

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

JRPP No	2014SYE140
DA Number	13/200/02
Local Government Area	City of Botany Bay
Proposed Development	Section 96(2) application to modify Development Consent No. 13/200 including to make various minor changes to the approved building design; convert 88 residential apartments to 124 serviced apartments which will reduce the total residential apartments from 899 to 811, and increase the total serviced apartments from 262 to 386; increase the retail areas on level 2 Quadrant 2; and slightly narrow in part the through site link; increase the GFA by 1,958m <sup>2</sup> as a result of changes to the unit configuration and uses; and amend the elevations as a consequence of the changes in unit size and uses.
Street Address	19-33 Kent Road, Mascot
Applicant/Owner	Karimbla Construction Services (NSW) Pty Ltd
Number of Submissions	One (1) objection
Regional Development Criteria (Schedule 4A of the Act)	Section 96(2) Application to modify a consent determined by the JRPP
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> <li>• List all of the relevant environmental planning instruments: s79C(1)(a)(i) <ul style="list-style-type: none"> <li>◦ Botany Bay Local Environmental Plan 2013;</li> </ul> </li> <li>• List any relevant development control plan: s79C(1)(a)(iii) <ul style="list-style-type: none"> <li>◦ Botany Bay Development Control Plan 2013;</li> </ul> </li> </ul>
List all documents submitted with this report for the panel's consideration	<ol style="list-style-type: none"> <li>1. Planning Assessment Report with amended conditions;</li> <li>2. Approved and amended architectural plans.</li> </ol>
Recommendation	Approval
Report by	Christopher Mackey – Senior Development Assessment Planner

**Assessment Report and Recommendation Cover Sheet**

## **EXECUTIVE SUMMARY**

Development Application No. 13/200 was approved by Joint Regional Planning Panel - Sydney Region East on the 20 March 2014 for a mixed use development. The site is located on the eastern side of Kent Road with a secondary frontage to its northern boundary to Church Avenue, Mascot.

This Section 96(2) Application (DA13/200/02) seeks to modify Development Consent No. 13/200 including to make various minor changes to the approved building design; convert 88 residential apartments to 124 serviced apartments which will reduce the total residential apartments from 899 to 811, and increase the total serviced apartments from 262 to 386; increase the retail areas on level 2 Quadrant 2; and slightly narrow in part the through site link; increase the GFA by 1,958m<sup>2</sup> as a result of changes to the unit configuration and uses; and amend the elevations as a consequence of the changes in unit size and uses.

As a result of the above proposed changes, Condition Nos. 1, 38, 66, 70(b), 75 and 98 are required to be amended together with the description of the approved development.

The Section 96 Application was originally submitted as a Section 96(1A) and placed on public exhibition from 6 August 2014 until 20 August 2014 in accordance with Part 2 of BBDCP 2013 and was also notified to those persons who originally made a submission to the Section 96. One submission was received, which largely relates to the extension of the retail spaces at Level 2 Quadrant 2.

The Section 96(1A) application was referred to Council's Development Committee meeting on the 19 November 2014. At the meeting, Council resolved to refer the application to the JRPP, as it was their view that the application is a Section 96(2) application and not a Section 96(1A) application.

On the 24 November 2014, the applicant has amended the application be a Section 96(2) application.

Council has re-advertised the application as a Section 96(2) application together with an explanatory note that there is no change from that which was advertised as a Section 96(1A) Application. The notification period will end on the 12 December 2014. A Supplementary Report will be provided to the Panel following the exhibition period, should Council receive any submissions.

The Section 96(2) Application has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 and is recommended for approval.

## **APPROVED DEVELOPMENT**

Development Application No. 13/200 was approved by Joint Regional Planning Panel - Sydney Region East on the 20 March 2014 for a mixed use development comprising the following:

- A total of 899 residential apartments; 262 serviced apartments; three levels of basement car parking for 1,666 vehicles; 5,666m<sup>2</sup> retail floor space including retail tenancies, a supermarket; and a childcare centre;

- Dedication and embellishment of new public land with a total area of 9,435m<sup>2</sup> including a new east-west pedestrian link, new north-south road, extension of John Street from Kent Road and land dedication along Church Avenue and Kent Road for road widening.

The approved details of the development are as follows:

Details	Approved
Site Area	31,500m <sup>2</sup>
Height	Quadrant 1 = 44.5 - 45.1m Quadrant 2 = 44.7 - 46.1m Quadrant 3 = 44.4 - 47.1m Quadrant 4 = 44.4 - 46.6m
Gross Floor Area (GFA)	117,296 m <sup>2</sup>
Floor Space Ratio (FSR)	3.72:1

## DESCRIPTION OF MODIFICATION

In detail, the Section 96(2) application seeks consent to modify Development Consent No. 13/200 to incorporate the following changes:

### **Basement**

- Minor changes to Basement 2 configuration to incorporate a storage area and lift pit to the eastern end of the basement;
- Realign driveway entry ramp into basement level;
- Reallocate basement car parking according to the proposed change in unit type, retaining a total of 1,666 parking spaces.

### **Quadrant 2**

- Extend the southern retail spaces 3 metres into the central pedestrian through link;
- Reconfigure retail spaces to allow a new lobby and entry to the child care centre from the through site link;
- Re-align the pedestrian footbridge between Quadrant 1 and Quadrant 2 from an angled bridge to a straight bridge;
- Changes to Level 2 units from 1 x studio and 2 x 2 bedroom units to 2 x 1 bedroom units and 1 x 2 bedroom unit, resulting in a change to unit mix from 64% studio/1 bedroom units to 63% studio/1 bedroom units;
- Changes to Level 2 retail floor area result in an increase in the total Q2 retail GFA from 2,461m<sup>2</sup> to 2,630m<sup>2</sup> (169m<sup>2</sup>);

### **Quadrant 3**

- At Level 2, convert residential apartments to serviced apartments and provide additional back of house area to the western end of the building.

- Change approved Building J (to be renamed Building F) at Levels 2-14 from 88 residential apartments to 124 serviced apartments which will reduce the total residential apartments from 899 to 811 and increase the total serviced apartments from 262 to 386;
- Façade redesign and flattening of the façade to conceal structural elements and provide an improved elevation treatment to Levels 2-14.
- Removal of unnecessary cross ventilated slots since the Residential units are now Serviced Apartments;
- Improved efficiency and relocation of condenser units;
- Façade changes across Levels 2-14 result in an increase in GFA of Building J by 1,789m<sup>2</sup>. Serviced Apartments can be deeper units than residential and so the façade has expanded towards the buildable boundary.

### History of Development

Council has received multiple other Section 96(1A) Applications as follows:

DA13/200/03	To amend Condition Nos. 3 and 4 relating to a requirement for a separate Development Application for non-residential uses and for public domain works. Under Assessment.
DA13/200/04	To amend Condition No. 12 relating to the requirement to upgrade the nearby intersection of Kent Road, Ricketty Street and Church Avenue. Under Assessment.
DA13/200/05	To make changes to the facades of the development and to make changes to the balcony sizes. Approved under delegation on the 10 September 2014.
DA13/200/06	To re-instate changes to the unit mix of the development that were initially proposed under DA13/200/05, but which was not consented to by Council. Under Assessment.
DA13/200/07	To amend the Section 94 Contributions; Under Assessment.

### ASSESSMENT OF MODIFICATIONS

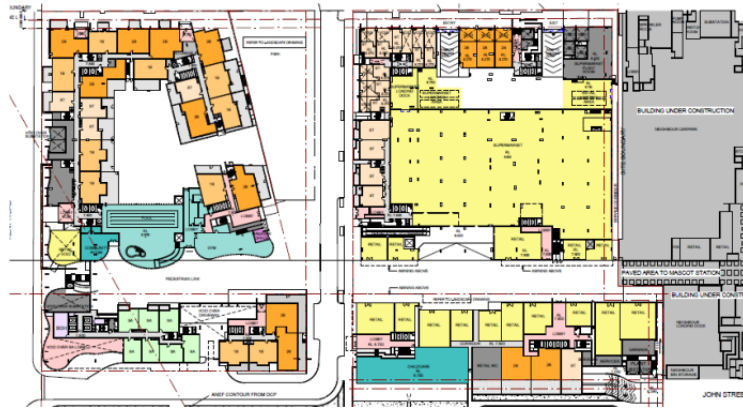
The assessment of the components of the modification are as follows:

#### 1. Change to retail areas/change to width of through site link

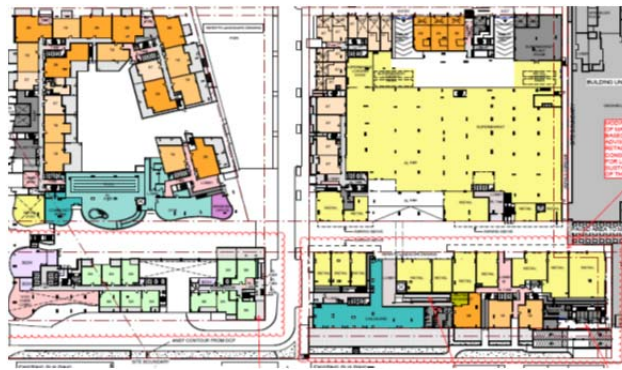
The retail spaces are approved on the northern and southern side of the pedestrian through link at Level 2, Q2. The applicant wishes to extend the retail floor area of the southern retail spaces by 3 metres into the pedestrian through link.

As advised by the applicant, this change is proposed in order to maintain viability of the shops, presumably to ensure a reasonable floor area results. The applicant's amended plan shows that in part, the through site link on level 2 is reduced by the increase in the retail space retail areas by three metres. This affects the southern retail spaces only. **Figure 1** indicates the extent of additional retail floor area/reduction in the link. The courtyards of new serviced apartments converted from residential units will also extend into the through link.

The changes also incorporate a reconfiguration of the retail spaces to allow better access into the residential lobby and child care centre entry. The resulting separation distance between the retail spaces will range from 12m to 27m.



**Figure 1** Approved Level 2



**Figure 2** – Proposed Level 2

The proposed changes to the retail spaces and Level 2 Quadrant 2 result in a minor **increase in total GFA** of 169m<sup>2</sup> from 2,461m<sup>2</sup> to 2,630m<sup>2</sup>, resulting in an increase in FSR from 3.72:1 to 3.73:1. This variation is supported in this instance, as there is minimal impact from the proposed additional floor area at Level 2 Quadrant 2.

## 2. Change to Footbridge

The footbridge at Level 4, between Quadrants 1 and 2 is approved at a diagonal angle. For ease of construction, improved safety and sight lines the applicant wishes to re-align the footbridge to a straight angle, which will not have any adverse impacts on the amenity of future residents.



**Figure 3** – the approved footbridge



**Figure 4 – the proposed footbridge**

### **3. Change of use residential units to serviced apartments**

The table below summarises the proposed change from residential units to serviced apartments and the unit mix. The units to be changed from residential to serviced apartments are in Building J. Note, this is now re-named as “Building F”.

<b>Approved</b>	<b>Proposed</b>
Residential Apartments 239 x Studio 336 x 1 bedroom 324 x 2 bedroom	Residential Apartments 227 x Studio 286 x 1 bedroom 298 x 2 bedroom
<b>Total = 899</b>	<b>Total = 811</b>
Serviced Apartments 262 units	Serviced Apartments 386 units
<b>1,161 Total Apartments</b>	<b>1,197 Total Apartments</b>

As approved, at the eastern end of Building J (F) had:

- 4 residential apartments on level 2;
- 8 residential apartments each on levels 3 to 10 and
- 5 residential apartments on levels 11 to 14

Total 88 residential units.

Proposed now for Building J (F) in the same location is:

- 5 serviced apartments on Level 2
- 12 serviced apartments on levels 3 to 10
- 6 serviced apartments on levels 11 to 14

Total 125 units

The change of apartments within Building F from residential apartments to serviced apartments is acceptable. Serviced apartments are a commercial use that is permissible in the B2 – Local Centre. Although originally approved for residential units within the 25+ ANEF contour, serviced apartments are a preferable use to permanent residential in this location. The unit sizes and configuration are smaller for the serviced apartments, hence the unit numbers overall have increased.

The change in residential to serviced apartments (commercial) floor space is minus 8,306m<sup>2</sup> residential GFA; plus 10,095m<sup>2</sup> commercial GFA, which increases the total GFA of Building J (F) from 25,779m<sup>2</sup> to 27,568m<sup>2</sup>. This change results in an increase in GFA by 1,789m<sup>2</sup>.

#### 4. Apartment Changes – Residential Unit Mix

It is proposed to change residential Level 2 units in Q2 from 1 x studio and 2 x 2 bedroom units to 2 x 1 bedroom units and 1 x 2 bedroom unit. This appears to be due to a loss of floor space due to amended access to the lift lobby.

Although not highlighted on the drawings, on levels 3 to 6, a studio is turned into a one bedroom unit as an indent in the building façade has been deleted. The slot in the façade mirrored another slot towards the eastern end.

The loss of the units now converted to serviced apartments in Building J also affects the unit mix. The proposed changes result in a reduction in the total number of studio and one bedroom units from 575 (64 %) to 513 (63%) as follows:

Level	Studio	1 bed	2 bed	Total residential units lost
2		2	2	4
3 to 10	8	32	24	64
11 to 14	4	16		20
<b>Total units</b>	<b>12</b>	<b>50</b>	<b>26</b>	<b>88</b>

In summary, the change to unit mix as a result of changes to Building J (assuming all existing numbers were correct), including the change to Level 2 units in Q2 the table is as follows:

Approved Units			Proposed Units	
	Unit	Dwelling Mix	Unit	Dwelling Mix
<b>Studio</b>	239	27%	226	28%
<b>1 bedroom</b>	336	37%	288	35%
<b>2 bedroom</b>	324	36%	297	37%
<b>Total</b>	<b>899</b>	<b>100%</b>	<b>811</b>	<b>100%</b>
<b>Serviced Apartments</b>	262	-	386	-
<b>TOTAL</b>	<b>1,161</b>		<b>1,197</b>	

#### 5. Façade Changes

As a result of the changes to serviced apartments, the balconies and unit sizes have changed, resulting in changes to the modelling of the façade of building. For example, the larger balconies for residential units have been replaced with smaller balconies and the façade has been flattened. The applicant has confirmed in an email dated 31 October 2014 that approval is now sought for these changes and other changes to the façade for the following reasons:

- Removal of unnecessary cross ventilated slots since the Residential units are now Serviced Apartments;
- Improved efficiency and relocation of condenser units; and
- Serviced Apartments can be deeper units than residential and so the façade has expanded towards the buildable boundary.

This results in a flattened, less articulated façade, although this part of the building is not highly visible from the public domain areas. The applicant has agreed to review the facades with a view to providing more articulation and measures such as blade walls. This will be addressed in other modifications already lodged with Council.

## 6. Increase in GFA and FSR

The changes to Building J increase the GFA of Building J by 1,789m<sup>2</sup>; and when combined with the increase to the retail areas of 169m<sup>2</sup>, total GFA is increased by 1,958m<sup>2</sup>. The approved GFA was 117,296m<sup>2</sup>; or FSR 3.72:1; proposed is now 119,254m<sup>2</sup>, or FSR 3.78:1. The increase in GFA/FSR is discussed in the LEP section of this report, below.

## 7. Changes to Basement and Car Parking

The proposed changes to the basement configuration, basement ramp alignment and car parking reallocation at basement level are acceptable. The basement car parking allocation will be compliant with the requirements of BBDCP 2013 and parking provision for the development remains in excess of Council's requirements and are summarised in the following table:

<b>Car Parking Rates</b>	<b>Approved number of units</b>	<b>Approved car parking</b>	<b>Proposed number of units</b>	<b>Proposed car parking</b>
1 space/Studio	239	239	227	227
1 space/1 bedroom	336	336	286	286
2 spaces/2 bedroom	324	648	298	596
<i>Total residential spaces</i>		1,223		1,109
1 visitor space/7 dwellings	899 ÷ 7	116	811 ÷ 7	116
Retail Spaces (inc. child care centre spaces)	88 + 21 child care spaces	189	88 + 21 child care spaces	189
Serviced Apartments (1 space per 2.5 rooms)	262	131	386	207
<b>Total Required Spaces</b>	<b>1,579</b>	<b>1,659</b>	<b>1,541</b>	<b>1,621</b>
<b>Total Proposed Spaces</b>	<b>1,666</b>	<b>1,666</b>	<b>1,666</b>	<b>1,666</b>



The approved parking allocation is as follows:

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

The proposed change to parking allocation are a result of the unit use changes and are as follows:

<b>Car Parking Rates</b>	<b>Required</b>
1 space per studio and 1 bedroom units	<b><i>558 spaces</i></b>
2 spaces per 2 bedroom units	<b><i>596 spaces</i></b>
1 visitor space per 7 dwellings	<b><i>116 spaces</i></b>
Retail Spaces (includes 8 child care spaces)	189
Serviced Apartments	<b><i>207</i></b>
<b>TOTAL REQUIRED</b>	<b>1666</b>
<b>TOTAL PROVIDED</b>	<b>1666</b>

The proposed modification to the basement access ramp, basement configuration and car parking allocation are acceptable. The parking re-allocation will accommodate the conversion of the residential units in Building J (F) to serviced apartments and the parking allocation will remain compliant with Council's car parking requirements. Based on the proposed changes being acceptable, it is recommended that the parking allocation table in Condition Nos. 38 and 70(b) be amended.

## **8. Amend the Section 94 Contributions**

Condition No. 66 outlines the applicable Section 94 Contributions for the approved development, being a total contribution of \$20,635,245.

This was calculated as following:

*Residential* = 899 residential units x \$20,000 = **\$17,980,000**

*Botany Bay Section 94 Contributions Plan 2005 - 2010*

Total Commercial Employees = 359 = **\$933,907.00**

*Mascot Station Section 94 Contributions Plan Amendment No. 1 2004*

Retail + Supermarket = 5242m<sup>2</sup> = **\$658,109**

Child Care Centre = 424m<sup>2</sup> = **\$89,464**

Serviced Apartments = 17,075m<sup>2</sup> = **\$973,765**

Total Contributions = **\$20,635,245**

Based on the proposed changes to reduce residential units in Building J (F) and replace these with more serviced apartments, the contributions require recalculation. The following recalculation is based on Council's Contribution Plans as indexed (Mascot Station and 2005-2010 being read together), calculating residential contributions under the Plans only:

*Botany Bay Section 94 Contributions Plan 2005 - 2010*

<b>Type of Units</b>	<b>No. of Units</b>	<b>Contribution Rate</b>	<b>Total \$</b>
Studio	227	5142	1167234
1 Bedroom	286	8638	2470468
2 Bedroom	298	11855	3532790
Serviced Appts (27,568m <sup>2</sup> ) 386 rooms	87	3168	275,616
Retail(5,411m <sup>2</sup> ) (Shops in arcade (20.4))	265.25	3168	840312
Child care (424m <sup>2</sup> )	10	3168	31680
<b>Subtotal</b>			<b>8,318,100</b>

Mascot Station Section 94 Contributions Plan Amendment No. 1 2004

Type of Units	Contributions		Total
Studio	227	3133.35	711270.45
1 Bedroom	286	3133.35	896138.1
2 Bedroom	298	6266.7	1867476.6
Total Units	811		
Serviced Appts based on 1 contribution per 60m2 (27568m2)	459.47	3133.35	1439680.325
Retail (5411m2)Shops within a centre 1 contribution per 17m2)	773	3133.35	2422079.55
Child Care (424m2) (1 contributrion per staff)	10	3133.35	31333.5
<b>Subtotal</b>			<b>7,336,645.025</b>

Total Contributions = **\$15,654,745.02**

The contributions will reduce from \$20,635,245 to reflect \$15,654,745.02. The applicant has sought a reduction to the above section 94 contribution, as a result of works undertaken in kind on the site. As the applicant is to provide works in kind at a cost of \$2,597,015 for the widening of Church Avenue, the Section 94 contribution is reduced to **\$12,858,421**.

## **Other Changes**

### *Condition 1*

As a result of the above changes, Condition 1 will need to be amended to refer to the approved plans received on the 9 July 2014.

*Amend Condition No. 66 relating to Section 94 Contributions to reflect the proposed changes to residential unit numbers and serviced apartments.* Discussed above and acceptable.

*Condition 38 and 70(b) to include the amended car parking allocation table.* Discussed above and acceptable.

*Condition 75(b) relating to the maximum approved FSR for the site.* Refer to FSR discussion in the LEP section of this report.

There is no objection to the proposed amendments, which will not create any adverse impacts on the locality. As indicated in the car parking allocation table above, there is sufficient car

parking approved for the development to accommodate the increase in serviced apartments and reduction in residential apartments.

## **SECTION 96(1A) CONSIDERATIONS**

In considering the Section 96(2) 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.**

Section 96(2) Provisions

Pursuant to Section 96(2) of the *Environmental Planning and Assessment Act 1979*, Council has to be satisfied that:

- a) Development Consent No. 13/200 as proposed to be modified is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all);
- b) It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent; and
- c) it has notified the application in accordance with:
  - (i) the regulations, if the regulations so require, or
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

The proposed Section 96(2) application seeks consent to modify Development Consent No. 13/200 to make changes to Quadrants 2 and 3 to reduce the total number of residential apartments from 899 to 811, increase the total number of serviced apartments from 262 to 386, reallocate car parking spaces to reflect the change in unit mix from 64% studio/1 bedroom units to 63% studio/1 bedroom units.

The development as modified is substantially the same development as approved, which does not result in any significant change to the approved FSR, approved building heights, car parking numbers/layout and unit mix. Given that the proposed changes only seek to alter the ratio of residential apartments to serviced apartments, and do not seek to significantly change the development as physically approved, except for the façade changes and retail extension, the amenity issue and potential impact to the adjoining property owners are minimal. As such, the proposed modification is satisfactory and is recommended for approval.

## Botany Bay Local Environmental Plan (BBLEP) 2013

Botany Bay Local Environmental Plan 2013 (BBLEP 2013) was gazetted on 21 June 2013 and commenced on 26 June 2013. In this regard, the following provides an assessment against the relevant provisions of BBLEP 2013:

<b>Principal Provisions of BBLEP 2013</b>	<b>Compliance Yes/No</b>	<b>Comment</b>
Landuse Zone	Yes	The site is zoned B2 – Local Centre under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The approved residential flat building, supermarket, retail shops, serviced apartments and child care centre are all permissible with Council's consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed modification application 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 the people who live in, work in and visit the local area;</i></li> <li>▪ <i>To encourage employment opportunities in accessible locations</i></li> <li>▪ <i>To maximise public transport patronage and encourage walking and cycling.</i></li> </ul>
Does Schedule 1 – Additional Permitted Uses apply to the site?	N/A	Schedule 1 does not apply to the subject site.
What is the height of the building? Does the height of the building exceed the maximum building height?	N/A	The proposed modification will not alter the built form approved under Development Consent No. 13/200.
What is the proposed FSR? Does the FSR of the building exceed the maximum FSR?	<b>No- Refer to Clause 4.6 assessment below</b>	The site area is 31,500m <sup>2</sup> The GFA will increase from 117,296m <sup>2</sup> to 119,254m <sup>2</sup>  The proposed modification will increase the FSR from 3.72:1 to 3.78:1.
Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m <sup>2</sup> min and maximum height of 22 metres and maximum FSR of 1.5:1?	N/A	The subject site is not located in the R3 or R4 zone.
Is the site within land marked "Area 1" on the FSR Map?	N/A	The subject site is not located within "Area 1" on the FSR Map.
Is the land affected by road	N/A	The subject site is affected by the

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
widening?		widening of Church Avenue and Kent Road widening is also required under BBDCP 2013 and this is acknowledged in the original approval. No change proposed.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not listed as a Heritage Item or within a Heritage Conservation Area.

#### **Clause 4.6 Variation to Floor Space Ratio (FSR)**

The approved FSR of the development is 3.72:1 (GFA 117,296m<sup>2</sup>), the proposed amended FSR is 3.78:1 (GFA 119,254m<sup>2</sup>), which exceeds the maximum FSR of 3.2:1 (or GFA 100,800 sq m) permitted under Clause 4.4 of BBLEP 2013.

The applicant has submitted a Clause 4.6 variation to the FSR standard. It is noted that clause 4.6 applies to the granting of development consent, and a section 96 modification does not grant development consent, but modifies an existing consent. However, as part of the justification for the increase in floor space, the 4.6 type issues are outlined below:

The applicant has submitted that the amendments will result in development of the same height and scale to existing and approved development nearby to the site and will not create any unreasonable amenity impacts in terms of overshadowing, privacy or view loss. The Clause 4.6 submission also highlights that a compliant 3.2:1 development could have a similar bulk and scale to the proposed development, and a similar traffic generation.

The applicant claims that the proposal is consistent with the objectives of the development standard as follows:

- *The proposal will not change the visual bulk or scale of the buildings;*
- *The proposal will not have any adverse impact on the skyline or streetscape;*
- *The proposal will not have any adverse amenity impacts;*
- *The proposal seeks to make changes to ensure the economic success of the precinct.*

The applicant's justification is generally agreed with. The proposed modification to increase the FSR is considered acceptable as it will not increase the visual bulk or scale of the approved development and will not result in any adverse impacts on the locality. The proposal therefore satisfies the objectives for the FSR control.

The applicant has provided the following justification to demonstrate that the underlying objectives of the FSR control of BBLEP 2013 would be thwarted or defeated if compliance were required:

*The floor space ratio control within the Botany Bay Local Environmental Plan 2013 has been consistently varied over time in recognition of a need to meet the demands for housing in the area. The proposed floor space ratio is not inconsistent with the extent of variations to which consent has previously been provided.*

*The amended FSR of 3.78:1 is less than several other developments (such as No. 8 Bourke which directly adjoins the site to the east). The increased GFA will encourage viability within the precinct and ensure that retail spaces at ground level encourage visitors to the area and support local residents.*

The applicant's justification is generally agreed with. The application has undergone assessment and strict compliance with the 3.2:1 FSR would tend to hinder attainment of the underlying objectives identified in Item 2 above.

The applicant also proposes that the development standard has been virtually abandoned or destroyed by Council's own actions.

The applicant's rationale, being that the development standard has been virtually abandoned or destroyed by Council's own actions is acknowledged. Other sites within the precinct have benefited from additional FSR, by way of a site by site assessment and SEPP 1/clause 4.6 objections based on individual consideration. Their key rationale includes:

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

The rationale and argument presented in the Clause 4.6 variation is agreed with and acknowledged. The development standard relating to the maximum FSR for the site as contained within Clause 4.4 of the BBLEP 2013 should be varied in the circumstances to allow the development to attain a floor space ratio of 3.78:1.

However, large developments such as this may be subject to incremental development creep in GFA and hence FSR. The applicant should therefore be advised that any further changes to unit configurations or the like must be accommodated

### Botany Bay Development Control Plan 2013

*Botany Bay Development Control Plan 2013* (BBDCP) was adopted by Council on 11 December 2013 and came into effect on 17 December 2013. In this regard, the BBDCP 2013 replaces all Botany Council's Development Control Plans and Policies that apply to the subject site. The provisions of Part 9A - Mascot Station Town Centre Precinct have been addressed.

The proposed modifications will comply to the same extent with the provisions and objectives of the DCP as the original development consent and will not impact significantly upon the visible external appearance of the development when viewed from the public domain areas.

The Section 96(2) modification will not impact upon the requirements of the various compliances under the DCP.

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

These matters have been considered in the assessment of the Section 96(2) Application. It is considered that the proposed amendment will have no significant adverse environmental, social or economic impacts on the locality.

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

These matters have been considered in the assessment of the Section 96(2) Application. It is considered that the proposed amendment is suitable in the context of the site and the locality.

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

These matters have been considered in the assessment of the Section 96 Application. In accordance with Council's Notification Policy, the Section 96(1A) Application was notified to adjoining property owners for a period of fourteen (14) days from 6 August 2014 to 20 August 2014.

Council has re-advertised the application as a Section 96(2) application together with an explanatory note that there is no change from that which was advertised as a Section 96(1A) Application. The notification period will end on the 12 December 2014. A Supplementary Report will be provided to the Panel following the exhibition period, should Council receive any submissions.

One (1) submission was received as a result of the notification of the Section 96(1A) application, which raises the following matters:

- *We want owners living in our community, people who care about the local area, not hotel guests who blow in and out. A serviced apartment is, on balance, the same as a single bedroom apartment. However, there is one important difference. Serviced apartments are usually owned as a block by one entity, most likely the developer, which gives them unequal representation on the Owners Corporation. Owners of serviced apartments are understandably primarily concerned about profit, not the surrounding community.*

**Comment:** The proposed changes to Building J to remove 88 residential apartments and increase the serviced apartments by 124 from 262 to 386 is supported. Building J is situated within the 25 ANEF contour, where residential development is not encouraged and commercial use such as tourist and visitor accommodation, is more appropriate. It is important that the site comprise a reasonable portion of commercial development as this is required by the objectives of the B2 – Local Centre zone, which seeks to encourage employment opportunities in accessible locations. The proposed changes will create a balance of commercial and residential development in the Mascot Station Precinct. The increase in serviced apartments will not have a detrimental impact on the social fabric or economy of the precinct, other than to encourage visitors and tourists to the area that will support existing goods and service providers.

- *The proposal intrudes onto public open space. It will result in increased shading and a stronger wind tunnel effect. It will also increase crowding in*



*the pedestrian mall. Narrowing this corridor will adversely affect the amenity of the pedestrian area, making it a less pleasant area to spend time in, encouraging people to walk straight through and discouraging potential customers from popping into the shops.*

**Comment:** There is no evidence that the proposed 3m narrowing in part of the link as a result of the increase in retail spaces will have only a minor impact the amenity of this pedestrian through link. The corridor will remain between 12 to 27 metres in width and this will be adequate for pedestrian to engage in the activities, services and goods provided by the respective tenancies. The proposed remaining width which is similar to the width of a public road, would still be sufficient to allow adequate natural sunlight and ventilation. This should have the effect of breaking up adverse wind conditions.

**(e) The public interest.**

These matters have been considered in the assessment of the Section 96(2) Application. It is considered that approval of the proposed amendment will have no significant adverse impact upon the public interest.

**Other Matters**

Referrals

The Section 96(2) Application was not required to be referred to other Council Officers in this instance.

**Conclusion**

The Section 96(2) Application to seeks to modify Development Consent No. 13/200 to amend Condition Nos. 1, 38, 66, 70(b), 75(b) and 98 to make changes to Quadrants 2 and 3 to extend the southern retail spaces, reduce the total number of residential apartments from 899 to 811, increase the total number of serviced apartments from 262 to 386, reallocate car parking spaces to reflect the change in unit mix, alter the façade of Building J and to amend Section 94 contributions to reflect the proposed changes.

The proposed modification application has been notified in accordance with the Regulations and Council's DCP. One (1) submission has been received and is addressed in this report. The modification application has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 and is recommended for approval.

**RECOMMENDATION**

In view of the preceding comments, it is RECOMMENDED that the Sydney Region East, as the Determining Authority, resolve that:

1. Pursuant to Section 96(2) of the Environmental Planning and Assessment Act, 1979, amend Development Consent No. 13/200 as follows:

- a) Amend Condition Nos. 1, 38, 66, 70(b), 75(b) and 98; and as outlined in the assessment report dated 9 July 2014;
- b) Amend the description of the consent to be read as follows:
  - A total of **811** residential apartments; **386** serviced apartments; three levels of basement car parking for 1,666 vehicles; **5,835sqm** retail floor space including retail tenancies, a supermarket; and a childcare centre; **(DA/13/200/02)**
  - Dedication and embellishment of new public land with a total area of 9,435sqm including a new east-west pedestrian link, new north-south road, extension of John Street from Kent Road and land dedication along Church Avenue and Kent Road for road widening.

**Premises: 19-33 Kent Road, Mascot**

**DA No: 13/200/02**

### **SCHEDULE OF CONSENT CONDITIONS**

#### **GENERAL CONDITIONS**

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

<b>Drawing No.</b>	<b>Author</b>	<b>Date Received</b>
DA 0001 titled Site Plan dated 18/02/2014 Rev G	PTW Architects	21 February 2014
<b><i>A0098 titled Level B2 Plan dated 18/02/2014 Rev H</i></b>	PTW Architects	<b><i>9 July 2014</i></b>
A0099 titled Level B1 Plan dated 18/02/2014 Rev G	PTW Architects	21 February 2014
A0101 titled Level 01 Plan dated 18/02/2014 Rev H (DA13/200/05)	PTW Architects	6 August 2014
A0102 titled Level 02 Plan dated 18/02/2014 Rev H (DA13/200/05) <b><i>(DA13/200/02 dated 9 July 2014)</i></b>	PTW Architects	6 August 2014
A0103 titled Level 03 Plan dated 18/02/2014 Rev H (DA13/200/05) <b><i>(DA13/200/02 dated 9 July 2014)</i></b>	PTW Architects	6 August 2014

A0104 titled Level 04 Plan dated 18/02/2014 Rev H (DA13/200/05) <i>(DA13/200/02 dated 9 July 2014)</i>	PTW Architects	6 August 2014
A0105 titled Level 05 Plan dated 18/02/2014 Rev H (DA13/200/05) <i>(DA13/200/02 dated 9 July 2014)</i>	PTW Architects	6 August 2014
A0106 titled Level 06 Plan dated 18/02/2014 Rev H (DA13/200/05) <i>(DA13/200/02 dated 9 July 2014)</i>	PTW Architects	6 August 2014
A0107 titled Level 07 Plan dated 18/02/2014 Rev H (DA13/200/05) <i>(DA13/200/02 dated 9 July 2014)</i>	PTW Architects	6 August 2014
A0108 titled Level 08-09 Plan dated 18/02/2014 Rev H (DA13/200/05) <i>(DA13/200/02 dated 9 July 2014)</i>	PTW Architects	6 August 2014
A0110 titled Level 10 Plan dated 18/02/2014 Rev H (DA13/200/05) <i>(DA13/200/02 dated 9 July 2014)</i>	PTW Architects	6 August 2014
A0111 titled Level 11 Plan dated 18/02/2014 Rev H (DA13/200/05) <i>(DA13/200/02 dated 9 July 2014)</i>	PTW Architects	6 August 2014
A0112 titled Level 12 Plan dated 18/02/2014 Rev H (DA13/200/05) <i>(DA13/200/02 dated 9 July 2014)</i>	PTW Architects	6 August 2014
A0113 titled Level 13 Plan dated 18/02/2014 Rev H (DA13/200/05) <i>(DA13/200/02 dated 9 July 2014)</i>	PTW Architects	6 August 2014
A0114 titled Level 14 Plan dated 18/02/2014 Rev H (DA13/200/05) <i>(DA13/200/02 dated 9 July 2014)</i>	PTW Architects	6 August 2014
A0115 titled Roof Plan dated 18/02/2014 Rev G	PTW Architects	21 February 2014
A0501 titled Street Elevations Rev H dated 20/09/2013 (DA13/200/05) <i>(DA13/200/02 dated 9 July 2014)</i>	PTW Architects	6 August 2014
A0502 titled Street Elevations Rev H dated 20/09/2013 (DA13/200/05) <i>(DA13/200/02 dated 9 July 2014)</i>	PTW Architects	6 August 2014

A0503 titled Street Elevations Rev H dated 20/09/2013 (DA13/200/05) <i>(DA13/200/02 dated 9 July 2014)</i>	PTW Architects	6 August 2014
Q1 A0711 titled Q1 - Facade Detail 1 Rev G	PTW Architects	21 February 2014
Q1 A0712 titled Q1 - Facade Detail 2 dated 18/02/2014 Rev G	PTW Architects	21 February 2014
Q1 A0713 titled Q1 - Facade Detail 3 dated 18/02/2014 Rev G	PTW Architects	21 February 2014
Q1 A0714 titled Q1 - Facade Detail 4 dated 18/02/2014 Rev G	PTW Architects	21 February 2014
Q2 A0721 titled Q2 - Facade Detail 1 dated 18/02/2014 Rev G	PTW Architects	21 February 2014
Q3 A0731 Q3 - Facade Detail 1 dated 06/09/2013 Rev D	PTW Architects	27 September 2013
Q3 A0732 Q3 - Facade Detail 2 dated 06/09/2013 Rev D	PTW Architects	27 September 2013
Q3 A0733 Q3 - Facade Detail 3 dated 18/02/2014 Rev G	PTW Architects	21 February 2014
Q4 A0741 titled Q4 - Facade Detail 1 dated 18/02/2014 Rev G	PTW Architects	21 February 2014
Q4 A0742 titled Q4 - Facade Detail 2 dated 18/02/2014 Rev G	PTW Architects	21 February 2014
A0800 titled Shadow Diagrams - Winter Solstice dated 20/09/2013 Rev G	PTW Architects	21 February 2014
A0801 titled Shadow Diagrams – Equinox dated 20/09/2013 Rev G	PTW Architects	21 February 2014
UT _A0104 titled – Studio Masionette dated 01/08/14	PTW Architects	23 January 2014
UT _A0107 titled – Studio Courtyard Dated 01/08/14	PTW Architects	23 January 2014
UT _A0113 titled – Studio – FlexiInternal dated 01/08/14	PTW Architects	23 January 2014
UT - A0340 titled Studio – Terrace	PTW Architects	23 January 2014

dated 01/08/14		
UT – B1105 titled Studio Corner dated 01/08/14	PTW Architects	23 January 2014
UT – D0405 titled 1 Bed – Corner dated 01/08/14	PTW Architects	23 January 2014
UT – F0603 titled Studio – FlexiInternal dated 01/08/14	PTW Architects	23 January 2014
UT – J0301 titled 2Bed – FlexiInternal dated 01/08/14	PTW Architects	23 January 2014
UT – K0201 titled 1 Bed – Courtyard dated 01/08/14	PTW Architects	23 January 2014
UT – K0202 titled 2 Bed – Corner dated 01/08/14	PTW Architects	23 January 2014
UT – K0217 titled 1 Bed – Terrace dated 01/08/14	PTW Architects	23 January 2014
UT – K0302 titled 1 Bed – FlexiInternal dated 01/08/14	PTW Architects	23 January 2014
UT – K0303 titled 1 bed – FlexiInternal dated 01/08/14	PTW Architects	23 January 2014
UT_K0322 titled 1bed – through dated 01/08/14	PTW Architects	23 January 2014
UT – M0504 titled 2 bed terrace dated 01/08/14	PTW Architects	23 January 2014
UT – M0605 titled 2bed – FlexiInternal dated 01/08/14	PTW Architects	23 January 2014
UT – M1108 – 2Bed – Courtyard dated 01/08/14	PTW Architects	23 January 2014
Civil Internal Works Plans, Drawing Nos. DAC101 to DAC163	AT & L Civil Engineers	27 September 2013
Amended Landscape Concept, Issue 5, dated February 2014	Arcadia Landscape Architecture	21 February 2014
Amended Landscape Details, Drawing Nos. 000 to 502, Issue B, dated 20 February 2014	Arcadia Landscape Architecture	21 February 2014

Level 5/6 Typical Podium Privacy Screens	PTW Architects	11 March 2014
Level 4 Privacy Screens	PTW Architects	11 March 2014

<b>Reference Document(s)</b>	<b>Author</b>	<b>Date Received</b>
Statement of Environmental Effects	Planning Ingenuity Pty Ltd	27 September 2013
Architectural Design Report	PTW Architects	27 September 2013
Survey Plan, Sheets 1-4	JBW Surveyors Pty Ltd	27 September 2013
Qualitative Wind Assessment, Report No. 610.12735-R1 (Rev O)	SLR Consulting Australia Pty Ltd	27 September 2013
BASIX Assessment, Issue 02 dated 26 September 2013	Efficient Living	27 September 2013
DA Acoustic Assessment Report, Report No. 20130401.1	Acoustic Logic Consultancy Pty Ltd	27 September 2013
Solar Access Assessment, Report No. 610.12735-R2	SLR Consulting Australia Pty Ltd	27 September 2013
Assessment of Traffic, Transport and Parking Implications,	Transport & Traffic Planning Associates	27 September 2013
Supplementary Traffic Report, dated 14 November 2013	Transport & Traffic Planning Associates	20 November 2013
Further letter from TTPA, dated 23 January 2014	Transport & Traffic Planning Associates	21 February 2014
Final letter from TTPA, dated 17 February 2014	Transport & Traffic Planning Associates	17 February 2014
Waste Management Plan, Revision B	Elephants Foot	27 September 2013
Quantity Surveyors Report	Gibson Quantity Surveyors	27 September 2013
Arboricultural Assessment Report, dated 29 November 2013	Tree And Landscape Consultants	21 February 2014

Geotechnical and Hydrogeological Investigation, Report No. 26541Zrpt Rev 1	JK Geotechnics	27 September 2013
Contamination Review Report, dated 18 September 2013	Consulting Earth Scientists	27 September 2013
Flood Impact Assessment, Ref X13255	Brown Consulting (NSW) Pty Ltd	27 September 2013
Crime Risk & Security Report	Meriton Property Services Pty Ltd	27 September 2013
Construction Management Plan (including Traffic Management Plan), Rev 1	Karimbla Constructions Services (NSW) Pty Ltd	27 September 2013
Clause 4.6 Variation to Height & Roof Plan Overlay	Meriton	21 February 2014
Mascot Residential Demand Assessment	Hill PDA	10 February 2014
Response to Design Review Panel	PTW Architects	21 February 2014
Communal Open Space Calculations	Arcadia Landscape Architecture	21 February 2014
Statement of Environmental Effects accompanying Section 96(1A) (DA13/200/05)	Meriton Property Services Pty Ltd	6 August 2014
<b><i>Statement of Environmental Effects accompanying Section 96(1A) (DA13/200/02)</i></b>	<b><i>Meriton Property Services Pty Ltd</i></b>	<b><i>9 July 2014</i></b>

No construction works shall be undertaken prior to the issue to the Construction Certificate.

2.

a) The applicant must prior to the issue of any Construction Certificates, pay the following fees:

- i) Builders Security Deposit \$50,000.00;
- ii) Development Control \$11,011.00;
- iii) Waste Contribution \$25,000.00;
- iv) Street Tree Maintenance Bond \$5000.00.

3.

- a) This Consent relates to land in Lot 2 in DP 620023 and as such, building works must not encroach on to adjoining lands or the adjoining public place, other than public works required and as otherwise permitted by this consent; and
- b) Prior to the issue of the Occupation Certificate, a survey report must be submitted to Council to verify that Condition 3(a) above has been complied with;
- c) Separate development applications must be lodged with Council for the supermarket, individual retail tenancies, child care centre, serviced apartment operation and associated signage;
- d) The Section 96(1A) (DA13/200/05) is limited to the following works/changes and as marked in red by Council on the stamped approved plans:
  - i) Quadrant 1 - Levels 1 to 3:
    - 1 Fire control room added;
    - 2 Staircase removed;
    - 3 Flip one bedroom units to accommodate structural elements at Level 03;
    - 4 Relocated switch room;
    - 5 Façade altered to hide columns and provide better elevation treatment.
  - ii) Quadrant 1 – Levels 4-14
    - 1 Façade altered to hide columns and provide better elevation treatment;
    - 2 Flip one bedroom units to accommodate structural elements at Level 04;
    - 3 1 x Studio apartment changed to 1 x 1 bed unit;
    - 4 Minor amendments to improve cross ventilation;
    - 5 Minor change to balcony sizes;
    - 6 AC condenser cluster areas identified.
  - iii) Quadrant 2 – Levels 1-3:
    - 1 Revised on-site detention provisions and relocated travelator;
  - iv) Quadrant 2 – Levels 4-14:
    - 1 Revisions to façade to hide columns and provide better elevation treatment;
    - 2 Minor change to balcony sizes;
    - 3 AC condenser cluster areas identified.
  - v) Quadrant 4 – Levels 1-3:
    - 1 Façade altered to hide columns and provide better elevation treatment;
    - 2 Flip 1 x Studio and 1 x 1 bed unit on Level 01;



- 3 Altered façade treatment to substation;
  - 4 Internal change to lobby;
  - 5 Minor change to balcony sizes.
- vi) Quadrant 4 – Levels 4-14:
- 1 Revisions to façade to hide columns and provide better elevation treatment;
  - 2 Minor change to balcony sizes;
  - 3 AC condenser cluster areas identified. (DA13/200/05)

4.

- a) The road widening and public domain to Church Avenue, Kent Road and within the subject site shall be the subject of a separate development application to be lodged with Council and shall include but not be limited to footpath treatments, service adjustments/access lids and street trees (as provided by the Landscape Consultant) (including the under-grounding of existing above ground electricity and telecommunication cables in Church Avenue, adjoining the site together with the provision of appropriate street light standards, drainage (if any), kerb and gutter, footway, bicycle paths, landscaping, traffic signs). The landscape component shall be in accordance with Council's City Identity Program and any other Council specification or requirement. All public domain/footpath improvements shall be installed in accordance with Council specifications by the Applicant and at the Applicant's expense. All improvements shall be completed prior to the issue of an Occupation Certificate for that part of the proposal that necessitates access for the public;
- b) The detailed landscape design of the public park area in the south-western corner of the site will be the same separate development application as detailed above to be lodged with Council. The Agreement shall also include timelines for construction of the public park and Applicant contribution to greening of the Sydney Water easement to the east of the site. The detailed design shall address the following: street furniture, amenity area lighting types and locations, level changes/treatments, drainage design (WSUD), irrigation, tree pit details, root barrier, pavement types, construction and slip ratings (paving samples supplied), public art/sculpture provision, elevations, sections and sketches provided;
- c) The public footpaths in Church Avenue, Kent Road, John Street and New Street shall be constructed in accordance with Council specifications and the Draft Public Domain Manual. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications. Hold points and Council inspections are required after formwork setback and to prior pouring the concrete blinding slab, at the commencement of paving works and at final completion as a minimum. Pavers shall be ordered allowing for adequate lead time for manufacture (10-12 weeks);
- d) New street trees at the pot size specified shall be installed in the accordance with the approved landscape plan. The trees shall be sourced from a reputable supplier that grows stock to the NATSPEC specifications. A Dial-Before-You-Dig enquiry is required prior to all planting - Council is not liable for any damage to subsurface infrastructure during public domain works. Two hold point

inspections are required: prior planting trees to ensure plant stock is suitable and post-planting; and

- e)
  - i) The requirements under (a) and (b) above must form part of a separate development application to Council;
  - ii) The completion of works at (a) to (d) above is a pre-condition to the issue of the Occupation Certificate for that part of the proposal that necessitates access for the public.

5.

- a) The Strata subdivision of the development shall be the subject of a further Development Application to Council; and
- b) The subdivision application must be accompanied by a formal copy of the by-laws which shall be in accordance with the plans and documentation approved under this Consent and must also include the following:
  - i) Responsibilities with regard to the ongoing maintenance of the building and landscaped areas at the property in accordance with the plans and details approved under Development Consent No. 13/200.
  - ii) Responsibilities with regard to the maintenance of artificial features at the property in accordance with the plans and details approved under Development Consent No. 13/200.
  - iii) Responsibilities regarding the maintenance of the car wash bay the Owners Corporation / building owner.
  - iv) Responsibilities for ensuring owners and/or tenants have adequate and hygienic disposal and collection arrangements and for ensuring the waste storage area is appropriately maintained and kept in a clean and safe state at all times in accordance with the Plan of Management required under the conditions of this consent.
  - v) Responsibilities to ensure that receptacles for the removal of waste, recycling etc. are put out for collection between 4.00pm and 7.00pm the day prior to collection, and, on the day of collection, being the day following, returned to the premises by 12.00 noon;
  - vi) Responsibilities to ensure that wastewater and stormwater treatment devices (including drainage systems, sumps and traps) are regularly maintained in order to remain effective. All solid and liquid wastes collected from the devices shall be disposed of in a manner that does not pollute waters and in accordance with the Protection of the Environment Operations Act 1997.
  - vii) The Owners Corporation/Executive Committee obligations under clauses 177, 182, 183, 184, 185 and 186 of the *Environmental Planning and Assessment Regulation 2000*.
  - viii) The linen plan must include details of any easements, encroachments, rights of way, including right of footway. restriction as to user or positive covenants and include a Section 88B Instrument under the *Conveyancing*

*Act, 1919.* Council is to be nominated as the only authority permitted to release, vary or modify any easements, encroachments, rights of way, restriction as to user or positive covenants;

- ix) A graffiti management plan for the removal of graffiti and similar vandalism within seven (7) days of its occurrence and surface re-instatement;
  - x) The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines;
  - xi) Maintenance of required acoustic measures of Development Consent No. 13/200; and
  - xii) CCTV surveillance of all public areas within the development site.
6. The consent given does not imply that works can commence until such time that:
- a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
    - i) The consent authority; or,
    - ii) An accredited certifier; and,
  - b) The person having the benefit of the development consent:
    - i) Has appointed a principal certifying authority; and
    - ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
    - iii) The person having the benefit of the development consent has given at least 2 days notice to the council of the persons intention to commence the erection of the building.
7. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
8. Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the each building in the development are fulfilled.
- a) Note:
- Relevant BASIX Certificate means:
- i) A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
  - ii) If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX

Certificate.

- iii) BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

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

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

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

##### Water

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

##### Wastewater

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

##### Sydney Water Servicing

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

Coordinator to get a Section 73 Certificate and manage the servicing aspects of the development. Details are available from any Sydney Water Customer Centre on 13 20 92 or Sydney Water's website at [www.sydneywater.com.au](http://www.sydneywater.com.au).

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

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

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

- b) The proposed access road (John Street connection) off Kent Road shall be restricted to left in/left out only on Kent Road.
- c) The abovementioned works shall be designed and constructed in accordance with RMS requirements, Austroads, RMS's supplements, RMS's Traffic Signal Design Manual and other Australian Standards and endorsed by a suitably qualified practitioner.

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

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

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

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

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

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

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

Details should be forwarded to:

The Sydney Asset Management  
Roads and Maritime Services  
PO Box 973 Parramatta CBD 2124

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

- e) The developer is to submit detailed documents and geotechnical reports relating

to the excavation of the site and support structures to RMS for approval in accordance with Technical Direction (GTD 2012/001).

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

#### General and Administrative Issues

- a) An authorisation shall be obtained for the take of groundwater as part of the activity. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will be limited to the volume of groundwater take identified;
- b) The design and construction of the structure shall preclude the need for permanent dewatering by waterproofing those areas that may be impacted by any water table (i.e. a fully tanked structure) with adequate provision for unforeseen fluctuations of water table levels to prevent potential future inundation;
- c) Construction methods and material used in and for construction shall not cause pollution of the groundwater;

#### Prior to Excavation

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

#### During Excavation

- j) Piping or other structures used in the management of pumped groundwater (tailwater) shall not create a flooding hazard. Control of pumped groundwater (tailwater) is to be maintained at all times during dewatering to prevent unregulated off-site discharge;
- k) Measurement and monitoring arrangements to the satisfaction of the NSW Office of Water are to be implemented. Monthly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a report provided to the NSW Office of Water after dewatering has ceased. Daily records of groundwater levels are to be kept and a report provided to the NSW Office of Water after dewatering has ceased;
- l) Pumped groundwater (tailwater) shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewerage system, etc) without the controlling authorities approval and/or owners consent. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater (tailwater) shall be complied with;

- m) Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulphate soils management plan or remediation action plan) shall not be compromised by the dewatering activity;
- n) The location and construction of groundwater extraction works that are abandoned are to be recorded and a report provided to the NSW Office of Water after dewatering has ceased. The method of abandonment is to be identified in the documentation;
- o) Access to groundwater management works used in the activity is to be provided to permit inspection when required by the NSW Office of Water under appropriate safety precautions;

#### Following Excavation

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

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

- a) As the development may be exposed to Break and Enter Steals, Stealing, Steal from persons, Malicious Damage and Steal from Motor Vehicle offences, a closed circuit surveillance system (CCTV) which complies with the Australian Standard - Closed Circuit Television System (CCTV) AS:4806:2006 shall to be implemented to receive, hold or process data for the identification of people involved in anti-social behaviour prior to the issue of the relevant Occupation Certificate. The system is obliged to conform with Federal, State or Territory Privacy and Surveillance Legislation;
- b) The CCTV system should consist of surveillance cameras strategically located at the front and rear of the premises to provide maximum surveillance coverage of the area. Particularly areas that are difficult to supervise. Cameras should be strategically mounted outside the development buildings and within the car parking areas to monitor activity within these areas. One or more cameras should be strategically mounted at entry and exit points to monitor activities around these areas;
- c) Any proposed landscaping and vegetation should adhere to the following principles:
  - i) Shrubs bushes, plants should remain under 900mm in height;
  - ii) Branches or large trees should start at a height of two (2) metres and higher;

This will assist with natural surveillance and reduce hiding spots and dark areas for potential offenders.
- d) Bicycle parking areas should be located within view of capable guardians. The provision of covered lockable racks to secure bicycles increases the effort required to commit crime.
- e) Any storage cages in the underground car park areas should not be constructed in an isolated area. CCTV cameras must cover this area, as they are easy targets



when they have little supervision. Solid steel housing and quality key locks should be used to prevent access.

15. The following conditions are imposed by the Sydney Airport Corporation Limited (SACL) and must be complied with:
- a) The PROPERTY DEVELOPMENT at 19-33 KENT ROAD MASCOT lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations, which limit the height of structures to 50 feet (15.24 metres) above existing ground height (AEGH) without prior approval of this Corporation.
  - b) The Civil Aviation Safety Authority (CASA) have no objection to the erection of the building to a height of 51.0 metres above Australian Height Datum (AHD).
  - c) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
  - d) Should you wish to exceed the above heights, a new application must be submitted. Should the height of any temporary structure and/or equipment be greater than 50 feet (15.24 metres) above existing ground height (AEGH), a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.
  - e) Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations. SACL advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct. Information required by SACL prior to any approval is to include:
    - i) the location of any temporary structure or equipment, ie. construction cranes, planned to be used during construction relative to Mapping Grid of Australia 1994 (MGA94);
    - ii) the swing circle of any temporary structure/equipment used during construction;
    - iii) the maximum height, relative to Australian Height Datum (AHD), of any temporary structure or equipment ie. construction cranes, intended to be used in the erection of the proposed structure/activity;
    - iv) the period of the proposed operation (ie. construction cranes) and desired operating hours for any temporary structures.
  - f) Any application for approval containing the above information, should be submitted to this Corporation at least 35 days prior to commencement of works in accordance with the Airports (Protection of Airspace) Regulations Statutory Rules 1996 No. 293, which now apply to this Airport.
  - g) The development is to comply with the Civil Aviation Safety Authority (CASA) requirements as outlined in the Council's Development Application Guide for Multi-Unit Residential, Commercial and Industrial.

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

16.
  - a) Prior to the issue of the first Construction Certificate, the applicant shall submit an amended plan of the new north-south street from Church Avenue to John Street, which indicates that vehicles are prohibited from traversing over the pedestrian corridor that connects with Mascot Station. A culdesac turning area for vehicles shall be provided for each termination point and a vehicle free zone established together with the extension of the park space to include this area as composite public space;
  - b) Public convenience amenities are to be provided in a location which is safe, easily accessible and identifiable for pedestrians and visitors to the site.
17. Prior to the issue of the relevant Construction Certificate, the applicant shall contact “Dial Before You Dig on 1100” to obtain a Service Diagram for, and adjacent to, the property. The sequence number obtained from “Dial Before You Dig” shall be forwarded to Principal Certifying Authority. Any damage to utilities/services will be repaired at the applicant’s expense.
18. Prior to issue of the relevant Construction Certificate, a Dilapidation Report of the immediate adjoining properties and public infrastructure (including Council and public utility infrastructure) shall be prepared by a Practising Structural / Geotechnical Engineer and submitted to Council. The report shall include records and photographs of the adjoining properties that will be impacted by the development:
  - a) A copy of the dilapidation report together with the accompanying photographs shall also be given to all immediately adjoining properties owners and public utility authorities, and a copy lodged with Principal Certifying Authority and the Council. The report shall be agreed by all affected parties as a fair record of existing conditions prior to commencement of any works.
  - b) It is a condition of consent that should construction works cause rise to public safety and/or workplace safety; works shall halt until absolute safety is restored.

(Note: Prior to commencement of the surveys, the applicant/ owner of the development shall advise (in writing) all property owners of buildings to be surveyed of what the survey will entail and of the process for making a claim regarding property damage. A copy of this information shall be submitted to Council).
19. A Soil and Water Management Plan (also known as an Erosion and Sediment Control Plan) shall be prepared according to ‘*Do It Right On-Site’ Soil and Water Management for the Construction Industry* (available from Council) and NSW EPA’s *Managing Urban Stormwater: Construction Activities* and submitted to the Principal Certifying Authority prior to issue of the relevant Construction Certificate. This Plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times during the construction works. A copy of the Soil and Water Management Plan shall be kept on-site at all times and made available to Council Officers on request.
20. Prior to the issue of the relevant Construction Certificate the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.
21. Prior to the issue of the relevant Construction Certificate design verification is required

to be submitted from a qualified designer to confirm the development is in accordance with the approved plans and details and continues to satisfy the design quality principles in State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development.

22.

- a) All plumbing stacks, vent pipes, stormwater downpipes and the like shall be kept within the building and suitably concealed from view. This Condition does not apply to the venting to atmosphere of the stack above roof level;
- b) The basement of the building must be designed and built so that on completion, the basement is a “fully tanked” structure, i.e. it is designed and built to prevent the entry of ground water / ground moisture into the inner part of the basement;
- c) The provision of disabled access throughout the development is required and shall be in compliance with the Building Code of Australia Part D3 “Access for People with Disabilities” and Australian Standard AS1428.1 (2001) - Design for Access and Mobility - Part 1 General Requirements for Access - Buildings. This requirement shall be reflected on the Construction Certificate plans.
- d) Prior to the issue of the relevant Construction Certificate, the construction drawings shall indicate the following:
  - i) That water will be prevented from penetrating behind fittings/linings and into concealed spaces in laundry, sanitary areas and bathrooms etc;
  - ii) That floor to ceiling in laundry and bathroom areas to be tiled;
  - iii) That timbers used in the development are plantation, recycled or regrowth timbers of timbers grown on Australian farms or State forest plantations and that no old growth or rainforest timbers are to be used in any circumstances; and
  - iv) That plumbing to each dwelling will be separated and adequately contained to prevent noise transmission and vibration.

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

24. Prior to the issue of the relevant Construction Certificate for each building, the measures required in the Acoustic Report: Report No. 20130401.1, prepared by Acoustic Logic Consultancy Pty Ltd dated 16 September 2013, received by Council 27 September 2013, shall be undertaken in accordance with the provisions of *AS2021-2000: Acoustics – Aircraft Noise Intrusion – Building Siting and Construction* to establish components of construction to achieve indoor design sound levels in accordance with Table 3.3 of AS2021-2000 shall be incorporated into the construction of the buildings.

25. Prior to the issue of the relevant Construction Certificate for each building, a compliance report from a suitably qualified acoustic consultant shall be submitted to Council indicating any required noise mitigation measures to the approved development, as detailed in the NSW Road Noise Policy 2011 in accordance with AS 3671-1989 – Acoustic – Road Traffic Intrusion.

26. Prior to the issue of the relevant Construction Certificate details are to be provided on acoustic treatment to the entry and exit driveway on Church Avenue adjacent to No. 8 Bourke Street of the development to comply with the Office of Environment & Heritage's Industrial Noise Policy and Noise Control Guidelines.
27. Prior to the issue of the relevant Construction Certificate, a Certificate under Section 73 of the Water Board (Corporation) Act 1994 shall be obtained and submitted to Council for each stage of construction to ensure that the developer has complied with all relevant Sydney Water requirements, including appropriate connections, correctly sized amplifications, procurement of trade waste agreements, where necessary, and the payment of developer charges.

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

28. Plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Principal Certification Authority with the application for the relevant Construction Certificate. Storage of Waste and recycling shall meet the following requirements:
- a) The rooms for the storage of garbage and recyclable materials shall be:
    - i) fully enclosed;
    - ii) adequately ventilated;
    - iii) Constructed with a concrete floor, concrete or cement rendered walls coved to the floor;
    - iv) The floor shall be graded to an approved sewer connection incorporating a sump and galvanized grate cover or basket in accordance with the requirements of Sydney Water Corporation.
    - v) Washing facilities shall be provided within close proximity to the garbage and recycling storage area.
29. A suitable intercom system linked to all units within the development shall be provided at the vehicle entrance to the development to ensure any visitors to the site can gain access to the visitor parking in the car parking area. The details of the intercom system shall be submitted to Principal Certifying Authority prior to the issue of the relevant Construction Certificate and its location and specifications endorsed on the construction drawings.
30. Prior to the issue of the Construction Certificate, the following documentation shall be submitted to Principal Certifying Authority:
- a) Longitudinal sections along centreline of all the ramps between each basement parking levels;
  - b) Design certification, prepared by a suitably qualified engineer, showing the longitudinal sections shall be designed in accordance with AS2890.1 (including gradients and gradient transitions).
- 31.
- a) Prior to the issue of the relevant Construction Certificate, detailed Stormwater Management Plans and specifications shall be prepared by a suitably qualified

and experienced civil engineer and the design shall be generally in accordance with the Concept Stormwater Management Plans prepared by AT & L Consulting Engineers Pty Ltd, Job No. 13-127, Drawing Nos. DAC101-DAC163 and received by Council on the 27 September 2013.

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

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

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

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

32. Prior to the issue of the relevant Construction Certificate, design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the car parking area shown on the construction plans includes the required sight lines for safety and has been designed in accordance with AS 2890.1, AS2890.2 (for loading area) and AS2890.6.

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

33. Prior to the issue of the relevant Construction Certificate:

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

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

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

features, bollards, public toilets, signage suite. Provide sectional construction details and elevations;

- h) Rigid polyethylene sheet type tree root barriers are to be specified as required to protect structural elements;
  - i) A detailed public art proposal;
  - j) Elevated planter box sectional details and drainage details. All planter box depths and dimensions shall be in accordance with Council's DCP and capable of supporting the medium and large canopy trees;
  - k) Trees are to be used extensively throughout the site and shall be of an appropriate scale to complement and ameliorate buildings and for appropriate scaling within pedestrian areas – footpaths and open spaces. Deep soil zones must include larger trees. Trees are to be predominantly native, evergreen species using open canopy evergreens or selected deciduous for solar penetration;
  - l) Indicate the location of all basement structures relative to the landscape areas;
  - m) Show the detailed design for the civil and footpath works surrounding tree # 4 and ensure these works do not compromise the health or structural stability of the tree;
  - n) The street trees in New Street (Spotted Gum) are to be increased to 10-12 metre centres. The Church Avenue street trees (Chinese Elms) are to be increased to 10 metre spacings (as per Council specification).
35. Prior to the issue of the relevant Construction Certificate, subject to the approval of CASA, the applicant is to provide roof mounted solar collector panels below a height of 51m AHD, to the rooftop area of each building, of which 20% of power generated shall be returned to the Ausgrid network together with tariff rebates. Details of the panel system are to be provided with the Construction Certificate including the approval from the Civil Aviation Safety Authority.
36. All plans submitted with any Construction Certificate shall demonstrate compliance with the following:
- a) All residential unit size excluding balconies as minimum must be as following:
    - i) Studio = 60m<sup>2</sup>
    - ii) 1 bedroom = 75m<sup>2</sup>
    - iii) 2 bedroom = 100m<sup>2</sup>
  - b) All unmarked rooms identified on Typical Unit Plan Nos. UT\_J0301, UT\_K0302, UT\_K0303, UT\_K0322, UT\_M504, UT\_K0201, UT\_K0202, UT\_K0217, UT\_D0405, UT\_M0605UT\_M1108, shall only be used as a study or extension of the dining/living area only and indicated as such on the plans of the Construction Certificate.
  - c) Adaptable units must be provided in accordance with Section 4C.6.1 of Botany Bay Development Control Plan 2013. Such units shall be designed in accordance with AS 4299 and BBDCP 2013 (Section 4C.6.1). Details to be submitted with the Construction Certificate.

37. In order to maximise visibility in the basement car parks, the ceilings shall be painted white. This requirement shall be reflected on the Construction Certificate plans.
38. The development shall make provision for the following car parking allocations:

<b>Car Parking Rates</b>	<b>Required</b>
1 space per studio and 1 bedroom units	<i>558 spaces</i>
2 spaces per 2 bedroom units	<i>596 spaces</i>
1 visitor space per 7 dwellings	<i>116 spaces</i>
Retail Spaces (includes 8 child care spaces)	189
Serviced Apartments	<i>207</i>
<b>TOTAL REQUIRED</b>	<b>1666</b>
<b>TOTAL PROVIDED</b>	<b>1666</b>

This requirement shall be reflected on the Construction Certificate plans. The approved car parking spaces shall be maintained to the satisfaction of Council, at all times.  
(DA13/200/02)

39. The roller doors to the loading docks are to be acoustically treated. Details are to be provided with the relevant Construction Certificate.

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

40. In order to ensure that street tree No. 4 in Church Avenue near Kent Road and trees Nos. 49, 50, 51, 52, 66 and 67 on the adjoining property to the south are retained and protected during construction, and their health and structural stability ensured, the following is required :
- A Consultant Arborist AQF Level 5 shall be engaged from site establishment to the post-construction period to erect tree protection zones and signage, inspect and advise on all works during the entire construction period, monitor tree health and to authorize and undertake tree canopy and root pruning where necessary only and to the minimum only so that the health or structural stability of the trees is not impacted;
  - All tree works and tree management shall be undertaken in accordance with the Arborist report by TALC dated 29th November 2013. For all tree root and canopy work to trees, comply with the recommendations and requirements and management plan contained within this report;
  - Trees to be retained are to be tagged with clearly visible marking tape at a height of approx. 2 metres from ground and numbered with the corresponding number in the Tree Report;
  - Prior to commencing demolition/any works the tree/s is/are to be physically protected by fencing underneath the canopy dripline using 1.8 metre high chainwire fence to form the Tree Protection Zone (TPZ). The area within the fencing is to be mulched with leaf mulch to a depth of 100mm and a weekly deep



watering program undertaken during construction. The fence shall remain in place until construction is complete;

- e) If there is insufficient space to erect fencing in a particular area, wrap the trunk with hessian or carpet underlay to a height of 2.5 metres or to the tree's first lateral branch, whichever is greater, and affix timber palings around the tree with strapping or wire (not nails);
- f) Before any works commence on site, the Applicant is required to contact Council for an inspection and/or provide photographic evidence of the fenced TPZ's. Council approval is required prior commencement of any work;
- g) All detailed Construction Certificate plans shall show trees to be protected and the TPZ;
- h) The TPZ's are "No-Go" zones. There shall be no access to the property excluding the existing crossover, no stockpiling, storage or sorting of waste or building materials, no construction work, no concrete mixing, strictly no washing down of concrete mixers or tools, no chemicals mixed/disposed of, no excavation or filling, no service trenching. Any unavoidable work within the fenced zone shall be under the direction of Council's Tree Officer or Consultant Arborist;
- i) Where unavoidable foot access is required in the TPZ, provide temporary access with timber sheets to minimise soil compaction, spillage or root damage;
- j) Excavation within the TPZ and within a nominated radial dimension from the tree trunk as determined by the consultant Arborist in accordance with AS 4970 : 2009 – Protection of Trees on Development Sites shall be carried out manually using hand tools or light machinery to minimise root damage or disturbance;
- k) No tree roots greater than 30mm in diameter shall be pruned without further assessment by Council's Tree Officer and the consulting Arborist and only following the submission of further Arborists reports to Council so as not to unduly impact or stress the tree;
- l) Ensure no damage to the canopy, trunk or root system (including the surrounding soil) of any tree to be retained. There shall be no canopy pruning unless approval has been granted by Council's Tree Officer under application from the consultant Arborist. Approved pruning shall be undertaken by a qualified Arborist in accordance with AS 4373;
- m) As most of the retained trees are on the private property adjoining, the developer is required to consult with and advise the owners of the adjacent properties as owners of the trees prior to any tree works taking place;
- n) Care shall be taken with construction work in the primary root zone of all existing neighbouring trees to be retained, including tree # 4. These trees must be retained and construction works are to accommodate tree roots, branches and canopy without damage or impact. Trees are not to be pruned back to the boundary fence line under any circumstances. The canopy may otherwise overhang the property;
- o) The Applicant will be required to undertake any tree maintenance or remedial pruning works required by Council or the Consultant Arborist at the completion of construction;
- p) If there is any contravention of these tree preservation conditions, or a tree was

found to be damaged (including roots), in decline, dead or pruned without permission, then Council may claim all or part of the lodged security bond prior to its release as well as require remedial pruning work. Epicormic growth is evidence of root damage.

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

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

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

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

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

42. A detailed Traffic Management Plan for the pedestrian and traffic management of the site during demolition, excavation and construction shall be prepared and submitted to the relevant road authority (Council or Roads and Maritime Service) for approval prior to commencement of any works. The plan shall:

- a) be prepared by a RMS accredited consultant.
- b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police.
- c) if required, implement a public information campaign to inform any road changes well in advance of each change.

- d) Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.
  - e) During construction, all works and measures shall be implemented in accordance with approved Traffic Management Plan at all times.
- 43.
- a) Erection of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
  - b) Each toilet provided:
    - i) must be standard flushing toilet; and,
    - ii) must be connected:
      - 1 to a public sewer; or
      - 2 if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,
      - 3 if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.
    - iii) The provisions of toilet facilities in accordance with this clause must be completed before any other work is commenced.
44. Prior to the commencement of works, the applicant must inform Council, in writing, of:
- a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
  - b) The name and permit number of the owner-builder who intends to do the work;
  - c) The Council also must be informed if:
    - i) A contract is entered into for the work to be done by a different licensee; or
    - ii) Arrangements for the doing of the work are otherwise changed.
45. A detailed Construction Management Plan (CMP) shall be submitted to Council and the Principal Certifying Authority for approval prior to the commencement of any works. The plan shall address:
- a) Excavation and construction vehicles access to and egress from the site;
  - b) Parking for demolition and construction vehicles. All construction-related vehicles shall be parked on-site and no parking of these vehicles shall be allowed on Church Avenue of Haran Street;
  - c) Locations of site office, accommodation and the storage of major materials related to the project;
  - d) Protection of adjoining properties, pedestrians, vehicles and public assets;
  - e) Location and extent of proposed builder's hoarding and Work Zones, if there is

- any.
- f) Active measures to control and suppress dust, grit and the like that are associated with construction activity.
  - g) Measures to control the arrival of plant and equipment associated with the construction process and the delivery of such plant and equipment during reasonable hours of the working day;
  - h) Public Notification where working hours are extended for a particular construction activity;
  - i) Provision of on-site car parking for employees, contractors and site personnel during the construction phase of the development; and
  - j) During construction, all works and measures shall be implemented in accordance with approved Construction Management Plan at all times.
46. A sign must be erected in a prominent position on any work site on which work involved in the erection of a building is being carried out;
- a) stating that unauthorised entry to the work site is prohibited;
  - b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
  - c) the Development Approval number;
  - d) the name of the Principal Certifying Authority including an after hours contact telephone number; and
  - e) any such sign is to be removed when the work has been completed.
47. The Applicant must indemnify Council against all loss of or damage to the property of others and injury or death to any persons which may arise out of or in consequence of the carrying out of the work and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto. In this regard, the Applicant shall take out a public liability policy during the currency of the works in the sum of not less than \$20,000,000 and to be endorsed with City of Botany Bay Council as principal, and keep such policy in force at the Applicant's own expense. A certificate from the Applicant's insurers to this effect is to be LODGED WITH COUNCIL BEFORE ANY WORK IS COMMENCED. The amount of Common Law liability shall be unlimited.
48. During construction, the applicant shall ensure that all works and measures have been implemented in accordance with following approved plans at all times:
- a) Approved Erosion and Sediment Control Plan;
  - b) Approved Traffic Management Plan and;
  - c) Approved Construction Management Plan.
49. All works carried out on the public roads shall be inspected and approved by Council's engineer. Documentary evidence of compliance with Council's requirements shall be obtained prior to proceeding to the subsequent stages of construction, encompassing not less than the following key stages:
- a) Initial pre-construction on-site meeting with Council's engineers to discuss

concept and confirm construction details, traffic controls and site conditions/constraints prior to commencement of the construction of the civil works associated with the road widening;

- b) Prior to placement of concrete (kerb and gutter and footpath);
- c) Prior to construction and placement of road pavement materials; and
- d) Final inspection.

Note: Council's standard inspection fee will apply to each of the above set inspection key stages. Additional inspection fees may apply for additional inspections required to be undertaken by Council.

### **DURING WORKS**

- 50. If the work involved in the construction of a building:
  - a) likely to cause pedestrians or vehicular traffic in a public place to be obstructed or rendered inconvenient; or,
  - b) involves the enclosure of a public place:
    - i) a hoarding or fence must be erected between the work site and the public place.
    - ii) If necessary an awning is to be erected sufficient to prevent any substance from or in connection with the work falling into the public place.
    - iii) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to person(s) in the public place.
    - iv) Any such hoarding, fence or awning is to be removed when the work has been completed.
  - c) Suitable consent shall be obtained from Council prior to the erection of any hoarding at the property.
- 51.
  - a) Any new information that comes to light during construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council;
  - b) Results of the monitoring of any field parameters such as soil, groundwater, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the remediation and construction works.
- 52. Throughout the construction period, Council's warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A copy of the sign is available from Council's Customer Service Counter.
- 53. During construction works, the applicant / builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.

54. The Applicant shall conduct all construction and related deliveries wholly on site. If any use of Council's road reserve is required then separate applications are to be made at Council's Customer Services Department.
55. All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
- 56.
- a) Existing structures and or services on this and adjoining properties shall not be endangered during any demolition associated with the above project. The Applicant is to provide details of any stabilisation works required to adjacent developments to Council.
  - b) As the development involves an excavation that extends below the level of the base of the footings of a building or road on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
    - i) Protect and support the adjoining premises from possible damage from the excavation, and
    - ii) Where necessary, underpin the adjoining premises to prevent any such damage.
    - iii) Must at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of his intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished.
- 57.
- a) The operations of the site shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, particulate matter, waste water, waste products or other impurities which are a nuisance or injurious to health.
  - b) All possible and practicable steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from wind-blown dust, debris, noise and the like.
58. The operation shall not give rise to offensive odour or other air impurities in contravention of the Protection of the Environment Operations Act 1997. The Principle contractor shall ensure that all practical means are applied to minimise dust and odour from the site. This includes:
- a) Covering excavated areas and stockpiles,
  - b) The use of fine mists of hydrocarbon mitigating agents on impacted stockpiles or excavation areas,
  - c) Maintenance of equipment and plant to minimise vehicle exhaust emissions,
  - d) Erection of dust screens on the boundary of the property and/or closer to potential dust sources,

- e) All loads entering or leaving the site are to be covered,
  - f) The use of water sprays to maintain dust suppression,
  - g) Keeping excavated surfaces moist.
59. The construction of the premises shall not give rise to transmission of vibration at any affected premises that exceeds the vibration in buildings criteria outlined in the NSW Environmental Noise Control Manual.
- 60.
- a) In order to prevent vehicles tracking soil or other materials onto public roads and washing of materials into the street drainage system or watercourse, during excavation, construction and deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion;
  - b) Concrete trucks and any other trucks that used for the transportation of building materials or similar, shall not traffic soil cement or other materials onto the road reserve. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or enter Council's land;
  - c) Building operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on public roadways or footways or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands;
  - d) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
  - e) During construction works the area in front of the premises and for the full width of the site, be maintained at all times and kept clean and tidy.
61. The Development is to be constructed to meet the following construction noise requirements:
- a) Construction Noise
    - i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.
  - b) Level Restrictions
    - i) Construction period of 4 weeks and under:
      - 1 The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10dB(A).
    - ii) Construction period greater than 4 weeks and not exceeding 26 weeks:
      - 1 The L10 sound pressure level measured over a period of not less

than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).

- c) Time Restrictions
    - i) Monday to Friday 07:00am to 06:00pm;
    - ii) Saturday 08:00am to 04:00pm
    - iii) No Construction to take place on Sundays or Public Holidays.
  - d) Silencing
    - i) All possible steps should be taken to silence construction site equipment.
62. Building plans must be lodged at Sydney Water Quick Agent for approval prior to commencement of works.
63. During construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in the vicinity of the development shall also be safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
64. The fire hydrant and booster assembly are required to be housed within an external façade/wall of the building or elsewhere within the building structure and shall be enclosed/screened with doors to Council approval.
- 65.
- a) All imported fill shall be validated in accordance with Department of Environment and Conservation approved guidelines to ensure that it is suitable for the proposed development from a contamination perspective. Imported fill shall be accompanied by documentation from the supplier, which certifies that the material is suitable for the proposed residential/recreational land use and not contaminated based upon analyses of the material.
  - b) To prevent contaminated soil being used onsite, all imported fill shall be certified VENM material and shall be validated in accordance with the Office of Environment and Heritage (OEH) approved guidelines to ensure that it is suitable for the proposed development. Imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.
  - c) Any soil disposed of offsite shall be classified in accordance with the procedures in the Department of Environment and Climate Change Waste Classification Guidelines (2008).

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



66. The City of Botany Bay being satisfied that the proposed development will increase the demand for public amenities within the area, and in accordance with Council's Section 94 Contributions Plans listed below a contribution of ~~\$20,635,245.00~~ **\$12,858,421**.

The Section 94 Contribution of ~~\$20,635,245.00~~ **\$12,858,421** is to be paid to Council prior to the issue of the first Occupation Certificate. (DA13/200/02)

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

67.

- a) Prior to the issue of the relevant Occupation Certificate, the development is to be constructed to meet the requirements detailed in the Acoustic Report, prepared by Acoustic Logic Consultancy Pty Ltd dated 16 September 2013, received by Council 27 September 2013; and
- b) All acoustic work including that acoustic work required at Condition No. 28 shall be completed prior to the issue of the relevant Occupation Certificate and validated by a person with appropriate qualifications and experience.

68. Prior to the issue of the relevant Occupation Certificate, a Site Audit Report is to be submitted to Council which states the subject site is suitable for residential development, together with a supplementary Statement which states that the land to be dedicated to Council for public reserves meets the criteria for recreation areas and those within the public reserve areas has not been excavated and remains undisturbed.

69. Prior to the issue of the relevant Occupation Certificate, the following is to be complied with:

- a) Dedicate to Council and at no expense to the Council and generally in accordance with the Communal Open Space Landscape Masterplan prepared by Arcadia Landscape Architecture Issue 5, dated February 2014, the following:
  - i) Dedicate the portion of land to Council for the purpose of widening Church Avenue and Kent Road. The areas of the land to be dedicated shall be the full length of Church Avenue and Kent Road frontages of the development site and as detailed in the Botany Bay Development Control Plan 2013. The Plan of Dedication shall be lodged with Council and registered with Land & Property Information prior to the issue of the relevant Occupation Certificate. A copy of the registered document shall be submitted to Council for record purposes;
  - ii) Dedicate the portion of land to Council for the purpose of a public park adjacent to new Church Avenue boundary (following the road widening of Church Avenue). The total area of public domain dedication shall be 6,915sqm. Construction of paving and landscaping within this area is to be in accordance with the approved landscape plans identified in Condition No.1 of DA13/200;
  - iii) Dedicate the portion of land to Council for the purpose of a public pedestrian through link adjacent from John Street to Kent Road. Construction of paving and landscaping within this area is to be in

accordance with the approved landscape plans identified in Condition Nos. 1 and 17 of DA13/200;

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

b)

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

70.

- a) A total of 1666 car parking spaces shall be provided for within the development. Resident parking spaces shall made available to residents and visitors at all times, with such spaces being clearly marked and signposted prior to issue of the relevant Occupation Certificate;
- b) Allocation of the car parking shall be as follows: (DA13/200/02)

<b>Car Parking Rates</b>	<b>Required</b>
1 space per studio and 1 bedroom units	<b><i>558 spaces</i></b>
2 spaces per 2 bedroom units	<b><i>596 spaces</i></b>
1 visitor space per 7 dwellings	<b><i>116 spaces</i></b>
Retail Spaces (includes 8 child care	189

spaces)	
Serviced Apartments	<b>207</b>
<b>TOTAL REQUIRED</b>	<b>1666</b>
<b>TOTAL PROVIDED</b>	<b>1666</b>

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

2890.1.

75. Prior to the issue of the relevant Occupation Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority and the Council to the effect that:
- a) All reduced levels shown upon the approved plans, with relation to the required solar panels, drainage, boundary and road reserve levels, have been strictly adhered to; and
  - b) A Floor Space Ratio (FSR) of **3.78:1** and height of 51m AHD as approved under this modified Development Consent No. **13/200/02**, have been strictly adhered to and any departures are to be rectified in order to issue the Occupation Certificate.
  - c) The development as built, stands within Lot 2 in DP 620023.
76. The applicant is responsible for the installation and protection of all regulatory/ parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the development and associated construction works shall be replaced at full cost to the applicant.
- 77.
- a) In order to ensure that the required on-site detention, infiltration and rainwater reuse systems will be adequately maintained, Positive Covenant and Restriction on the Use of Land on the Title under Section 88B/88E(3) of the Conveyancing Act 1919 shall be created in favour of Council as the benefiting authority for the as-built on-site detention, infiltration and rainwater reuse systems. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council. The relative location of the on-site detention, infiltration and rainwater reuse systems, in relation to the building footprint, shall be shown on a scale sketch, attached as an annexure to the plans/ forms. Proof of registration shall be submitted to the Principal Certifying Authority prior to occupation of the premises.
  - b) In order to ensure that the required pump-out system will be adequately maintained, Positive Covenant and Restriction on the Use of Land on the Title under Section 88B/88E(3) of the Conveyancing Act 1919 shall be created in favour of Council as the benefiting authority for the as-built pump-out system. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council. Proof of registration shall be submitted to the Principal Certifying Authority prior to occupation of the premises.
78. Prior to the issue of the relevant Occupation Certificate:
- a) the construction of the stormwater drainage system of the proposed development shall be generally in accordance with the approved stormwater management construction plan(s), Council's 'Guidelines for the Design of Stormwater Drainage Systems within City of Botany Bay', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA; and
  - b) documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been

constructed generally in accordance with the approved stormwater management construction plan(s) accepted practice and the construction standard referred to in Condition 78(a) above.

79. Any damage not shown in the dilapidation report required under Condition No. 19 submitted to Council before site works have commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense, prior to the issue of the relevant Occupation Certificate.
80. Prior to the issue of the relevant Occupation Certificate, landscaping within the private property shall be installed in accordance with the landscape plans by *Arcadia, Issue 5, February 2014, Plans 000-106 Issue B and Plans 401-7 Issue B*. This plan is to be amended to include the following additional landscape requirements:
- a) A small, evergreen spreading canopy tree is required within the Church Avenue landscaped setbacks to provide privacy and shading for residents and amelioration of the building. The tree should attain a minimum height at maturity of 3-4 metres. Minimum pot size 200 litre;
  - b) The large private patios in the Church Avenue setbacks shall include additional landscaping in the form of planter boxes to break up the linear nature of the landscaping across this frontage, provide depth to the landscaping and provide additional space for small trees. All planter boxes containing trees are to have min 900mm soil depth;
  - c) Where possible, small trees are to be provided in the 1 metre wide Kent Road setback (residential section). Additional planter width should be provided where possible;
  - d) Landscaping on the property and in the public domain shall be installed in accordance with the approved landscape plan by *Arcadia, Issue 5, February 2014, Plans 000-106 Issue B and Plans 401-7 Issue B* and in accordance with sub-clauses (a) to (b) above, prior to the issue of the relevant Occupation Certificate. The landscaped areas on the property shall be maintained in accordance with the Council stamped and approved landscape documentation, the conditions of development consent and Council's DCP all times.
81. At the completion of landscaping on the site, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to the City of Botany Bay Council prior to the issue of the relevant Occupation Certificate.
82. Prior to the issue of the relevant Occupation Certificate, planter boxes constructed over a concrete slab shall be built in accordance with the following requirements :
- a) Ensure soil depths and dimensions in accordance with Council's DCP allowing a minimum soil depth of 1 metre to support trees. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes;
  - b) A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter;

- c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil;
  - d) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns; and
  - e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
83. Prior to the issue of the relevant Occupation Certificate, the public domain landscaping shall be installed in accordance with the approved landscape plan as stamped by Council's Landscape Architect. This amended plan supercedes the original landscape plan. The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation and to Council's satisfaction all times.
84. An experienced Landscape Contractor shall be engaged to undertake all landscaping (site and public domain) work and shall be provided with a copy of both the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements. The contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.
85. Prior to the issue of the relevant Occupation Certificate, to ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscaped areas, inclusive of the street tree pits in Kent Road, Church Avenue and New Street. The system shall be installed by a qualified landscape contractor and provide full coverage of planted areas with no more than 300mm between drippers, automatic controllers and backflow prevention devices, and should be connected to a recycled water source. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.
86. Any air conditioning units are to be located so that they are not visible from the street or public place and are not obscure windows/window frames or architectural features of the development and installed in a manner not be inconsistent with the relevant provisions of the Building Code of Australia (BCA).
87. Prior to issue of the relevant Occupation Certificate, the applicant's Traffic Engineer must conduct a survey within one (1) month following the sale of at least 90% of the available apartments stock within the development, to validate the findings of the Traffic Assessment prepared by Traffic and Transport Planning Associates dated 17 February 2014. If the Traffic Assessment cannot be validated, the Applicant must undertake measures to ensure the road network achieves a satisfactory level of service.
- 88.

- a) Prior to use and occupation of the buildings an Occupation Certificate must be obtained under Section 109C(1)(c) and 109M of the Environmental Planning and Assessment Act 1979.
- b) Condition Numbers 3(b), 4(e), 14, 30 and 65 to 85 of this consent are pre-conditions to the issue of the relevant Occupation Certificate.

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

- 89. The landscape contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time monthly maintenance is required.
- 90. New street trees shall be maintained by the Applicant/Owner/Strata Corporation for a 24 months after final inspection by Council. Maintenance includes twice weekly watering within the first 6 months then weekly thereafter to sustain adequate growth and health, bi-annual feeding, weed removal round the base, mulch replenishment at 3 monthly intervals (to 75mm depth) and adjusting of stakes and ties. Maintenance but does not include trimming or pruning of the trees under any circumstances.
- 91. The landscaped areas on the property shall be maintained in accordance with the Council stamped and approved landscape documentation, the conditions of development consent and Council's DCP all times.
- 92. Ongoing maintenance of the road verges and footpaths in Church Avenue, Kent Road, John Street and New Street nature strip shall be undertaken by the owner/body corporate/strata corporation. Maintenance includes mowing, watering and maintaining the landscaping in these areas at all times. Maintenance does not include pruning, trimming, shaping or any work to street trees at any time.
- 93. The use of the premises shall not give rise to any of the following when measured or assessed at "sensitive" positions within any other property. These "sensitive" positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.
  - a) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
  - b) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
  - c) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
  - d) For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for

tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

94. Any air conditioning units shall comply with the following requirements:
- a) Air conditioning units are not to be visible from the street or public place and are not to obscure windows/window frames or architectural features of the dwelling.
  - b) A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
    - i) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
    - ii) Before 7 am or after 10 pm on any other day.
- 95.
- a) Each residential dwelling (apartment) is approved as a single dwelling for use and occupation by a single family. They shall not be used for separate residential occupation or as separate residential flats. No plumbing fixtures, fittings, walls shall be deleted or added, doorways enclosed or any other changes made from the approved plans in Condition No. 1 of this Consent without the prior Consent of the Council;
  - b) The adaptable apartments approved under this development consent are to remain unaltered at all times; and
  - c) The storage areas located within the basement shall be allocated to the relevant residential dwelling in any future subdivision of the site. In addition, any isolated storage areas and other spaces identified by the NSW Police in Condition 14, shall be monitored by CCTV cameras at all times.
96. Vehicular access to the retail loading dock off Church Avenue is to be restricted to the hours of 7:00am to 10:00pm Monday to Saturday and 7:00am to 8:00pm Sunday and public holidays.
97. All parking bays shown on the approved architectural plans shall be set aside for parking purpose only and shall not be used for other purposes, e.g. storage of goods. Vehicle turning areas shall be kept clear at all times and no vehicles are permitted to park in these areas.
98. The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 13/200 dated as 27 September 2013 and as amended by Section 96(1A) Application received by Council on 6 August 2014 (DA13/200/05) **and as amended by Section 96(2) Application received by Council on 24 November 2014 (DA13/200/02)** and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.