

## 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"> <li>▪ 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.</li> <li>▪ 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.</li> <li>▪ The proposal provides a total of 792 car parking spaces plus a public pay car park for approximately 93 car parking spaces.</li> <li>▪ 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"> <li>- Dedication and embellishment of a through site link to provide public pedestrian access from Coward Street to John Street.</li> <li>- Provision of a public pay car park accommodating approximately 93 car parking spaces.</li> </ul> </li> </ul>
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"> <li>• Environmental Planning &amp; Assessment Act 1979, Part 4</li> <li>• Environmental Planning &amp; Assessment Regulation 2000, Part 6 – Procedures relating to development applications</li> <li>• State Environmental Planning Policy No. 55 – Contaminated Land</li> <li>• State Environmental Planning Policy 2004 (BASIX);</li> <li>• State Environmental Planning Policy No. 65 – Design Quality of Residential Flat buildings</li> <li>• Botany Bay Local Environmental Plan 2013</li> <li>• Botany Bay Development Control Plan 2013</li> <li>• Draft State Environmental Planning Policy No. 65</li> </ul>
List all documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> <li>• Architectural Plans – Krikis Tayler Architects</li> <li>• Statement of Environmental Effects – LJB Urban Planning</li> <li>• Clause 4.6 Exception – LJB Urban Planning</li> </ul>
Recommendation	Approval, subject to conditions
Report by	Wil Nino, Consultant Planner

## RECOMMENDATION

It is recommended that the Sydney East Joint Regional Planning Panel (JRPP), as the determining authority:

- (a) Is satisfied that the applicant's written request under Clause 4.6(3):
  - i. Of the Botany Bay LEP 2013 has adequately addressed the contravention of the Floor Space Ratio development standard; and compliance is unreasonable or unnecessary in the circumstances of the case; and that there are sufficient grounds to justify contravening the development standard.
  - ii. The proposed development will be in the public interest because it is consistent with the objectives of the FSR standard and the objectives of the B2 Local Centre zone.
- (b) Is satisfied that the applicant's written request under Clause 4.6(3):
  - i. Of the Botany Bay LEP 2013 has adequately addressed the contravention of the Height development standard; and compliance is unreasonable or unnecessary in the circumstances of the case; and that there are sufficient grounds to justify contravening the development standard.
  - ii. The proposed development will be in the public interest because it is

consistent with the objectives of the Height standard and the objectives of the B2 Local Centre zone.

- (c) Resolves to approve Development Application No. 14/146 for the demolition of the existing commercial building, removal of trees and construction of two 14 storey mixed use buildings with a maximum FSR of 4.42:1 and a maximum height of 46.8 metres, containing 1440sqm of retail and 470 residential apartments, three basement levels providing a total of 739 car parking spaces plus a public pay car park for approximately 93 car parking spaces, at 256-280 Coward Street, Mascot, subject to the Conditions imposed in the attached Schedule.

## EXECUTIVE SUMMARY

This is a revised report to the Joint Regional Planning Panel (JRPP) in relation to an amended proposal for a Development Application at 256-280 Coward Street Mascot.

Council previously recommended the refusal of the Development Application and this was subject to a JRPP Meeting on 20 May 2015. At this meeting, the Panel determined to defer the application to allow Council to assess an amended proposal that the applicant had submitted for the site.

The previous application sought 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 pay car park for 93 car parking spaces.
- A 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 amended proposal is as follows:

- Description: Two x 14 storey towers, with central podium reduced in height to 8 and 9 storeys. The central podium is 8 and 9 storeys, comprising a 3 metre setback up to 4 storeys, then an 8 metre setback from level 5 to level 8 and 9. Building A tower has been re-designed with a curved eastern façade. A minor step has been provided to the side profile of the 13<sup>th</sup> and 14<sup>th</sup> storey of the tower component.
- FSR: 4.42:1 including internal corridors. GFA of 46,556 sqm

- Units: 470 units.
- Height: 46.8 metres or 14 storeys (no change)
- Planning Agreement (PA): Dedication of through site link and approximately 93 car space public pay car park, with access from Coward Street.
- Car parking: 739 car parking spaces plus a public pay car park for approximately 93 car parking spaces.

The amended scheme has reduced the FSR by deleting 29 apartments and reducing the height of the centre podium from 12 storeys to 8 and 9 storeys. This has reduced the overall bulk, scale and mass, and delivers a development that is more in keeping with the character of adjoining development.

The Draft PA and letter of offer was forwarded to a Council meeting on 3 June 2015, where the Council resolved to agree in principle to enter into a PA with the applicant for the delivery of the public car park and through site link, subject to the application being approved.

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 a stated 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 approximately 93 car space pay 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 Planning Agreement (PA) and a Draft PA 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 was originally proposed via private land (owned by Meriton) that is not part of the subject site. This has since been amended to provide access to the public car park from Coward Street.

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 were excluded from this FSR calculation and therefore the FSR was actually in the order of 4.65:1. Supplementary documentation in support of this scheme was lodged between January 2015 and March 2015.

Council formally advised the applicant on 17 April 2015 that it could not support the application in its current form, and that unless amendments were made, the application would be recommended for approval.

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 preliminary amended architectural plans and an amended Clause 4.6 Exception in support of the amended scheme, with a complete architectural set being made available on the 15 May 2015. The amended scheme had reduced the total number of apartments to 470 and reduced the height of the podium.

However, Council was unable to assess this scheme, as the matter was required to be determined at a JRPP Meeting on the 20 May 2015. Notwithstanding, Council's officers advised the applicant that it would be more appropriate to consider the amended plans at 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.

At the JRPP Meeting on 20 May 2015, the JRPP resolved to defer consideration of the application, to allow Council to assess the amended proposal that was submitted on the 20 May 2015.

Accordingly, the assessment undertaken in this report is based upon the amended proposal lodged with Council on 15 May 2015.

The key issues are:

- Bulk and scale
- Non-compliant FSR
- Non-compliant height

The amended scheme is a considered an improvement on the original application, and whilst the amended scheme retains a non-compliant FSR and Height, on balance, the variation is considered to be supportable. The amended scheme has reduced the overall bulk, scale and mass, and delivers a development that is more in keeping with the character of adjoining development.

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

## 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 m<sup>2</sup>.
- Lot 1 DP 1081391 – 39 Kent Road Mascot, being 3,712 m<sup>2</sup>.

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 m<sup>2</sup> 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.*

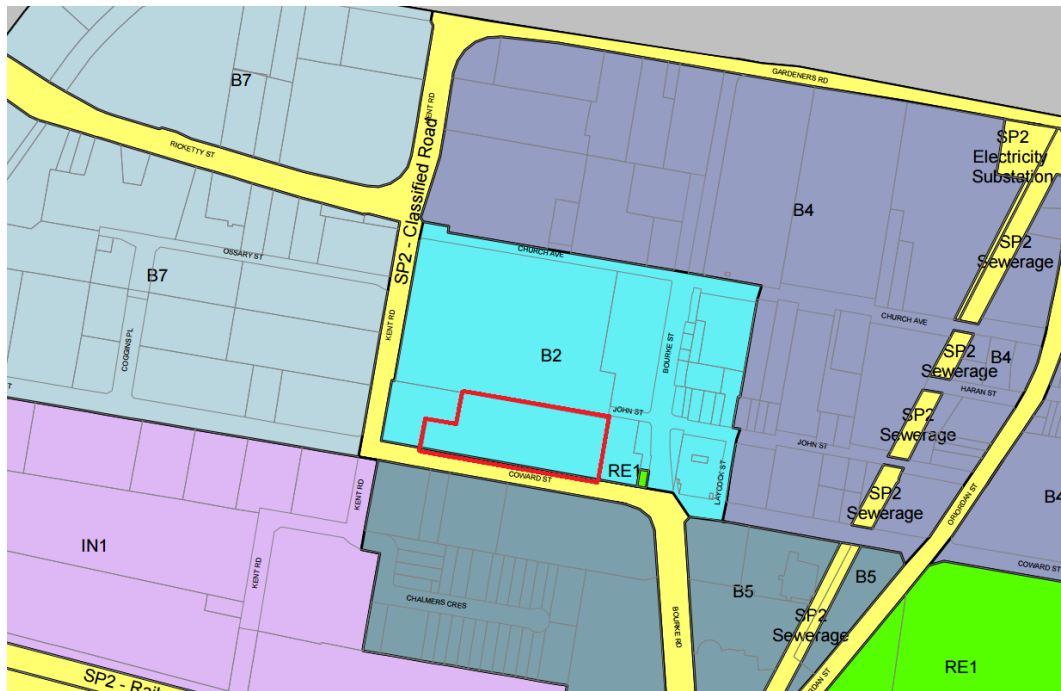


Figure 2 – Zoning Map of the development site



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. BACKGROUND

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 amended proposal is designed as two buildings (Building A and Building B), with the towers at either end being 14 storeys. The towers include a central podium that is 8 and 9 storeys, comprising a 3 metre setback up to 4 storeys, then an 8 metre setback from level 5 to level 8 and 9. Level 13 and 14 of the towers include a minor step from the lower levels, and 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.

The development includes a mixture of 1, 2 and 3 bedroom apartments, and all apartments comply with the minimum apartment size under the BB DCP 2013.

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 an above ground car park that forms part of the podium for the development.

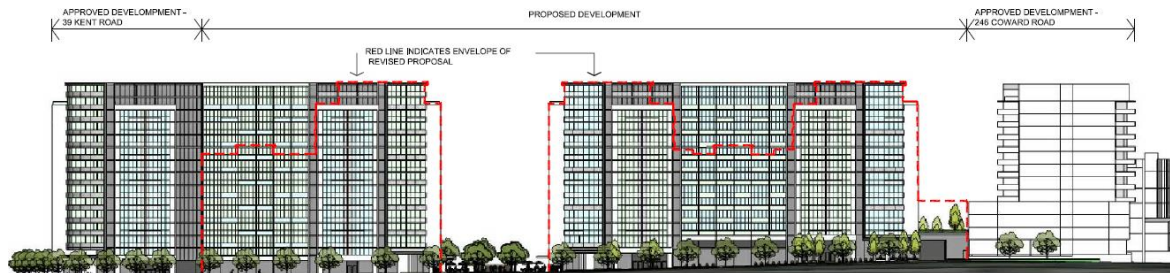
The public car park entry is now proposed to be accessed via Coward Street. Originally, the car park entry was proposed via land associated with the development at 19-33 Kent Road (Meriton site), from John Street. However, given there is no documentation to demonstrate that there is an agreement for access to the basement between Meriton and the subject developer, the applicant amended the car park entry.

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. This land has been included as part of the site for the purposes of calculation of FSR.

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

Original DA Lodged

*Figure 3: 3D View along Coward Street.*



*Figure 4: Coward Street elevation.*

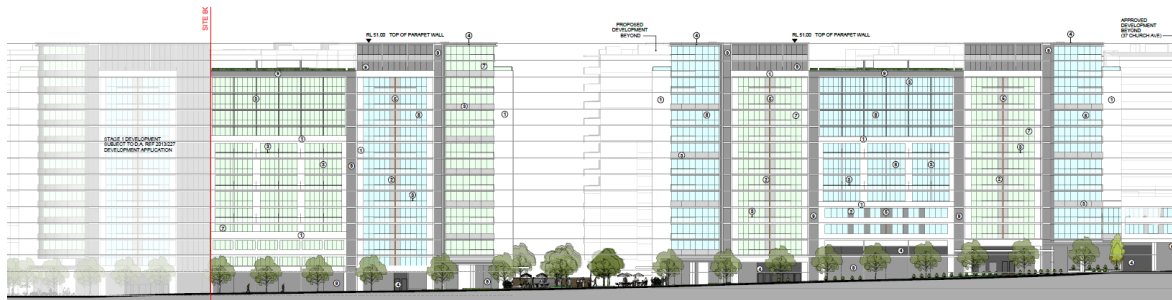
- Description: Two x 14 storey towers in a u-shape building with no building breaks, other than a through site link in-between the two forms.
- FSR: 4.68:1 or GFA of 49,331 sqm, but this did not include corridors (actual is closer to 5:1).
- GFA departure from 3.2:1 – 15,651 sqm, if FSR was 4.68
- Units: 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. Note, that access to the public car park was proposed via private land (19-33 Kent Road).



Previous scheme – subject to previous JRPP Report, with recommendation of refusal



*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. Note, that access to the public car park was proposed via private land (19-33 Kent Road).

#### 4. THE PROPOSAL

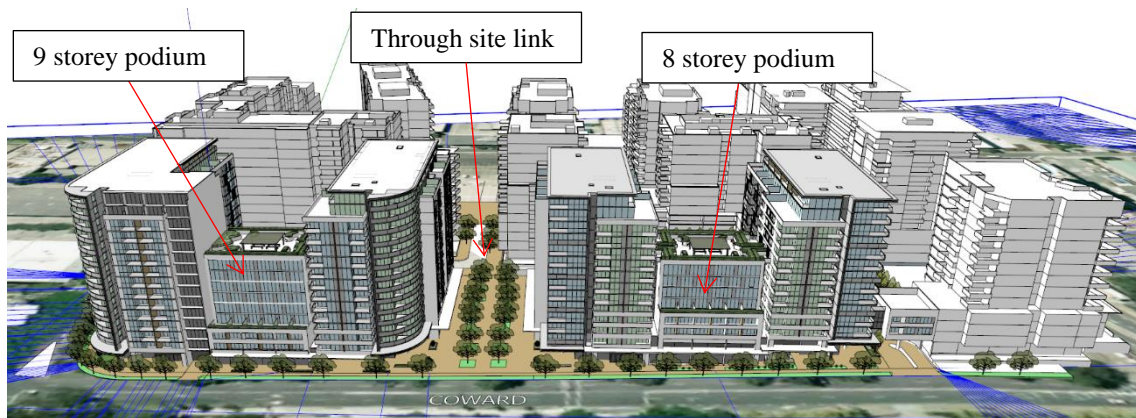
Current scheme - submitted by applicant on 05/05/15 and 15/05/15.



*Figure 7: 3D view of proposal*



*Figure 8: 3D view of proposal*



*Figure 9: 3D Coward Street elevation*



Figure 10: Coward Street elevation plan

- Description: Two x 14 storey towers, with central podium reduced in height to 8 and 9 storeys. The central podium is 8 and 9 storeys, comprising a 3 metre setback up to 4 storeys, then an 8 metre setback from level 5 to level 8 and 9. Building A tower has been re-designed with a curved eastern façade. A minor step has been provided to the side profile of the 13<sup>th</sup> and 14<sup>th</sup> storey of the tower component.
- FSR: 4.42:1 including internal corridors. GFA of 46,556 sqm
- GFA departure from 3.2:1 – 12,876 sqm
- Units: 470 units.
- Height: 46.8 metres or 14 storeys (no change)
- VPA: Dedication of through site link and approximately 93 car space public pay car park, with access to be provided from Coward Street.
- Car parking/basement: Basement reconfigured to provide 739 car parking spaces plus a public pay car park for approximately 93 car parking spaces.

The main amendments of the proposed scheme to the proposal that was presented to the Panel in May 2015 are as follows:

- FSR has been reduced by deleting 29 apartments.
- The podium has been reduced to 8 and 9 storeys, providing a break between the 14 storey towers.
- Building A has adopted a curved eastern façade.
- A landscape communal roof terrace is provided above level 8 and 9.
- A step has been provided on the side profile of the 13<sup>th</sup> and 14<sup>th</sup> storey of the tower component.

Numeric Overview

The numeric overview of the proposed development is as follows:

Control	Required	Proposal	Complies
<b>FSR (LEP)</b>	3.2:1 (under BBLEP 2013 (33,680 m <sup>2</sup> ))	4.42:1 or 46,556 m <sup>2</sup>	<b>No – Clause 4.6 Variation submitted</b>
<b>Height (LEP)</b>	44 metres (under BBLEP 2013)	46.8 metres	<b>No – Clause 4.6 Variation submitted</b>
<b>Car Parking (DCP)</b>	750 spaces are required as follows for the proposal: <ul style="list-style-type: none"> <li>• 665 residential;</li> <li>• 67 visitors;</li> <li>• 18 commercial.</li> </ul>	739 spaces are proposed as follows: <ul style="list-style-type: none"> <li>• 665 residential;</li> <li>• 55 visitors;</li> <li>• 19 commercial</li> </ul>	No Shortfall of 12 visitor spaces
<b>Communal Space (DCP)</b>	20% for residential flat buildings	31% (includes public park dedication total of 3,676 m <sup>2</sup> )  Communal open space for the development itself was not provided.	No, space for residents will be less than 20%
<b>Unit Sizes (DCP)</b>	Studio: 60m <sup>2</sup> 1 bedroom: 75m <sup>2</sup> 2 bedrooms: 100m <sup>2</sup> 3 bedrooms: 100m <sup>2</sup>	Studio = 60m <sup>2</sup> 1 Bedroom = 75m <sup>2</sup> 2 Bedroom = 100m <sup>2</sup> 3 bedrooms: 100m <sup>2</sup>	Yes

**Table 1 – Summary of Compliance**

The unit mix of the development is as follows:

	<b>TOTAL</b>	<b>Unit Mix</b>
<b>Studio</b>	10	2.2%
<b>1 bedroom</b>	265	56.4%
<b>2 bedroom</b>	190	40.4%
<b>3 bedroom</b>	5	1%
	<b>470</b>	<b>100%</b>

**Table 2 – Unit Mix**



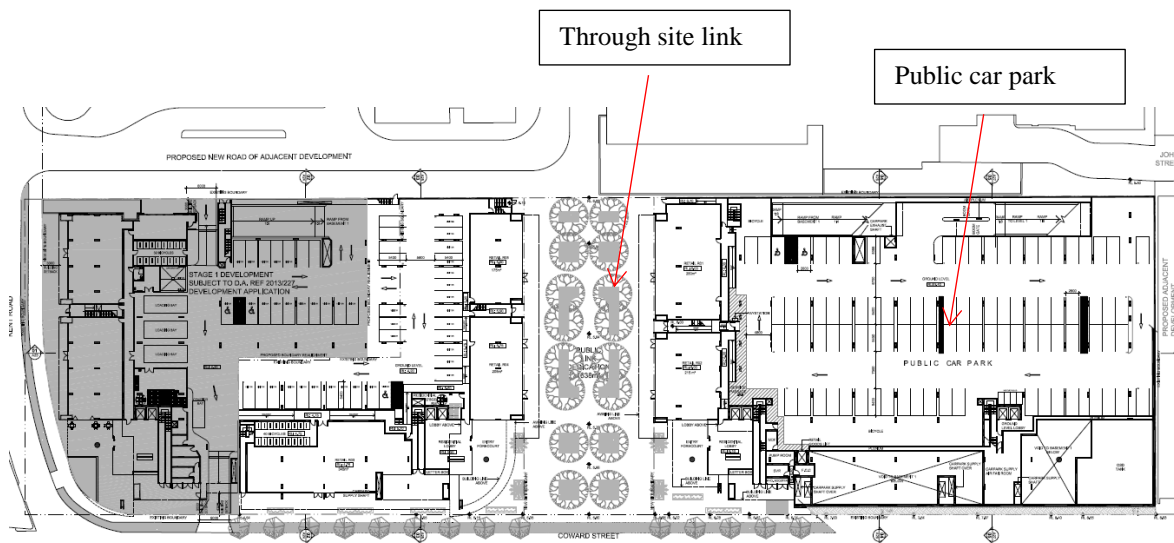


Figure 11: Coward Street elevation.

With regards to the car park, the entry to the public car park was previously proposed via private land (owned by Meriton) that is not part of the subject site and no documentation was provided to demonstrate how such access will function. As part of the amended documentation provided on 15 May 2015, access to the car park shall be provided from Coward Street. The public car park shall be located below the Coward Street entry ramp, with one level of residential parking located further below the public car park level. The public car park shall be dedicated to Council in a stratum at no cost, and Council has the flexibility to utilise the car park as a public facility on a commercial basis. Therefore, the proposed public car park will be able to be accessed from a public road. This is shown in the following figure.

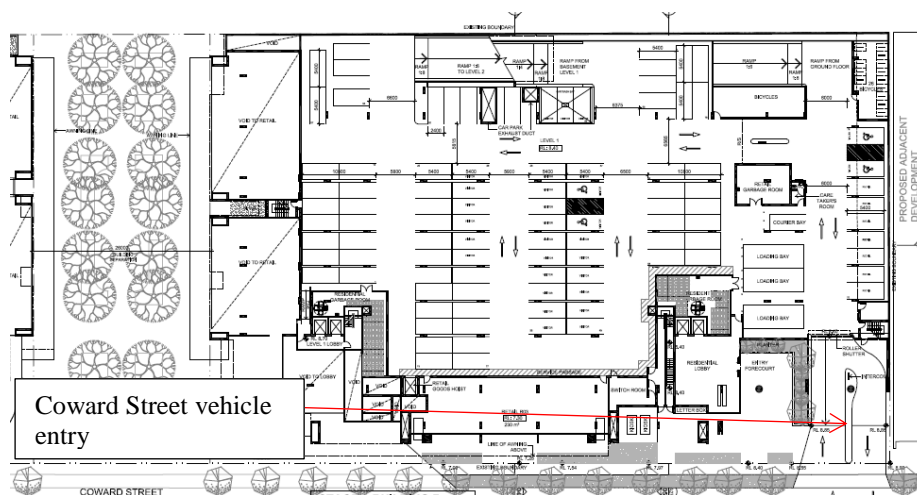


Figure 12: Coward Street elevation.

The through site link is 26 metres wide (with no basement under) and also forms part of the draft PA. The through site link is of benefit to the development, and to the permeability through the Precinct. It is also noted that the separation also represents the required separation distance between buildings under SEPP 65. The applicant has indicated that approximately 93 car spaces will be provided.

## 5. 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, which have been included in the conditions of consent.

#### **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.

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

A BASIX Certificate has been submitted with the application. The BASIX certificate will need to be revised to reflect the amended architectural plans.

#### **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.

The applicant submits that further detailed analysis cannot be undertaken due to the existing site coverage of the building on the site, and that post demolition of the buildings, further assessment can be undertaken. The applicant states that the existing tenants of the building include two companies that provide Government defence related contracting and training services, and these businesses have restrictions on site access and do not allow any heavy drilling equipment or personnel to enter the building, preventing the investigative sampling that is required for a Stage 2.

In addition, the applicant's environmental consultant submitted additional correspondence on 22 May 2015, stating:

1. Historical uses on the site have been commercial in nature, similar to the surrounding properties, which involved office, warehousing and car parking activities;
2. The site will undergo a Stage 2 Detailed Site Investigation (DSI) and Acid Sulfate Soils (ASS) assessment after building demolition to enable site access to heavy drilling equipment. Should environmental impacts or ASS be identified, these will be remediated/managed in accordance with State Environmental Planning Policy No 55 (SEPP 55) *Remediation of Land* and relevant NSW EPA guidelines;
3. Although underground storage tanks were noted to have been installed during the 1960's no evidence of such facilities was identified during the Stage 1 site inspection suggesting that they have probably been removed from the site. This will be confirmed during the DSI and subsequent, site-wide bulk excavations for basement construction; and
4. Based on the knowledge that adjacent properties were historically used for similar land uses to those at the subject site and all have recently been remediated successfully and are presently in the process of redevelopment, EI is very confident that should it be deemed necessary, the site can also be successfully remediated and made suitable for the proposed residential land uses.

Council is satisfied that the site can be made suitable for the intended use, it appears that the remediation will be Category 2 under SEPP 55, and consent is not required. The applicant must prepare a Stage 2 Report and if required, remedial action plan. This is to be submitted to Council and notification provided of the remediation works as required by SEPP 55. Remediation must be completed prior to the issue of the Construction Certificate.

**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 considered the original development application, in September 2014. The DRP concluded that it cannot support the proposal for reasons relating to built form and density. However, the amended scheme is considered to better respond to the issues raised by the DRP.

In performing an assessment of the amended scheme, it is considered that the proposal is consistent with the aims and objectives of the SEPP as the proposal responds to the urban context in terms of scale, bulk, materials, setbacks, security and amenity as indicated below.

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.

**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.

The proposal contributes to the context, as it is of a form of development, in terms of height and density, that would be reasonably expected upon the site, given the surrounding development within the precinct. Specifically, the reduced central podium height from 12 to 8 and 9 storeys improves the streetscape presentation of the development and results in a better response to the context. This is illustrated in the images overleaf.

## 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 8 and 9 storey podium. The central podium is designed with a 3 metre setback up to 4 storeys, then an 8 metre setback from level 5 to level 8 and 9. Level 13 and 14 of the towers provide a book-end structure at either side of the development and have incorporated a minor step in the side elevation profile.

The scheme now also includes a curved façade for Building A, which matches the curved façade of the adjoining development at 39 Kent Road Mascot. This improves the differentiation in scale of Building A to Building B.

The scale and density of the proposed development is proportional to approved development within the Mascot Town Centre, particularly development along 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 accommodate residential towers.

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. To the north is 19-33 Kent Road Mascot.

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



Figure 13: 3D view of subject development in context with adjoining development within Mascot Town centre



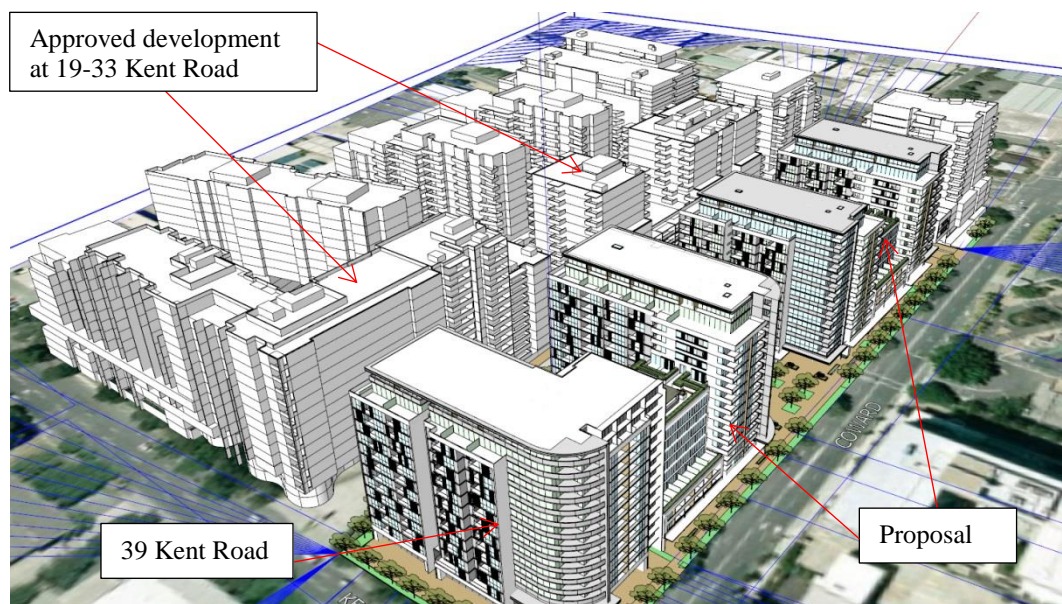


Figure 14: 3D view of subject development in context with adjoining development within Mascot Town centre

The scale of the amended development is considered to be similar to the scale of recently approved development in the immediate vicinity. Figure 13 and 14 demonstrate the similarity in bulk and scale between the subject development and adjoining development. Therefore, the scale of the proposal is considered to be of a scale that would be reasonably contemplated for the site and is considered to be acceptable.

### 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 compatible with the adjacent developments and the emerging character of the area. The height and form of Building A unifies with the adjoining approved development at 39 Kent Road, particularly with the inclusion of a curved eastern façade. This provides a suitable built form presentation along Coward Street. This allows for Building A and Building B to be differ in architectural style and finish. However, a condition has been included requiring that different finishes and materials be adopted in Building B, to further improve the differentiation in built form between the two buildings.

**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 4.42:1 (46,556 m<sup>2</sup>) does not comply with the maximum FSR permitted for the subject site of 3.2:1.

The FSR departure exceeds the permissible GFA by 12,876 sqm.

However, as stated under Principle 2 and 3, the scale and built form of the amended proposal is considered to be contextually appropriate for the site, and on balance, is proportional to the density of approved development within the precinct.

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 previous scheme included 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.

As a result of the amendments to the podium and reduction in apartments, the proposal achieves 57% of the apartments receiving 2 hours of solar access in mid-winter. If extended hours of 8am to 3pm are included, then this increase to 61%.

Given the extent of overshadowing by the approved development to the north, there are limited alternate schemes for the site which would increase solar access. Therefore, a departure from the 70% requirement is satisfactory.

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. Conditions from Council's Landscape Officer have been 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.

64% 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. Conditions to this effect have been included.

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.

On balance, the proposal satisfies the ten design principles and is consistent 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 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 Height 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 designed as two 14 storey buildings, with a reduced 8 and 9 storey central podium. The amended schemes retains the overall height non-compliance of 2.8 metres, however the reduced number of storeys has improved the overall urban outcome for the site and delivers a development that is more in-line with the heights and scale of adjoining development. The following plan shows the portions of the building that depart from the height, outlined in red. The balance of the building complies with the 44 metre height control.

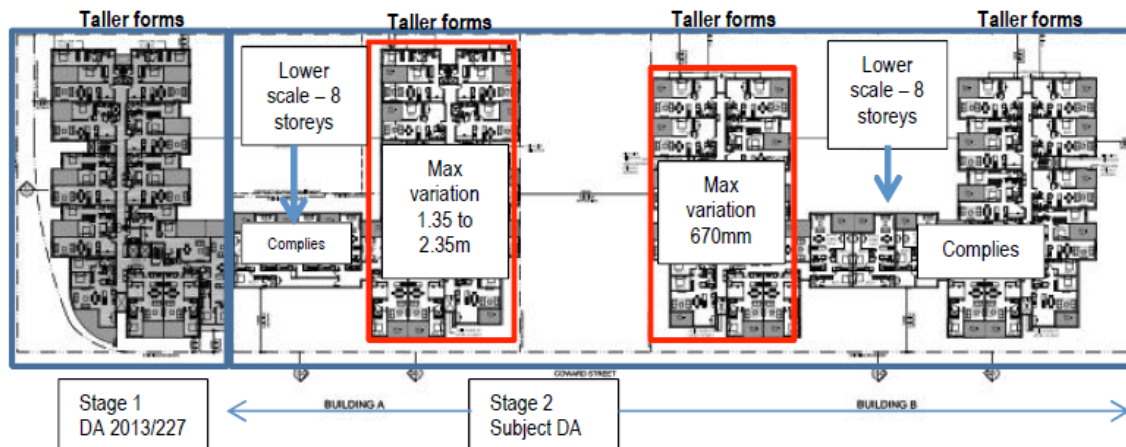


Figure 15: Height variation

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

- The proposal appropriately locates taller buildings within the site. The reduction in height to the central podium of the development balances the minor increase in height for the tower components.
- The proposed height is 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. Figure 13 and 14 demonstrates that the proposed height and scale of the development is relative to the height and scale of adjoining development. This is specifically achieved by the reduction in the height of the central podium, generating a development that is consistent with the desired future character of the area.
- The proposed 8 and 9 storey central podium provide a suitable building break and separation between the 14 storey towers. This has reduced the visual impact, and provides a suitable streetscape elevation along Coward Street.
- The height departure is minimal and does not generate any discernible impact. If the development were to strictly comply with the height, then it would require the deletion of a portion of the 14<sup>th</sup> storey, which does not alter the developments compliance with the objectives of the standard.
- When viewed from the public domain, the proposal will be of a form that is generally in-line with the built form that would be reasonably expected for this precinct. The proposal includes a public benefit in the form of a through site-link which generates increase pedestrian permeability within the precinct. The pedestrian link increases the separation between the two non-complying tower portions of the building.
- The development results in a better urban outcome for the site, as it includes the delivery of a pedestrian through site-link and provides a public car park. Whilst

these public benefits are not sole justification for the departure, they are considered to be outcomes of the development that are in the public interest, which supports the position of a better urban outcome for the site.

- In addition, the applicant contends that the ‘minor variation to the height control, maintains a cohesive building scale consistent with surrounding developments, and that the building is reflective of the surrounding area and desired future character’. It is accepted that the building is of a scale consistent with adjoining development.

*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 been achieved and therefore strict compliance with the numerical requirement is not considered necessary in this instance. The proposal maintains compliance with the objectives of Clause 4.4.

*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 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*

The height control has been varied within the precinct. The development standard has not been abandoned, however, in this instance, the applicant has submitted adequate justification in support of the height departure and the variation is considered to have sufficient planning merit.

*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 appropriate and strict adherence to the development standard in this instance is not necessary. The proposed development provides 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 appropriate and strict adherence to the development standard in this instance is not necessary.

It is considered that the applicant's Clause 4.6 is well-founded and the departure is in the public interest given the non-compliance with the height control will generate a building height and scale that is consistent with the height of adjoining buildings in the precinct.

- 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 acceptable in this instance as the proposal does achieves compliance with the objectives of the standard and in this instance will allow for the co-ordination of the orderly and economic use and development of land. Conversely, whilst a compliant height can readily be developed on this site, it would not generate a more orderly urban outcome than the current proposal. Therefore, the proposal is considered to be akin to a development that were to comply strictly with the numerical control.

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

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

- The development will not adversely impact on the surrounding streetscape, but rather the reduction in building bulk and scale results in a suitable streetscape presentation.
- The taller buildings have been appropriately positioned, particularly via the reduction in height to the central podium from 12 to 8 and 9 storeys.
- The site is located within the Mascot Town Centre, which is a dense urban town centre. When compared with adjoining approved development, the proposal is of a similar height, bulk and scale and is therefore compatible with the precinct. As such, the development is consistent with the desired future character of the area.

Therefore, it is considered that there are sufficient planning grounds for a variation to the height and the variation is 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 achieve a better outcome for the site in that the proposal will not impact on the visual amenity and streetscape. This has been detailed within the body of this assessment.

Therefore, for the reasons outlined this assessment, it is considered that flexibility can be applied to this development, as it does achieves a better outcome for the site.

#### *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. Whilst the public benefit arising from the development is not sufficient to justify a non-compliant building height, this clause 4.6 assessment concludes that the proposal attains compliance with the objectives of the standard, and therefore, the public benefit is in the public interest.

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 can be varied as it is generally consistent with other approved development in the area.

On the basis of this assessment, it is concluded that the variation is 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 consistent with the underlying objectives of the standard identified.

The proposal results in a development that does not strictly comply with the Height standard by 2.8 metres, which is considered a minor departure given the scale of the development. Further, the proposal is of a form that would be reasonably contemplated for the site, given the scale of adjoining approved development.

It has been established that the proposed development is appropriate and strict adherence to the development standard in this instance is unnecessary.

It is considered that the applicant's Clause 4.6 is well-founded and the departure in height is in the public interest.

On balance, considering the height of adjoining development and the minor nature of the departure, and that the development maintains compliance with the objectives of the standard, it is recommended that the development standard for the height be varied. Accordingly, Council officers support the height departure.

## 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 <sup>2</sup> )	4.42:1 or 46,556 sqm including internal corridors

**Table 3 - FSR**

It is noted that the application results in a departure that is equivalent to 12,876 sqm.

The applicant has submitted a Clause 4.6 Exception and this is provided at Appendix D. An assessment of the Clause 4.6 Exception is provided below. In summary, Council officers do support the proposed FSR departure for the reasons listed in this section.

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 D), 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.

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 consistent with the objectives of the FSR development standard for the following reasons:-

- The intensity and density of the development is of a form that would be reasonably contemplated for the site. Whilst the proposed FSR is non-compliant, there are other sites within the Mascot Town Centre precinct that have been approved at a similar or high FSR. The FSR generates a bulk and scale that is in keeping with the desired future character of the area. This satisfies objective (a).
- The proposed building is considered to be compatible with the bulk and scale of existing and desired future development. The introduction of a reduced central podium has provided increase building breaks providing an improved bulk and scale. Images 13 and 14 within this report demonstrate that the proposal is proportional in bulk and scale to approved adjoining development.

The development is consistent with the desired future character of the area, in that it provides retail uses along Coward Street and also provides active uses to the proposed through site link. This generates a land use consistent with the desired character of the area. This satisfies objective (b).

- The proposal has maintained an appropriate visual character in that the bulk and scale of the proposal will integrate with the adjoining approved development at 39 Kent Road. This provides a uniform streetscape presentation, providing an appropriate visual interface between new development and adjoining approved development. This satisfies objective (c).

- The proposal includes the introduction of a through site link that will improve the streetscape and public landscaped areas. The through site link provides a 26 metre building separation and provides a link to future public areas to the north. This improves the permeability and views across the precinct. This satisfies objective (d).
- The proposal is not considered to generate adverse impacts to the use of adjoining properties and the public domain. Rather, the proposal shall deliver a 1600sqm through site link that includes active ground floor uses, providing for the improved enjoyment of the public domain via outdoor dining areas and pedestrian links. This satisfies objective (e).
- The site is a large site that is capable of accommodating an increase in density without generating adverse impact. The density is considered to be similar to that of adjoining approved development in the precinct. This satisfies objective (f).
- The proposal shall contribute to the economic growth of Botany Bay via the provision of new housing and employment opportunities within proximity to public transport services and within the Mascot Town centre.

Accordingly, the development is considered to be compliant with the objectives of the FSR standard.

- 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 been achieved as stated above, therefore the numerical standard, whilst being relevant, can be varied and strict compliance with the numerical requirement of 3.2:1 is considered unnecessary in this instance.

- 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. However, the proposed development is 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*

The prevailing approved FSRs in the precinct are around 3.8:1, as developments have almost all been approved with additional FSR via the approval of a Clause 4.6 exception to the FSR standard. The following table provides a summary of approved FSRs in the Mascot Town Centre.

Address	Approved FSR	Approval Date
39 Kent Road (JRPP Application)	4.2:1	July 2014
19-33 Kent Road (JRPP Application)	3.78:1	June 2014
246 Coward Street (JRPP Application)	3.88:1	March 2014
214 Coward Street (JRPP Application)	4.5:1*	16 December 2010
230 Coward Street (aka 25 John Street)	4:1*	23 August 2006
3-9 Church Avenue	2.09:1*	18 December 2008
13A Church Avenue	4.24:1*	4 June 2014
10-14 Church Avenue & 619-629 Gardeners Road (JRPP Application)	2.52:1*	3 August 2011
1-5 Bourke Street	3.35:1*	11 August 2004
7 Bourke Street & 30-32 John Street	4.16:1*	13 January 2011
24-26 John Street	3.46:1*	6 September 2009
8 Bourke Road & 37 Church Avenue	4.24:1*	13 May 2009
208-210 Coward Street (JRPP Application)	4.6:1*	5 December 2011
103-105 O'Riordan Street (JRPP Application)	3.1:1	20 June 2012
5 Haran Street (Court Approved)	3.1:1	June 2013
2-4 Haran Street (JRPP Application)	4:1	August 2013

\* Approved under BLEP 1995. Note that the definition of GFA under the BLEP 1995 differs from the BB LEP 2013.

It is noted that the application intends to link the proposed basement car park to the approved development at 39 Kent Road, and the Building A of the subject application will connect with the approved 14 storey tower at 39 Kent Road. The DA at 39 Kent Road was approved by the JRPP in July 2014. The FSR approved is 4.2:1, but it is now noted that in the calculation of GFA the applicant did not include corridors in the building, contrary to the definition in the LEP. The approved GFA is therefore more likely to be in the order of FSR 4.5:1.

Therefore, the proposed FSR is considered to be generally consistent with the approved FSR's within the precinct.

- 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 appropriate and strict adherence to the development standard in this instance is considered to unnecessary. Furthermore, the additional floor space does not result in adverse impacts to adjoining properties in terms of bulk and scale, streetscape impact and visual impact.

Accordingly, since the proposal does satisfies the objectives of the FSR development standard pursuant to Clause 4.4 of BBLEP 2013, the proposed development is considered to be appropriate and strict adherence to the development standard in this instance is unnecessary.

It is considered that the applicant's Clause 4.6 is well-founded and the departure is in the public interest.

- 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 acceptable as the proposal does achieves the objectives of the development standard and in this instance will allow for the co-ordination of the orderly and economic use and development of land.

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 of this variation to the FSR development standard given:-

- The development will not adversely impact the surrounding streetscape and desired future character of the area;
- The FSR results in a minor height non-compliance under the BB LEP 2013, which is supported for the reasons outlined in this report.

- The FSR does not set an undesirable precedent for future development within the precinct.

Therefore, it is considered that there are sufficient planning grounds for a variation to the FSR and the variation is 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 be an acceptable outcome for the site in that the proposal will adversely impact on the visual amenity, and streetscape along Coward Street.

Therefore, for the reasons outlined and given the existing context, flexibility can be applied to this development, to achieve a suitable urban outcome for the site.

*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. Whilst the public benefit arising from the development alone is not sufficient to justify a non-compliant FSR, this clause 4.6 assessment concludes that the proposal attains compliance with the objectives of the standard, and therefore, is in the public interest.

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 can be varied as it will not affect the general planning controls in the area, particularly as it generates built form that is generally consistent with other approved development and construction in the area.

On the basis of this assessment, it is concluded that the variation is 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 compliant with the underlying objectives of the standard identified.

The proposed FSR non-compliance generates not discernible adverse impact and the bulk and scale is considered to be consistent with that of approved development in the precinct.

It has been established that the proposed development is appropriate and strict adherence to the development standard in this instance is unnecessary. Maintaining and enforcing the development standard in this case would be unreasonable and would prevent the orderly and economic development of this site.

It is considered that the applicant's Clause 4.6 is 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 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 of the DCP. However, the majority of the development within the Mascot Town Centre has not complied with the built form controls contained in the DCP, where an applicant can demonstrate a better urban outcome via an alternate built form layout. The following image illustrates the subject site in context of the adjoining development in the precinct. The similarities that are evident are the height, the bulk, the scale and the layout between towers, podiums and open space areas.



Figure 16: 3D view of subject development in context with adjoining development within Mascot Town centre

The reduction to the height of the centre podium has improved the building breaks and reduced the bulk and scale of the development. The podium setbacks reduce the building street wall height and the through site-link increases the spatial and visual relationship in the site. This is consistent with the objectives of the DCP.

Whilst the numerical FSR of the proposal remains substantially high, the outcome of this FSR is the built form, density and scale is considered proportional to the density and scale of development in the precinct. As outlined in the Clause 4.6 assessment, the FSR variation retains compliance with the objectives of the standard, and therefore can be supported.

The Design Review Panel (DRP) did not support the original 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. In addition, the DRP stated that the large non-compliance with the FSR standard would increase the building bulk dramatically. The original application sought consent for 542 apartments and the applicant stated that the FSR was 4.68:1 or a GFA of 49,331 sqm, however this did not include internal corridors and the FSR was more likely to be 5:1.

The subject proposal has an FSR of 4.42:1 with a GFA of 46,556 sqm. As outlined in the Clause 4.6 assessment, this FSR is considered appropriate and comparable to the FSR of surrounding development.

The overall layout of the built form and resulting density is considered acceptable for the site.

#### Note 2 – Setback, separation, building lengths and materials/finishes

The ground floor setbacks are compliant with the requirements of the DCP, however the tower components do not strictly comply with the setback requirements of the DCP. The DCP recommends an upper level setback along Coward Street of 5 metres to 7 metres. The central podium is 8 and 9 storeys, comprising a 3 metre setback up to 4 storeys, then an 8 metre setback from level 5 to level 8 and 9. However, the tower component has a 3 metre setback. The incorporation of new setbacks to the podium are an improvement and reduces the length and height of the street wall, providing better a spatial and visual relationship to the streetscape. Further, the setbacks reduce the building bulk and scale.

The positioning of the 14 storey towers provides a book-end structure to the podium and the through site-link provides a 26 metre separation between the two buildings. The 26 metre separation allows for the pedestrian through site-link, which provides a good urban outcome for the site and wider precinct. The pedestrian link allows for connectivity to adjoining public areas, and can provide opportunities for future outdoor dining and public gathering spaces. A condition of consent has been included requiring that a public domain plan be prepared, in consultation with Council staff.

The following images indicate the setback, separation and building materials.



*Figure 17: Coward Street elevation.*





*Figure 18: Coward Street elevation.*

The proposal seeks consent for building lengths that are up to 80-90 metres at their greatest length, however the introduction of building breaks, setbacks and reduction in height to the central podium offsets any visual impact from the length of the building.

The two buildings are designed in a similar manner, with the exception that Building A has now adopted a curved eastern façade, to match the curved façade of 39 Kent Road Mascot. Despite this, the same materials and finishes are incorporated in both buildings. Council considers that there is no benefit in maintaining a symmetrical approach to the design and requires that Building B be designed in a less commercial manner, to reflect the predominant residential nature of the buildings. A condition has been included requiring the applicant to alter the materials and finishes for Building B.

### Note 3 – Solar Access

The site is constrained by the overshadowing cast by the development to the north at 19-33 Kent Road Mascot. This constraints the ability of the subject development to receive solar access in mid-winter. The application results in 57% of the apartments receiving two hours of solar access in mid-winter between 9am to 3pm. If extended hours are included, 61% of the apartments would receive two hours of solar access between 8am to 3pm. The site is a dense urban area, and it is appropriate to apply the two hour control.

In the assessment of the application to the north at 19-33 Kent Road, it was concluded that overshadowing of southern sites will occur, however that such overshadowing was reasonable given the dense urban form that is envisaged for the precinct. Figure 16 illustrates the shadow diagrams.

The applicant has submitted an Expert Report regarding the solar access to the apartments. The report states that if the site was not affected by the overshadowing from the development to the north, that the solar access compliance would be approximately 77% for two hours in mid-winter. The report also concludes that the applicant has made a considerable design effort to achieve compliance. Therefore, any alternate design upon the site would achieve a similar level of solar access, and in considering this, it is not possible that a greater level of compliance could be achieved. As such, the solar access, although not ideal, it considered appropriate given the constraints of the site.



Figure 19: Shadow diagrams – 21 June.

#### Note 4 - Unit Mix

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

	<b>TOTAL</b>	<b>Unit Mix</b>
<b>Studio</b>	10	2.2%
<b>1 bedroom</b>	265	56.4%
<b>2 bedroom</b>	190	40.4%
<b>3 bedroom</b>	5	1%
	<b>470</b>	<b>100%</b>

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 25% 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 been acceptable.

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

- *The suburb of Mascot has experienced significant population growth between 2001 and 2011 and population projections indicate that this will continue;*
- *The age profile of residents in Mascot is getting younger with the median age falling from 37 years to 35 years between 2001 and 2011. This is contrary to broader trends for the Botany Bay LGA and Greater Sydney where the median age of residents has increased over the period;*

- *The proportion of flat-unit-apartments in Mascot has increased between 2001 and 2011 as has the proportion of households comprising lone persons and couples with no children. Mascot has experienced declining dwelling occupancy rates over the same period;*
- *Studios and 1 bedroom apartments comprise only 10% of total stock 2011 – significantly below the 22% level in Inner Sydney SA3s. This is despite these dwellings being the most affordable and in high demand by y. This is despite these dwellings being the most affordable and in high demand by younger residents and families without children; and*
- *The improved accessibility and attraction of Mascot to a wider market has led to a changing socio-economic character with a growing share of residents employed in white collar occupations and a declining proportion employed in blue collar occupations.*

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

- *Two (2) bedroom dwellings make up the greatest proportion of dwellings in Mascot with studio and one (1) bedroom dwellings making up only 10% of stock in 2011;*
- *Residential demand emanates from three main sources being:*
  - o Young single professionals and young couples without children who are predominately first homebuyers with a strong component of Asian buyers attracted by proximity to a rail node, Sydney CBD and the Airport;*
  - o Investors and second home buyers; and*
  - o Ageing residents seeking to downsize or to upgrade from older style apartments.*
- *Reflective of the buyer profile demand is strongest for studio/ 1-bedroom units which are more affordable and align with the characteristics of buyers (i.e. lone persons and young couples without children). This is evidenced by a shortage of supply, a lack of small units advertised for sale/ rental and strong capital appreciation on the resales that do occur; and*
- *The proportion of smaller units (studios and 1 bedroom units) in new residential developments planned for delivery in Mascot range from 24% to 70%. This suggests Council is increasingly recognising prevailing market conditions in this locality and exhibiting flexibility in the application of DCP requirements to allow developers to tailor their stock to the market. This supports financial viability of residential development and ensures that supply matches demand commensurate with Government policy*

The findings of the submitted report are agreed with. The report identifies current rental and sales figures from the March Quarter 2014 and relies on these in forming the view that there is strong demand for more studio and one bedroom apartments and less demand for two and three bedroom apartments. The proposed units comply with the minimum units sizes stipulated under Section 4.4.7 of BBDCP 2013. The unit mix will be a positive contribution to the social mix of the precinct and will assist to some extent in supporting affordable housing in Mascot. The submitted report is therefore considered acceptable and therefore the proposed unit mix of 58.3% studio/one bedroom units is supported.

## **Draft Amendment to SEPP No. 65**

A draft amendment to SEPP No. 65 had been placed on public exhibition and ended 31 October 2014. As such, Council will need to consider the draft amendments to the SEPP.

The amendments include variations to the names of the ten planning principles which are to include: Context and Neighbourhood Character, Built Form and Scale, Density, Sustainability, Landscape, Amenity, Safety, Housing Diversity and Social Interaction, and Architectural Expression.

It is considered that the ten planning principles are similar if not the same to the existing principles. However, there is an addition of the component of 'social interaction' which seeks to encourage good design including the use of communal spaces to provide opportunities for social interaction amongst the residents.

However, the proposal is still considered satisfactory in providing housing choice to the local community. The SEPP No. 65 assessment above provides a more complete assessment against the ten planning principles which is largely similar to the draft amendment.

The proposal is considered to comply with the requirements of draft SEPP 65

## **Public car park**

Council intends to use the public car park for pay parking for commuters and visitors to Mascot Town Centre. There shall be approximately 93 car parking spaces which shall be subject to detailed design by the applicant. A condition has been included requiring access to John Street via a potential door way and direct access from Coward Street is required. The car park is to be dedicated to Council in a stratum lot, with access details to be outlined in the Planning Agreement. The Planning Agreement shall be entered into, prior to the issuing of any Construction Certificate.

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

These matters have been considered in the assessment of the application. It is considered that the proposal will have minimal adverse environmental, social or economic impact on the locality. Consideration has been given to the merits of the application, and whilst the application results in a non-compliance with the FSR, and building height standard, the non-compliance has been justified and therefore, the application attains compliance with 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.

The form of the development in terms of bulk, scale and density is considered to be similar to that of adjoining development, and therefore is of a built form that would be reasonably expected for the site.

**(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 in the public interest as it delivers additional housing for the Mascot town centre and will provide a public benefit in the form of a public car park and dedicated through site link.

**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. Relevant conditions have been imposed into the recommendation of the consent.

Design Review Panel (DRP)

The original application for 542 apartments was referred to the DRP in September 2014. The DRP concluded that it cannot support the proposal for reasons relating to built form and density.

However, the amended scheme that forms the basis of this assessment report is considered to better respond to the issues raised by the DRP and results in an improved urban outcome for the site. An assessment under the ten design principles of SEPP 65 has been undertaken in this report and it is concluded that the proposal addresses the concerns raised by the DRP.

External Referrals

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

<b>Authority</b>	<b>Comment</b>	<b>Date Received</b>
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	4 September 2014

	a maximum 51m AHD.	
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**

Under the Mascot Station Precinct Section 94 Contributions Plan and the Botany Bay Section 94 Contributions Plan 2005-2010, the following contribution is applicable:

- Total Section 94 Contribution = \$7,202,085.00

A credit of \$657,585.90 is available to the applicant, based upon the existing commercial building. Therefore, the total applicable contribution is \$6,544,499.10.

**6. 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 is supported in this instance as it retains compliance with the objectives of the standard.

On balance, the amended scheme results in an improved urban outcome for the site, and delivers a built form that is consistent with adjoining approved development in terms of bulk, scale, density and height.

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*. On balance, the proposed development is compliant with the objectives and variations to the standards of the BB LEP 2013 and the BB DCP 2013, are acceptable in context.

It is therefore recommended that the Panel grant approval to the application subject to the conditions in the attached schedule.

**APPENDIX A – BOTANY BAY LOCAL ENVIRONMENTAL PLAN 2013**

<b>Principal Provisions of BBLEP 2013</b>	<b>Compliance Yes/No</b>	<b>Comment</b>
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"> <li>• <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></li> <li>• <i>To encourage employment opportunities in accessible locations, and</i></li> <li>• <i>To maximise public transport patronage and encourage walking and cycling.</i></li> </ul>
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 <sup>2</sup> .  The site has an FSR standard of 3.2:1.  This equates to a permissible GFA of 33,680 m <sup>2</sup> .  The FSR is 4.42:1 with a GFA of 46,556 m <sup>2</sup> .  This is discussed at item 2.
Clause 4.4 (2A) Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m <sup>2</sup> min and maximum height of 22 metres and maximum FSR	N/A	The subject site is not located within an R3 or R4 zone.



Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
of 1.5:1?		
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. This has been included as a condition of consent.
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. This has been included as a Condition of Consent.  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 development. The application has been reviewed by Council's Development Engineer whom has not raised an objection to

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		the proposal. The development is considered to be consistent with Clause 6.3 of BBLEP 2013.
6.8 - Airspace operations	Yes	<p>Clause 6.8 – Airspace Operations. The subject site lies within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority. The application proposed buildings 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.</p>
6.9 – Development in areas subject to aircraft noise	Yes	<p>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.</p>
6.16 – Design excellence	Yes	<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>However, the amended scheme is considered to satisfy the issues raised by the DRP, and therefore is consistent with Clause 6.16 of BBLEP 2013.</p>

**APPENDIX B – BOTANY BAY DEVELOPMENT CONTROL PLAN 2013**

<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
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.	This has been included as a condition
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>	Access conditions have been included.
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:            (i) Existing on site public stormwater drainage infrastructures;            (ii) Flooding and overland</p>	<p>The application has been assessed by Councils Development Engineer who has no objection to the proposed development, subject to conditions.</p> <p>Yes as mentioned above, the proposal will incorporate a stormwater system suitable for the development.</p>	<p>Yes</p> <p>Yes</p>

	<p>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>		
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>Yes</p> <p>Condition has been included</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 - Contamination – Preliminary Investigation	C7 - Before determining a Development Application that involves a change of use or rezoning of land where it is proposed to carry out development for a more sensitive land uses, Council must consider the results of a preliminary investigation.	<p>The application has been accompanied by a Preliminary Stage 1 Environmental Site Investigation prepared by Environmental Investigations.</p> <p>The report recommends that a Phase</p>	Condition has been included

	<p>Consideration shall be given to the following:</p> <ul style="list-style-type: none"> <li>(i) Is the information about the site's history adequate?</li> <li>(ii) Are the descriptions of activities on the site detailed enough to identify a potentially contaminating land use?</li> <li>(iii) Are there any gaps in the history that might mask a potentially contaminating land use?</li> <li>(iv) Are the sources reliable?</li> <li>(iv) Is the information verifiable?</li> <li>(v) Does the information conform to the Managing Land Contamination: Planning Guidelines (EPA)?</li> </ul>	<p>2 Environmental Assessment and Acid Sulfate Soil Management plan be provided. The applicant has provided further information in this regard, and Council is satisfied that the site can be made suitable for the proposed use. A condition has been included that a Phase 2 Environmental Assessment, Acid Sulfate Management Plan, and a RAP be prepared, prior to the issuing of a Construction Certificate.</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, grassing, shrub and accent planting or any combination of these.</p>	<p>The development application has been accompanied by a landscape design, which is consistent with Council's Technical Guidelines. A condition has been included requiring a public domain plan.</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 southern boundaries.</p> <p>The submitted landscape plans have been assessed by Council's Landscape Architect. Appropriate conditions have been included.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

	<p><b>Deep Soil Zones</b> 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><b>Planter Beds</b> 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. In addition, a communal roof terrace is provided above level 8 and 9.</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>The amended plans indicate that there are 46 adaptable dwellings.</p> <p>A condition has been included requiring compliance with DCP 4C.6.1</p>	Condition has been included.
9A.4.3.1 Height	<b>C1</b> 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>	<b>No – Refer to Clause 4.6 variation above.</b>
	<b>C3</b> Development must conform to the maximum height of buildings in storeys for Urban Blocks 1, 3, and 4 as shown in <b>Figures 16, 17, 19 and 20</b> .	<p>Building A = 14 storeys, with a central podium of 8 storeys</p> <p>Building B = 14 storeys, with a central podium of 9 storeys</p>	<b>No</b>
9A.4.3.2 Floor Space Ratio (FSR)	<b>C1</b> The maximum FSR of buildings must be in accordance with the Floor Space Ratio Map and Clause 4.4 and 4.4B of the Botany Bay Local Environmental Plan 2013.	Proposed FSR is 4.42:1 (46,556 m <sup>2</sup> ).	<b>No – Refer to Clause 4.6 Variation to FSR</b>
	<b>C3</b> Development must comply with the future layout and built form controls for Urban Blocks 1, 3, and 4 in <b>Figures 11, 12, 14 and 15</b> . This requirement may result in the FSR not being achieved.	The development does not comply with the storey limit form or the building block mass envisaged in the DCP.	<b>No – Refer to Note 1</b>
9A.4.3.3 Site Amalgamation and Subdivision	<b>C1</b> The redevelopment of lots within Urban Blocks 1, 3 and 4 must conform to the amalgamation pattern in <b>Figures 21, 22, 24 and 25</b> .	The subject site is not required to be consolidated with any adjoining allotments.	Yes
	<b>C2</b> The redevelopment of lots within Urban Blocks 1, 3 and 4 must generally conform to the lot alignments in <b>Figures 26, 27, 28 and</b>	The development application complies with the indicated lots alignments.	Yes

	<b>29.</b>		
9A.4.3.4 Street Setbacks	<b>C1</b> All development within Urban Block 1 must comply with the street setbacks identified in <b>Figures 30 and 31.</b>	<p>A 3 metre setback is provided to Coward Street for level 1 to 4.</p> <p>The setback provides consistency with the adjoining development at 39 Kent Road.</p> <p>A setback of 8 metres is provided to the podium from level 5 to level 8 and 9 of the podium. The tower components remain at 3 metres.</p>	<p><b>Yes – Refer to Note 2</b></p> <p><b>No</b></p>
	<b>C4</b> All development within Urban Blocks 1, 3 and 4 must comply with the section plans in <b>Figures 36, 37, 38, 39, 40, 41 and 42.</b>	Section AA in Figure 36 applies to the subject site.	<b>No – Refer to Note 2</b>
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.	<p>Yes</p> <p><b>No – Refer to Note 2</b></p>
9A.4.4.4 Active Street Frontages and Awnings	<b>C1</b> All development within Urban Blocks 1, 3 and 4 must provide retail or commercial street frontages where shown in <b>Figures 49, 50, 51 and 52.</b>	<p>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 1423sqm of commercial space is provided.</p> <p>All commercial tenancies are designed with a two storey height, providing a void area above. No residential apartments are proposed on the ground floor facing Coward Street.</p>	Yes
	<b>C2</b> All development within Urban Blocks 1, 3 and 4 must provide awnings where shown in <b>Figures 53, 54, 55 and 56.</b>	An awning is provided to the retail and commercial tenancies.	Yes
	<b>C4</b> There must be a minimum clear passage width of 2 metres between the adjacent building and leased area for outdoor dining and 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	<b>C2</b> Shadow diagrams must be provided for all development proposals for the summer and winter solstices. Shadow diagrams must show shadow impacts at 9am, 12 noon and 3pm for both solstices. Additional building setbacks may be required where internal site shadow impacts or impacts on adjoining properties are considered by Council to be unreasonable.	<p>To the south of the site is commercial/light-industrial land, that is zoned B5 Business Development.</p> <p>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.</p> <p>On balance, the shadow cast is considered reasonable, given the urban context of the site.</p>	<p><b>No</b></p> <p><b>Refer to Note 3.</b></p>



		<p>Further, the subject site is overshadowed by the approved development to the north at 19-33 Kent Road.</p> <p>As detailed in this report, an Expert Report by Steve King has been provided stating that 57% of the apartments receive 2 hours of solar access in mid-winter between 9am to 3pm.</p>	
9A.4.4.6 Building Articulation	<b>C2</b> Blank external walls of greater than 100m <sup>2</sup> 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>	Considered acceptable.
9A.4.4.7 Dwelling Size and Mix	<b>C1</b> Dwellings are to have the following minimum areas:  Studio: 60m <sup>2</sup> 1 bedroom: 75m <sup>2</sup> 2 bedrooms: 100m <sup>2</sup> 3 bedrooms: 130m <sup>2</sup>	All apartments within the development comply with the BB DCP 2013 apartment sizes.	Yes
	<b>C2</b> The combined total number of studio units and one-bedroom apartments/dwellings must not exceed 35% of the total number of apartments/ dwellings within any single site area.	The combined total of studios and 1 bedroom units is 57%	<b>No – Refer to Note 4</b>
9A.4.4.8 Landscaped Area	<b>C8</b> Developers are required to execute all nominated proposed public domain works identified on Figures 57, 58, 59 and 60, including landscaping works.	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
	<b>C9</b> Public parks must generally contain a minimum of 80% of deep soil area, and support planting of large scale trees. The remaining 20% may contain pavement area or hard surfaces. The 80:20 ratio can be flexible depending on the design of space.	As above.	No
9A.4.4.9 Private Open Space and Communal Open Space	<b>C2</b> The minimum private open space requirement per dwelling for multi dwellings and residential flats are as follows:  Studio/1 bedroom= 12m <sup>2</sup> ; 2 Bedrooms: 15m <sup>2</sup> 3 bedrooms: 19m <sup>2</sup>	Studio = 12m <sup>2</sup> 1 bedrooms = 12m <sup>2</sup> 2 bedrooms = 15m <sup>2</sup> 3 bedrooms = 19m <sup>2</sup>	Yes
	<b>C5</b> The minimum communal open space requirement for residential flats is 20% of the site area.	25.8% of site area (3,676m <sup>2</sup> )	No, as the calculation has included the through site link

	<b>C7</b> 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.	<b>No</b>
9A.4.4.11 Car Parking	<b>C1</b> Car parking provision must comply with the following car parking rates:  <b>Residential</b> Studio = 1 space per unit = 10 1 bedroom = 1 space per unit = 265 2 bedroom = 2 spaces per unit = 380 3 bedroom = 2 spaces per unit = 10 Visitor = 1 space per 7 apartments = 67 <i>Sub-total: 732</i>  <b>Retail</b> 1 space/80sqm of GFA = 18 Total required: 750 + 4 car wash bays	<b>Residential</b> Studio = 10 x 1 = 10 1 bedroom = 265 x 1 = 265 2 bedroom = 190 x 2 = 380 3 bedroom = 5 x 2 = 10 Visitor = 55 including shared as car wash bays <i>Sub-total: 720</i>  <b>Retail</b> 19 spaces  <b>Total proposed = 739 spaces</b>	<b>No</b>  <b>Shortfall of 12 visitor spaces. The applicant has provided justification for the departure, and it is accepted.</b>  <b>Conditioned to comply</b>
9A.4.5.4 Solar Access and Shadow	<b>C3</b> 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	<b>C1</b> All new buildings are to meet the following maximum wind criteria:  (i) 10 metres/second along commercial/retail streets; (ii) 13 metres/second along main pedestrian streets, parks and public places; and (iii) 16 metres/second in all other streets	A 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 recommendations adopted from the report.	Yes, subject to design measures

## **APPENDIX C – APPLICANT’S CLAUSE 4.6 FOR HEIGHT OF BUILDING**

## **APPENDIX D – APPLICANT’S CLAUSE 4.6 FOR FLOOR SPACE RATIO**