered that the proposed development will not achieve a better outcome for the site in that the proposal will adversely impact on the visual amenity, and streetscape along Coward Street.

The site is a large development site that can easily comply with the FSR and building height standard. Therefore, there is no unique circumstance to be flexibility in applying the FSR standard. Further, the justification, that the public benefit works of a public car park and through site link are not sufficient to warrant the approval of an excessive FSR.

Therefore, for the reasons outlined this assessment, it is considered that flexibility cannot be applied to this development, as it does not achieve a better outcome for the site.

Public Interest and Public Benefit

In terms of public benefit, the applicant proposes to enter into a VPA to provide a public car park and pedestrian through site link. The public benefit works will provide a benefit to the locality and is in the public interest. However, access to the public car park has not been resolved by the applicant, as it requires access via private land. Further, the public benefit works does not provide sufficient planning justification to vary the FSR standard to the extent proposes. As outlined, the proposed development is not compatible with the existing development and the approved development surrounding the site and the density is much greater than adjoining development.

Preston CJ noted that there is a public benefit in maintaining planning controls and a SEPP 1 objection should not be used in an attempt to effect general planning changes throughout the area. It is considered that in the current case, the planning control should not be varied as it will affect the general planning change in the area, as it will not be consistent with other development already approved and construction in the area.

On the basis of this assessment, it is concluded that the variation is not in the public interest and can be supported.

Matters of State or Regional Importance

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

Summary

The Clause 4.6 Exception to the FSR control has been assessed in accordance with relevant case law, being the principles of *Wehbe v Pittwater Council [2007] NSW LEC 827*. It is considered that the proposal is not consistent with the underlying objectives of the standard identified.

The proposed FSR non-compliance generates an adverse streetscape presentation and an undesirable bulk and scale. Therefore it is considered the site is not being developed in an orderly and economic development of land in a manner that is appropriate for the site and the locality.

It has been established that the proposed development is inappropriate and strict adherence to the development standard in this instance is reasonable and necessary. Maintaining and enforcing the development standard in this case is reasonable and does not prevent the orderly and economic development of this site.

It is considered that the applicant's Clause 4.6 is not well-founded and the departure in FSR is not in the public interest. On this basis of, it is recommended that the development standard relating to the maximum FSR for the site pursuant to Clause 4.4 of the BBLEP 2013 should not be varied in the circumstances as discussed above.

Botany Bay Development Control Plan 2013

The applicable clauses of the DCP are considered in the assessment of the proposal and are addressed at **Appendix B**.

The main areas of non-compliance are discussed as follows:

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

Control C3 of Section 4.3.2 of BBDCP 2013 states that *Development must comply with the future layout and built form controls for Urban Blocks 1, 3, and 4 in Figures 11, 12, 14 and 15. This requirement may result in the FSR not being achieved.*

The proposed configuration of buildings on site does not comply with that indicated in Figure 11.

Whilst there has been variations to the configurations of buildings within the Mascot Town Centre, the proposal results in a building of substantial bulk and scale that incorporates minimal building breaks with un-broken building lengths of up to 90 metres. This is inconsistent with the objectives of the DCP.

The Design Review Panel did not support the proposal on the basis of the built form and density. Specifically, the DRP was concerned with the extent of variation between the proposal and the Master plan. Specifically, the DRP states that the large non-compliance with the FSR standard would increase the building bulk dramatically. The DRP does not support the through site link being lined with two x 14 storey buildings with no podium. The ambience and amenity of the space would be subject to overshadowing. It is noted that the DRP did not review the amended scheme.

In summary, the current scheme requires further amendment in terms of a reduction in FSR, height and building bulk with physical breaks. The proposed layout, building configuration and built form is not supported.

Note 2 - Setbacks and Separation

The ground floor setbacks are compliant with the requirements of the DCP, however the upper levels do not comply with the setback requirements of the DCP. The central podium incorporates a 2.5 metre setback on level 5 to 9 and an additional 7 metre setback from level 9 to 12. However, the rest of the tower is built with a 3 metre setback that continues from the ground floor to the 14th storey. The setbacks of the building do not extend sufficiently and further setbacks are required to reduce the bulk and bring the building into line with the DCP. The DCP recommends an upper level setback along Coward Street of 5 metres to 7 metres.

Given the non-compliant FSR and height, further setbacks are considered necessary to both the tower and podium.

Note 3 - Building Lengths

The proposal seeks consent for building lengths that are up to 80-90 metres at their greatest length, with minimal building breaks, setbacks and articulation. The building length is as a result of the non-compliant FSR and excessive building bulk and scale.

Note 4 - Unit Mix

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

.	TOTAL	Unit Mix
Studio	9	2%
1 bedroom	282	56.5%
2 bedroom	206	41%
3 bedroom	2	0.5%
	499	100%

Table 4 – 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 an Economic Assessment Report prepared by Hill PDA dated June 2014 in support of the unit mix. Unit mix has been varied for other developments in Mascot, but only when the resultant form has form has been acceptable.

(b) Impacts of the development S79(c)(1)(b).

These matters have been considered in the assessment of the application.

These matters have been considered in the assessment of the application. It is considered that the proposal will have an adverse environmental, social or economic impact on the locality in respect non-compliance with FSR, building height, unit mix and setbacks under the BBLEP 2013 and BBDCP 2013.

(c) The suitability of the site for the development S79C(1)(c)

These matters have been considered in the assessment of the development application. The site is considered suitable for a high density residential and mixed use development. It is located within the Mascot Town Centre, which is strategically earmarked for revitalisation and redevelopment.

However, the current form of the development is not considered suitable for the site due to the FSR non-compliance, and the resulting bulk and scale.

The proposed development is not consistent with the maximum FSR applicable to the site under Clause 4.4 of Botany Local Environmental Plan 2013 (BBLEP 2013) is therefore not considered to be a suitable in its current form.

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

In accordance with Council's Notification Policy, the original development application was notified to surrounding property owners and occupants and advertised in the local newspaper from 6 August 2014 to 5 September 2014 and no objections were received.

(e) The public interest

These matters have been considered in the assessment of the development application. It is considered that approval of the proposed development is not in the public interest as it will have a adverse impact upon the locality in terms of bulk, scale, visual impact and streetscape presentation.

Other Matters

Internal Referrals

The development application was referred to Council's Engineering Services Department, Parks and Landscape Department; Traffic Department; Environmental Health and Council's Environmental Scientist for comment and relevant conditions.

External Referrals

External Referrals as part of the notification from the 6 August 2014 to 5 September 2014, are detailed in the Table below:

Authority	Comment	Date Received
Roads & Maritime Services	No objection, subject to conditions.	17 September 2014
Sydney Water	No objection, subject to conditions.	25 August 2014
Ausgrid	No objection, given application appears to include replacement of two existing substations. Determination on this cannot be provided until a connection application is lodged with AusGrid. This is to be undertaken by a condition of consent.	13 August 2014
NSW Police Service	No objection, subject to conditions relating to CPTED principles	26 August 2014
SACL	No objection subject to limitation of height to a maximum 51m AHD.	4 September 2014
NSW Office of Water	No objection, subject to General Terms of Approval.	18 August 2014
RailCorp	No response received.	

Table 5 – External Referrals

Section 94 Contributions

Section 94 contributions under both the Mascot Precinct Plan and the 2005 Botany Bay Plan would apply if the application was to be approved.

5. CONCLUSION

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

The proposed development is permissible in the B2 Local Centre Zone. The applicant has submitted a Clause 4.6 Exception to the maximum FSR of 3.2:1 and Building Height standard of 44 metres.

The Clause 4.6 exception in relation to the FSR is not supported in this instance as it is inconsistent with the objectives of the standard, and the variation to FSR is considered outside the scope of Clause 4.6 of the BB LEP 2013. In addition to this the proposed development is inconsistent with the development controls of BB DCP 2013.

The proposal has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979* and the *Botany Bay Local Environmental Plan 2013*. The proposed development is largely inconsistent with the FSR control of BB LEP 2013, with the development controls stipulated in BB DCP 2013, in particular building height, unit mix, setbacks, and the general bulk and scale of the development.

On this basis, the proposed development in its current form is not supported and it is recommended that the Panel refuse Development Application No. 14(146) for the reasons outlined in this report. The recommendation with reasons for refusal is on page 1 of this report.

APPENDIX A – BOTANY BAY LOCAL ENVIRONMENTAL PLAN 2013

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Landuse Zone Is the proposed use/works permitted with development consent?	Yes	The site is zoned B2 – Local Centre under BBLEP 2013. 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 range of retail, business, entertainment and community uses that serve the needs of people who live, work in and visit the local area;</i> • <i>To encourage employment opportunities in accessible locations, and</i> • <i>To maximise public transport patronage and encourage walking and cycling.</i>
Does Clause 2.6 apply to the site?	N/A	Clause 2.6 states that land to which this Plan applies may be subdivided, but only with development consent. The application does not seek consent for strata subdivision.
What is the height of the building? Is the height of the building below the maximum building height?	No Refer to item 1 under BB LEP 2013 assessment	The permitted height of buildings is 44 metres. The proposed building height at its greatest point is 46.8 metres (measured to the top of the lift overrun). This results in a non-compliance of 2.8 metres. Consideration has been given to the Applicant’s Clause 4.6 variation to the height. An assessment in relation to Clause 4.3 and Clause 4.6 is provided at item 1
What is the proposed FSR? Does the FSR of the building exceed the maximum FSR?	No Refer to item 2 under BB LEP 2013 assessment	The site has an area of 10,525 m ² . The site has an FSR standard of 3.2:1. This equates to a permissible GFA of 33,680 m ² . The applicant submits that the FSR is 4.28:1 with a GFA of 45,099 m ² . However this does not include the corridors. Council have calculated that the FSR is more likely to be 4.65:1 or a GFA of 48,941.25sqm. This is discussed at item 2.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Clause 4.4 (2A) 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.
Clause 4.4B Does this clause apply to the site.	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?	No	The subject site is not affected by road widening on the Land Acquisition Map.
Is the site identified on the Key Sites Map?	N/A	The subject site is within the Mascot Station Precinct. Refer to Clause 6.16.
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.
Development near zone boundaries	N/A	The proposed development is permissible within the relevant zone and does not rely upon the provisions of Clause 5.3.
The following provisions in Part 6 of the LEP apply to the development:		
6.1 – Acid sulfate soils	No	Clause 6.1 – Acid Sulfate Soils. The subject site is affected by Class 2 Acid Sulfate Soils. The development application has been reviewed by Council's Environmental Scientist who advises that an Acid Sulfate Soil Management plan is required.
6.2 – Earthworks	Yes	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. The development is considered to be consistent with Clause 6.2 of BBLEP 2013.
6.3 – Stormwater management	Yes	Clause 6.3 – Stormwater. The development application involves appropriate stormwater management and practice throughout the

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		development. The application has been reviewed by Council's Development Engineer whom has not raised an objection to the proposal. The development is considered to be consistent with Clause 6.3 of BBLEP 2013.
6.8 - Airspace operations	Yes	Clause 6.8 – Airspace Operations. The subject site lies within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority. The application proposed buildings which exceed the maximum height and was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration. SACL raised no objections to the proposed maximum height of 51 metres AHD, subject to conditions. The development is considered to be consistent with Clause 6.8 of BBLEP 2013.
6.9 – Development in areas subject to aircraft noise	Yes	Clause 6.9 – Aircraft Noise. The subject site is affected by the 20 ANEF contour. An acoustic report has been submitted with the development application, which indicates that the development has been designed to comply with the requirements of AS2021-2000. The development is considered to be consistent with Clause 6.9 of BBLEP 2013.
6.16 – Design excellence	No	<p>Clause 6.16 Design Excellence. The proposed design has been the subject of consideration by Council's Design Review Panel on September 2014.</p> <p>The DRP concluded that it cannot support the proposal due to the built form and density.</p> <p>The bulk and density of the proposal does not satisfy the reasons raised by the DRP.</p> <p>On this basis, it is considered that the proposed development is not consistent with Clause 6.16 of BBLEP 2013.</p>

APPENDIX B – BOTANY BAY DEVELOPMENT CONTROL PLAN 2013

Part	Control	Proposed	Complies
3E.3. Subdivision	C1 Strata subdivision is to be consistent with the Desired Future Character of the area	The application does not include strata subdivision.	N/A
3A.2 Car Parking	C7 – Bicycle parking equivalent to 10% of the required car parking shall be provided.	Nominated areas for bicycle parking have been provided in the basement.	If application were to be approved, it could be conditioned to comply
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>Building B incorporates four loading bays within the basement. Building A relies upon the loading bays that have been approved within the basement of 39 Kent Road.</p> <p>The DCP requires that access and aisle are capable of accommodating a Medium Rigid Vehicle (MRV). The traffic report submitted with the application concludes that an MRV is able to access the basement of the development.</p> <p>This includes the provision of a swept path analysis.</p>	Considered acceptable.
3C.2 – Access and Mobility	<p>C1 - All development including community events must comply with Table 1.</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 commercial tenancies are designed to be fully accessible.</p> <p>The development can be conditioned to comply.</p> <p>10% of the total number of proposed dwellings are conditioned to be adaptable.</p>	If application were to be approved, it could be conditioned to comply
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>	<p>The application has been assessed by Councils Development Engineer who has no objection to the proposed development.</p> <p>Yes as mentioned above, the proposal will incorporate a stormwater system suitable for the</p>	<p>Yes</p> <p>Yes</p>

	<p>(i) Existing on site public stormwater drainage infrastructures;</p> <p>(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</p> <p>(iii) Flood prone lands as indicated on Section 149(5) Planning Certificates</p>	development.	
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 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>The ground floor retail/commercial tenancies will assist in providing a connection with the street.</p> <p>The development is mixed use in nature, providing both residential and commercial uses.</p> <p>Public transport networks are located on Coward Street and Bourke Street, as well as Mascot Train Station.</p> <p>An active street frontage is proposed at the frontage to Coward Street and to the through site link.</p> <p>A landscape plan has been submitted, which indicates that the 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>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>If it were to be approved, it could be conditioned</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 25 ANEF contour transects the subject site. 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 -	C7 - Before determining a	The application has been	No

Contamination – Preliminary Investigation	<p>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> <ul style="list-style-type: none"> (i) Is the information about the site's history adequate? (ii) Are the descriptions of activities on the site detailed enough to identify a potentially contaminating land use? (iii) Are there any gaps in the history that might mask a potentially contaminating land use? (iv) Are the sources reliable? (iv) Is the information verifiable? (v) Does the information conform to the Managing Land Contamination: Planning Guidelines (EPA)? 	<p>accompanied by a Preliminary Stage 1 Environmental Site Investigation prepared by Environmental Investigations.</p> <p>The report recommends that a Phase 2 Environmental Assessment and Acid Sulfate Soil Management plan be provided.</p> <p>This required, prior to the recommendation of approval for any development on this site.</p>	
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 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,</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 existing street trees which will be preserved.</p> <p>The proposed landscaping assists in reducing the bulk and scale of the development.</p> <p>Landscape setbacks are proposed to the eastern, western and southern boundaries.</p> <p>The submitted landscape plans have been assessed by Council's Landscape Architect and appropriate conditions could be imposed.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

	<p>grassing, shrub and accent planting or any combination of these.</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>The deep soil zone is limited to the through-site link.</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>No</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 4299-1995 Adaptable Housing.</p>	<p>As a result of amendments to the scheme, there is minimal information on this.</p> <p>As such, it could be conditioned to comply.</p>	<p>If application were to be approved, it could be conditioned to comply</p>
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.	<p>46.8 metres</p> <p>As such a Clause 4.6 variation has been submitted.</p>	No – Refer to Clause 4.6 variation above.
	C3 Development must conform to the maximum height of buildings in storeys for Urban Blocks 1, 3, and 4 as shown in Figures 16, 17, 19 and 20 .	<p>Building A = 14 storeys, with a central podium of 8 storeys</p> <p>Building B = 14 storeys, with a central podium of 8 storeys</p>	No
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.	<p>Proposed FSR is 4.28:1 (45,099 m²). This does not include internal corridors.</p>	No – Refer to Clause 4.6 Variation to FSR
	C3 Development must comply with the future layout and built form controls for Urban Blocks 1, 3, and 4 in Figures 11, 12, 14 and 15 . This requirement may result in the FSR not being achieved.	The development does not comply with the storey limit form or the building block mass envisaged in the DCP.	No – Refer to Note 1
9A.4.3.3 Site Amalgamation and Subdivision	C1 The redevelopment of lots within Urban Blocks 1, 3 and 4 must conform to the amalgamation pattern in Figures 21, 22, 24 and 25 .	The subject site is not required to be consolidated with any adjoining allotments.	Yes
	C2 The redevelopment of lots within Urban Blocks 1, 3 and 4 must	The development application complies with the indicated lots	Yes

	generally conform to the lot alignments in Figures 26, 27, 28 and 29.	alignments, except that the John Street extension does not extend east toward Bourke Street as indicated. This is considered acceptable as it enables the pedestrian through link to be more aligned with Mascot Station further north.	
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.	A 3 metre setback is provided to Coward Street for level 1 to 4. The setback provides consistency with the adjoining development at 39 Kent Road. A setback of 4.4 to 5.4 metres is provided to level 5 of the podium, which increases to 12.8 metres from level 9 to 12. The tower components remain at 3 metres.	Yes – Refer to Note 2 No
	C4 All development within Urban Blocks 1, 3 and 4 must comply with the section plans in Figures 36, 37, 38, 39, 40, 41 and 42.	Section AA in Figure 36 applies to the subject site.	No – Refer to Note 2
9A.4.3.6 – Building Separation	C1 Mixed Use developments containing residential units must comply with the principles and provisions of State Environmental Planning Policy No. 65 (SEPP65) and the RFDC.	A separation of 14 metres to 18 metres is provided between Building B and the adjoining development to the north at 19-33 Kent Road.	Yes No – Refer to Note 2
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.	Commercial/retail tenancies are provided on the ground floor of Building A and B, facing Coward Street and fronting the through site link. A total of 1440sqm of commercial space is provided. All commercial tenancies are designed with a two storey height, providing a void area above. No residential apartments are proposed on the ground floor.	Yes
	C2 All development within Urban Blocks 1, 3 and 4 must provide awnings where shown in Figures 53, 54, 55 and 56.	An awning is provided to the retail and commercial tenancies.	Yes
	C4 There must be a minimum clear passage width of 2 metres between the adjacent building and leased area for outdoor dining to allow for clear passage of pedestrian traffic at all times.	There is adequate area in the through site link for outdoor dining and pedestrian movement.	Yes
9A.4.4.5 Residential and Non Residential Interface	C2 Shadow diagrams must be provided for all development proposals for the summer and winter solstices. Shadow diagrams must show shadow impacts at 9am, 12 noon and 3pm for both solstices. Additional building setbacks may be	To the south of the site is commercial/light-industrial land, that is zoned B5 Business Development. The shadow diagrams indicate that the proposal shall overshadow land to the south. However, the land to the	No

	required where internal site shadow impacts or impacts on adjoining properties are considered by Council to be unreasonable.	<p>south does not include any residential properties.</p> <p>On balance, the shadow cast is considered reasonable, given the urban context of the site.</p> <p>Further, the subject site is overshadowed by the approved development to the north at 19-33 Kent Road. In the assessment of that application, it was concluded that the “Shadow diagrams have been amended to reflect the increased southern boundary setback. These indicate that future buildings to the south will achieve at least 3 hours direct solar access to at least 50% of dwellings”.</p> <p>As detailed in this report, an Expert Report by Steve King has been provided stating that 59% of the apartments receive 2 hours of solar access in mid-winter between 9am to 3pm.</p>	
9A.4.4.6 Building Articulation	C2 Blank external walls of greater than 100m ² must be avoided.	<p>There are no extensive areas of blank walls proposed in the subject development.</p> <p>However, as a result of the amendments to the proposal, there will be a visible portion of blank wall to the adjoining approved development at 39 Kent Road.</p>	No
9A.4.4.7 Dwelling Size and Mix	<p>C1 Dwellings are to have the following minimum areas:</p> <p>Studio: 60m² 1 bedroom: 75m² 2 bedrooms: 100m² 3 bedrooms: 130m²</p>	All apartments within the development comply with the BB DCP 2013 apartment sizes.	Yes
	C2 The combined total number of studio units and one-bedroom apartments/dwellings must not exceed 35% of the total number of apartments/ dwellings within any single site area.	The combined total of studios and 1 bedroom units is 57%	No – Refer to Note 4
9A.4.4.8 Landscaped Area	C8 Developers are required to execute all nominated proposed public domain works identified on Figures 57, 58, 59 and 60, including landscaping works.	The proposal incorporate a through site link which is greater than the requirements under the BB DCP 2013. In addition, a public car park is proposed.	Yes
	C9 Public parks must generally contain a minimum of 80% of deep soil area, and support planting of large scale trees. The remaining 20% may contain pavement area or hard surfaces. The 80:20 ratio can be flexible depending on the design of	As above.	No

	space.		
9A.4.4.9 Private Open Space and Communal Open Space	C2 The minimum private open space requirement per dwelling for multi dwellings and residential flats are as follows: Studio/1 bedroom= 12m ² ; 2 Bedrooms: 15m ² 3 bedrooms: 19m ²	Studio = 12m ² 1 bedrooms = 12m ² 2 bedrooms = 15m ² 3 bedrooms = 19m ²	Yes
	C5 The minimum communal open space requirement for residential flats is 20% of the site area.	25.8% of site area (3,676m ²)	No, as the calculation has included the through site link
	C7 More than 70% of the communal open space area should be capable of growing plants, grasses and trees.	Less than 70% of the common area is capable of growing plants.	No
9A.4.4.11 Car Parking	C1 Car parking provision must comply with the following car parking rates: Residential Studio = 1 space per unit 1 bedroom = 1 space per unit 2 bedroom = 2 spaces per unit Visitor = 1 space per 7 apartments Retail 1 space/80sqm of GFA	<u>Required Parking</u> Residential Studio = 9 x 1 = 9 1 bedroom = 282 x 1 = 282 2 bedroom = 206 x 2 = 412 3 bedroom = 2 x 2 = 4 Visitor space per 7 apartments = 71 Sub-total: 778 Retail 18 spaces Total Required = 796 spaces	Yes 798 proposed
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 of the site is commercial/light-industrial land, that is zoned B5 Business Development. The shadow diagrams indicate that the proposal shall overshadow land to the south. However, the land to the south does not include any residential properties.	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	A Pedestrian Wind Environment Statement has been submitted with the application prepared by Windtech dated October 2014. The report concludes that adequate wind conditions are expected to be achieved for the majority of trafficable areas within and around the subject site, subject to	Yes, subject to design measures

	streets	recommendations adopted from the report.	
--	---------	--	--

**APPENDIX C – APPLICANT’S CLAUSE 4.6 FOR HEIGHT OF BUILDING AND
FLOOR SPACE RATIO STANDARD**