

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

JRPP No	2015SYE010
DA Number	DA-14/306
Local Government Area	City of Botany Bay Council
Proposed Development	<p>Joint Regional Panel Application comprising:</p> <ul style="list-style-type: none"> ▪ Demolition of existing factory buildings; ▪ Construction of: <ul style="list-style-type: none"> ○ three levels (one at grade two above ground) of car parking for a total of 60 vehicles ○ an eight (8) storey hotel comprising 150 rooms (including 8 accessible rooms); a sky lobby, bar, lounge, two conference rooms and restaurant with outdoor terrace on Level 8; ▪ On-site drop-off and pick up zone for a bus with vehicle entry and exit points along Baxter Road; ▪ Shuttle bus service; ▪ All vehicular access to be obtained from Baxter Road;
Street Address	113 Baxter Road, Mascot
Applicant/Owner	Baxter International Pty Limited/ Adam Standfield
Number of Submissions	Nil
Regional Development Criteria (Schedule 4A of the Act)	The development application is referred to the JRPP pursuant to Clause 3 of Schedule 4A of the Act as the Capital Investment Value (CIV) of the proposal is over \$20 million. The Council Estimate of the CIV of this development \$24,000,000.00.
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • List all of the relevant environmental planning instruments: s79C(1)(a)(i) <ul style="list-style-type: none"> ○ Botany Bay Local Environmental Plan 2013; • List any relevant development control plan: s79C(1)(a)(iii) <ul style="list-style-type: none"> ○ Botany Bay Development Control Plan 2013; • List any relevant regulations: s79C(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288
List all documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> • Statement of Environmental Effects • Architectural Plans • Contamination Assessment • Traffic Impact Assessment • Geotechnical Assessment • Acoustic Assessment • Access Review

	<ul style="list-style-type: none"> • BCA Assessment Report • Waste Management Plan • ESD DA Report • Building Services DA Report • Wind Impact Assessment
Recommendation	Conditional Consent
Report by	Lincoln Lawler, Senior Development Assessment Officer

EXECUTIVE SUMMARY

Council received Development Application No. 14/306 on the 16 December 2014 seeking consent for a hotel development comprising the following:

- Demolition of existing factory buildings;
- Construction of:
 - three levels of car parking (one at grade two above ground) for a total of 41 vehicles
 - an eight (8) storey hotel comprising 150 rooms (including 8 accessible rooms); a sky lobby, bar, lounge, two conference rooms and restaurant with outdoor terrace on Level 8;
- On-site drop-off and pick up zone for a bus with vehicle entry and exit points along Baxter Road; and
- Shuttle bus service.

The application was referred to the JRPP on 25 March 2015 for determination. Council recommended refusal of the application. The applicant advised at the public meeting that they had lodged amended plans addressing the issues raised by Council. The JRPP recommended that:

“The Panel noted that the applicant had lodged, after the completion of the assessment report, amended plans including an additional parking floor. Depending on the council's policy on exhibiting amendments, the new plans may need to be re-exhibited.

The Panel therefore resolved to defer determination of the application pending a supplementary assessment report that takes into account the amended plans. The Panel requests the applicant to lodge final amended plans by 27 March 2015, and the assessment officer to provide the Panel with a supplementary report by 22 April 2015.

Following receipt of that report, the Panel will determine the application by communicating by electronic means, unless a public meeting is necessary because there are objections, a dispute on conditions or a negative recommendation.”

Council received a full set of amended plans on 25 March 2015. The amendments included an additional above ground level of car parking to accommodate 19 car spaces and to comply with Council car parking requirement.

The development in amended form, which seeks approval, is as follows:

- Construction of four levels (including one level at grade) of car parking for a total of 60 vehicles
- Eight (8) storey hotel comprising 150 rooms (including 8 accessible rooms) a total of 12 storey including car parking;
- A sky lobby, bar, lounge and restaurant with outdoor terrace on Level 8;
- An on-site drop-off and pick up zone for a bus with vehicle entry and exit points along Baxter Road;
- A shuttle bus service, site preparation works and business identification signage

The amended plans were placed on public exhibition from 1 April 2015 to 20 April 2015. No Public Submissions have been received. The application in its amended form is recommended for approval.

RECOMMENDATION

- (a) It is recommend that the Joint Regional Planning Panel (JRPP) for the Sydney East Region, as the Consent Authority, resolve to **approve** Development Application No. 14/306 for the following reasons: Grant consent to the Clause 4.6 variation request under Botany Bay Local Environmental Plan 2013 to permit a maximum FSR of 3.13:1(4637m²) being an additional 192.2m² above the maximum permissible of 3:1 (4,444.8m²); and
- (b) Approve Development Application No. 14/306 for the demolition of the existing factory buildings; Construction of four levels (including one level at grade) of car parking for a total of 60 vehicles and a eight (8) storey hotel comprising 150 rooms (including 8 accessible rooms); a sky lobby, bar, lounge and restaurant with outdoor terrace on Level 8; an on-site drop-off and pick up zone for a bus with vehicle entry and exit points along Baxter Road; a shuttle bus service and site preparation works business identification signage at 113 Baxter Road, Mascot, subject to the Conditions imposed in the attached schedule.

AMENDED DESCRIPTION OF THE DEVELOPMENT

The development application seeks consent for:

- The demolition of existing factory buildings and structures on site.
- Construction of a eight storey hotel (RL 48.050) comprising:
 - a ground floor lobby,
 - a sky lobby, bar, lounge and restaurant with outdoor terrace on Level 8.

The building is of modern architecture incorporating the use of panel cladding and glass to emphasize the horizontal and vertical elements of the building. The front entrance of the hotel is accentuated by an awning.

It will have 150 rooms, of average size 23m². Of these eight rooms will be suitable for persons with a disability.

There are four levels of aboveground car parking, for a total of 60 vehicles.

The proposal includes an on-site drop-off and pick up zone for a bus with vehicle entry and exit points along Baxter Road, and a shuttle bus service to and from the airport.

The operator will be Baxter International with a 3-4 star rating.

The site area is 1481m² and total GFA is 4621.8m².

SECTION 79C CONSIDERATIONS

In considering the Development Applications, 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.

Botany Local Environmental Plan 2013

The original report contains the LEP table, however as the original proposal exceeds the Floor Space Ratio; Clause 4.6 of BBLEP 2013 has been addressed as follows:

Clause 4.4 Floor Space Ratio

Clause 4.6 Exceptions to a Development Standard (FSR)

The maximum FSR permitted by the BBLEP 2013 is 3:1 (4,444.8m²). The development application seeks an FSR of 3.13:1 (4637m²) being an additional 192.2m².

The applicant has submitted a variation to Clause 4.4 pursuant to Clause 4.6 requesting a greater FSR. This variation is considered below.

Clause 4.6 of BBLEP 2013 states:-

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

- a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- 4) *Development consent must not be granted for development that contravenes a development standard unless:*
- a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - b) *the concurrence of the Director-General has been obtained.*
- 5) *In deciding whether to grant concurrence, the Director-General must consider:*
- a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - b) *the public benefit of maintaining the development standard, and*
 - c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*
- 6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
- a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note.** *When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.*
- 7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- 8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- a) *a development standard for complying development,*
 - b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - c) *clause 5.4.*

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

4.6(4) and (5) are also considered below. Clause 4.6 (6), (7) and (8) are not relevant to the current proposal.

In assessing the proposed departure, consideration has been given to the objectives of the standard, the objectives of the zone, and the objectives of BBLEP 2013 (including Clause 4.6(1)) as outlined below. The following justification for this proposed departure from the FSR development standard has been provided by the applicant:

The proposed FSR variation is considered to be justified on the following basis:

1. Consistency with the objectives of the height standard in the LEP and DCP LEP FSR objectives:

4.4 Floor space ratio [relevant clauses quoted]

(1) The objectives of this clause are as follows:

(a) to establish standards for the maximum development density and intensity of land use,

(b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,

(c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,

(d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities, (e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,

(f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,

(g) to facilitate development that contributes to the economic growth of Botany Bay.

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

Applicant's justification

The proposed floor space represents only a slight variation (0.13:1) to Council's FSR control of 3:1. The subject site is currently underdeveloped however it is earmarked for an increase of density as base on Council's LEP and DCP controls. The locality is undergoing a transition with underdeveloped residential and light industrial properties being replaced with large scale hotel development namely Stamford Plaza, The Quest Hotel, 2 x new developments at no. 210 O'Riordan Street [Note, one of these hotel applications, has been refused by the JRPP and is subject to appeal] and 210 Baxter Road and 2 x approved hotel/commercial buildings at no. 289 and 342 King Street. The proposed bulk and scale is consistent with the surrounding hotel developments whilst its height is well below Council's requirement.

The proposal will introduce a contemporary building which is of high architectural merit and will add visual interest to Baxter Road. The abundance of landscaping to the front setback area and to the first 3 storey levels (in the form of vertical planter climbers) will screen the car parking levels whilst it will soften the built form along Baxter Road. The proposed wrap around ground floor awning will ensure the proposed development will be of pedestrian scale along Baxter Road thereby reducing the appearance of bulk and scale. The featured sky lounge level with large glazing areas with a thick solid frame will add a feature to longer distant views.

The hotel accommodation is located from the 4th storey and above. The elevated nature and sufficient building separation distances will minimise acoustic and visual privacy impacts to

the residential properties to the northern rear and eastern side. Furthermore, the wide landscaping buffers and tall mature planting along the rear creates further privacy for adjoining neighbours. The additional overshadowing will fall onto Baxter Road and the non-residential developments to the south whilst the morning sunlight to the eastern neighbours will be maintained. There are no iconic views which will be affected by the proposal whilst the development is sufficiently separated from the Quest Hotel and therefore maintains its views.

The proposal will be a more efficient use of the site by introducing high quality hotel accommodation within a convenient location which contributes to the economic growth of Botany Bay.

Therefore the FSR is considered to be acceptable given the proposal is consistent with surrounding hotel development, is a positive contribution to the public domain whilst there will be minimal amenity impacts to surrounding neighbour.

2. Consistency with the objectives of the B5 Business Development

1 Objective of zone

- To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*

Applicant's justification

The proposed hotel development is permissible within the B5 Business Development zone whilst it accords with the zone objectives. The proposal seeks to introduce hotel accommodation within a convenient location, close to Sydney Airport and Mascot train station. The hotel development is a more efficient use of the site and will introduce 150 hotel rooms to the locality thereby supporting the viability of Sydney Airport, Mascot town centre and the wider Botany Bay locality. The minor variation to Council's FSR control will allow for further gross floor area for the hotel development and will accord with the zone objectives.

3. Consistency with State and Regional planning policies

Applicant's justification

The proposed FSR variation ensures the orderly and economic use of land as envisaged by the Environmental Planning and Assessment Act, 1979. The subject site is currently underutilised which is earmarked for an increase in density as stipulated in Council's controls and the proposed development is considered to be a more efficient use of the site. The proposed FSR allows for high quality hotel accommodation within a highly accessible location in close proximity to the Sydney Airport, public transport facilities and various services and uses at Mascot town centre.

4. The variation allows for a better planning outcome

Applicant's justification

The proposal represents a significant improvement from the existing form and condition of the site. The proposal will introduce a contemporary building to the locality which is of high architectural merit and will be a positive contribution to Baxter Road.

The variation to Council's FSR control will introduce hotel accommodation which has high internal amenity with sufficient solar access and ventilation, pleasant expansive outlooks and the provision of communal areas to the sky lounge level. The hotel accommodation is suitably

located within close proximity to the Sydney Airport, public transport facilities and various services and uses at Mascot town centre which is a preferred planning outcome.

The abundance of landscaping to the scheme will soften the built, screen the car parking levels to the public domain, improve pedestrian amenity and allow for natural drainage.

The proposal allows for adequate car parking whilst the shuttle bus service to the airport will minimise traffic impacts to the existing road network.

Overall the variation with the FSR control allows for a better planning outcome while there are minimal impacts to the surrounding properties.

5. There are sufficient environmental grounds to permit the variation

- The proposal will create an appropriate built form which is consistent with surrounding hotel developments whilst the proposal is well under Council's height control;*
- The proposal will introduce an architectural feature to Baxter Road which incorporates high quality facade treatments and an articulated form which creates a superior presentation to what exists on the subject site and sets a precedent for future hotel development in the area;*
- The hotel accommodation will comprise of high internal amenity with large room sizes, sufficient solar access and natural ventilation, expansive outlooks and access to communal areas;*
- The proposal will be a more efficient use of the site and will introduce 150 hotel rooms which is conveniently located in close proximity to various uses and public transport services;*
- The hotel accommodation caters for disabled and elderly people with barrier free access to all rooms and communal areas, special accessible hotel rooms and nominated accessible car parking spaces;*
- The departure from the maximum FSR control will not result in any significant adverse amenity impacts such as overshadowing, privacy impacts or any significant view loss to the surrounding neighbours; and*
- The proposal will provide adequate car parking whilst the occupants will generally rely on the shuttle bus services to travel to the airport which will alleviate traffic impacts to the road network.*
- When compared with the existing approval the proposal will have slightly reduced shadow impacts.*

6. The variation is in the public interest

The minor FSR variation is considered to be in the public interest, given the proposal will introduce hotel accommodation to the locality and will contribute to the economic growth of Botany Bay. The building mass, height and separation distances combined with the provision of sufficient deep soil landscaping demonstrates the floor space is suitable for the site. Furthermore, the hotel is located in an accessible location whilst it will not create any impacts to the public domain or the amenity of surrounding properties. Therefore the proposal and its associated FSR are in the public interest.

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded to Council in support of the variation to the FSR associated with the development proposal at 113-121 Baxter Road, Mascot and is requested to be looked upon favourably by Council.

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

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

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

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

These matters are considered below.

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

The Land and Environment Court have set out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development standards is well founded. This test is outlined below for the variation to FSR.

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

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

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

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

- The proposed development is compatible with the bulk and scale of the existing development in the area and the future desired character of the locality, given the mixed use nature of the site and locality;
- The proposal has maintained an appropriate visual character in that the parking levels will be visible from the adjoining development and is consistent the transformation of the area.
- It is not likely that there will be significant adverse impacts from the additional floor space proposed on the amenity of adjoining properties in terms of increased traffic and the lack of on street car parking.
- The proposal provides for an appropriate correlation between size of the site and the extent of the development site as the additional floor space generates additional parking demand which is being complied with.

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

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

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

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

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

While the FSR control has been varied previously for this site, the development standard has not been abandoned. This development standard remains generally relevant in the area, and a variation to the standard is warranted as discussed above.

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

It has been established that the proposed development is appropriate and strict adherence to the development standard in this instance is considered unreasonable and unnecessary. Furthermore, the additional floor space does not result in adverse impact to adjoining properties in terms of residential amenity. A compliant commercial building would create a larger impact in terms of traffic movements and parking demand for the site.

The proposed development provides a high quality tourist accommodation, which facilitates the orderly and economic development of the land in a manner that is appropriate in this area as it provides appropriate level of car parking in an area where car parking is at a premium and is consistent with the streetscape presentation already approved at the site.

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

It is considered that the applicant's Clause 4.6 is well-founded and the departure is in the public interest given an appropriate level of car parking is provided.

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

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

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

a) to encourage:

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

It is considered that in this instance, non-compliance with the FSR standard is acceptable in this instance as the proposal does achieve the objectives of the development standard and in this instance will allow for the co-ordination of the orderly and economic use and development of land.

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

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

- The development will not adversely impact on the surrounding road network; and the acceptable level of car parking will not impact on the availability of on-street car parking;
- The proposal has provided above ground car parking levels which are suitably screened and integrate with the overall design of the building to provide a coherent streetscape appearance
- Other hotels approved by both Council and JRPP have varied the FSR standard and have also complied with the parking controls as is what is currently proposed.

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

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

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

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

Objectives of Clause 4.6

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

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

It is considered that the proposed development will achieve a suitable outcome for the site in that the proposal will adversely impact on the visual amenity, and adjoining road network of the area. This is addressed further in this assessment. Therefore, for the reasons outlined in this assessment, it is considered that flexibility can be applied to this development, in this instance as it does achieve a better outcome for the site, in that it provides for a development that is deficient in car parking and impacts on the streetscape.

Public Interest and Public Benefit

In terms of public benefit, the proposal will provide for a public benefit. The proposed development is compatible with the existing development and the approved development surrounding the site.

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

The proposed development will not impact on the existing road network nor rely on street car parking to compensate for the non-compliance with car parking.

Matters of State or Regional Importance

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

Summary

The Clause 4.6 Exception to the FSR control has been assessed in accordance with relevant case law, being the principles of *Wehbe v Pittwater Council [2007] NSW LEC 827*. It is considered that the proposal is consistent with the underlying objectives of the standard identified:

- The impacts associated with a commercial building with a compliant FSR and Height would be much greater than what is being proposed and would generate a higher demand of car parking being 111 car spaces.
- The variation is 4.3% over the site, where the maximum FSR permitted by the BBLEP 2013 is 3:1 (4,444.8m²). The proposed development seeks an FSR of 3.13:1 (4,637m²) being an additional 192.2m².
- The scale and bulk of the building reinforces the landmark qualities that are required for the locality to serve as a Gateway to Sydney.
- The overshadowing created by the development still maintains at least three hours of sunlight to neighbouring properties on June 21.

- The buildings address the desired future character of the area and the site is located in an area that is in transition to align the development to the B5- Business Development zone, noting residential activity is not permissible in this zone.

It is considered that the Applicant has addressed the requirements of Clause 4.6(4) and the granting of consent is consistent with the aims and objectives of Clause 4.6 of BBLEP 2013 further the applicant's Clause 4.6 is well-founded. On this basis of, it is recommended that the development standard relating to the maximum FSR for the site pursuant to Clause 4.4 of the BBLEP 2013 should be varied in the circumstances as discussed above.

Botany Bay Development Control Plan (BBDCP) 2013

BBLEP 2013 is the comprehensive development guideline for the City of Botany Bay. Compliance with relevant controls is as follow:

Part and Control	Proposed	Complies
<p>3A.2 Parking Provisions</p> <p>C2 – Car parking provisions shall be provided in accordance with Table 1.</p>	<p>The car parking rate is required to be:</p> <p>1 space for manager</p> <p>1 space/ 2 employees; plus</p> <p>1 space/1.5 rooms, plus 1 taxi pick and set-down space/100 plus</p> <p>2 coach pick-up and setdown spaces; and</p> <p>Additional parking does not need to be provided for other licensed parts of the use in this instance as the ancillary in nature to the main use and will not be a destination in its own right.</p> <p>Therefore a total of 220 spaces is required.</p> <p>Where a shuttle bus service will be provided to the airport. This allows the parking rate to reduce to 1 space per 2.5 rooms, being 60 spaces</p> <p>A shuttle bus is being provided, therefore a total of 60 car spaces are required and the development proposes 60 spaces.</p>	<p>Yes</p>
<p>3A.3.1 - Car Park Design</p> <p>C1 – All off-street parking facilities shall be designed in accordance with current Australian Standards AS2890.1 and AS2890.6. The design of off-street commercial vehicle facilities shall be in accordance with</p>	<p>The Traffix Impact Assessment report prepared by Traffix confirms that the internal configuration of the car park and loading area has been designed in accordance with AS2890.1 and AS2890.2</p>	<p>Yes</p>

Part and Control	Proposed	Complies
AS2890.2.		
<p>3C.1 – Access and Mobility</p> <p>C2 – All development must comply with the provisions of the Disability Discrimination Act 1992, BCA, the Premises Standards and the relevant Australian Standards</p>	<p>The proposal is accompanied by a Statement of Compliance Access for People with a Disability prepared by Accessible Building Solutions which demonstrates that the proposal can achieve compliance with the access provisions of the BCA.</p>	<p>Yes</p>
<p>3G.2 – Stormwater Management</p> <p>C1 – Development shall not be carried out on or for any lands unless satisfactory arrangements have been made with and approved by Council to carry out stormwater drainage works.</p>	<p>The Engineering report concludes that the existing stormwater infrastructure in the vicinity of the site is adequate to accommodate the proposed new hotel development.</p>	<p>Yes</p>
<p>3G.3 – Water Sensitive Urban Design</p> <p>C3 – All developments shall adopt an integrated approach on water management through a coordinated process to address water efficiency, water conservation, stormwater management, drainage and flooding.</p>	<p>The ESD and Energy Efficiency report prepared by SLR provides several initiatives for water sensitive design that can be implemented throughout the development.</p>	<p>Yes</p>
<p>3G.4 – Stormwater Quality</p> <p>C1 – Water quality objectives stated in “<i>Botany Bay & Catchment Water Quality Improvement Plan (BBWQIP)</i>” shall be satisfied.</p>	<p>The Stormwater plans prepared by IGS include appropriate sediment and stormwater measures to ensure the quality of stormwater runoff meets the objectives of the BBWQIP.</p>	<p>Yes</p>

Part and Control	Proposed	Complies
<p>3I.- Crime Prevention Safety and Security</p> <p>C1 – Building entrances shall be visible from the street and be clearly recognisable through design features</p> <p>C8 – Entrances to new development shall front the street to maximise surveillance to the public environment and provide clear sightlines with direct access from the street to the building entrance.</p> <p>C10 – Entrances and exits of buildings shall be well lit, secure and highly visible to and from public spaces, streets and adjoining buildings.</p>	<p>The entrance to the proposed hotel will be clearly recognisable from Baxter Road.</p> <p>The entrance to the proposed hotel fronts Baxter Road and will provide maximum surveillance to the porte cochere area and direct sightlines and access from Baxter Road. Further it is noted that there will be a staff member located in the ground level of the building at all times.</p> <p>Adequate lighting will be provided to the building entrance along Baxter Road and the pick-up and drop-off area. Lighting will be provided to the car parking areas.</p>	<p>Yes</p>
<p>3J.2 – Aircraft Noise and Exposure Forecast</p> <p>C2 – Where a building site is classified as “conditional” under Table 2.1 of AS20121-2000, development may take place, subject to Council consent and compliance with AS2021-2000</p>	<p>The subject site is affected by the 25-30 ANEF Contour. An Acoustic Report has been prepared by Acoustic Logic and concludes that provided the measures recommended are implemented aircraft noise emissions will comply with AS2021-2000.</p>	<p>Yes</p>
<p>3J.3 – Aircraft Height Limits and Prescribed Zones</p> <p>C1 – If the building is located within a specific area identified on the OLS map or seeks to exceed the height limit specified on the OLS map or seeks to exceed the height limit specified in the map the application must be referred to Civil Aviation Safety Authority and Airservices Australia for</p>	<p>The development application has been referred to SACL. SACL raised no objections to the proposed maximum height of 45.01 AHD, subject to conditions to be imposed on any consent.</p>	<p>Yes</p>

Part and Control	Proposed	Complies
assessment.		
<p>3L - Landscaping</p> <p>C3 – landscaping shall be designed to reduce the bulk, scale and size of buildings, to shade and soften hard paved areas, to create a comfortably scaled environment for pedestrians in the public domain, or from within the site, and to screen utility and vehicle circulation or parking areas. Emphasis should be placed on landscaped setbacks designed to soften buildings.</p>	<p>The proposed development is accompanied by Landscape Plans prepared by JILA.</p> <p>The proposed building envelopes provide generous setbacks to all site boundaries and 13.5% of the site will be in the form of deep soil planting although the DCP has no requirements for hotels to provide deep soil planting.</p> <p>The landscaping including the elevated planter boxes provided to the front and east of the site will soften the built form and enhance the streetscape when viewed from Baxter Road. The deep soil landscaping will allow for natural drainage to occur and minimise overland flow onto adjoining premises.</p>	Yes
<p>3N.2 – Waste Minimisation and Management/ Demolition and Construction</p> <p>C1 – A Site Waste Minimisation and Management Plan in accordance with Part 1 – Model Site Waste Minimisation and Management Plan must be submitted.</p>	<p>A Waste Management Plan prepared by The Baxter International Hotel has been submitted and addresses the waste minimisation at design stage and during demolition, excavation and construction and future on-site waste management.</p>	Yes
<p>6 – Mascot Business Development Precinct</p> <p>C1 – Development is to encourage a higher public transport (including walking and cycling) use and include strategies to encourage and promote car sharing and carpooling strategies. In this respect a Workplace Travel Plan is to be lodged with the development application. The Workplace Travel Plan shall establish measurable targets to achieve the mode share</p>	<p>The proposals close location to Mascot Train Station (930m north) and Domestic Terminal Station is approximately 875m from the hotel. The hotel will also provide a shuttle bus service however it has not provided the minimum parking rate required by the Section 3D – Car parking. The Development has bar/lounge/restaurant and function rooms, which will be available to the public. This will increase the demand for on-site car parking and additional staff. It considered the proposed development has not fully satisfied this control.</p>	No

Part and Control	Proposed	Complies
<p>targets stated in the Mascot Town Centre Precinct TMAP – maximum car mode share: 65% by 2021 and 57% by 2031.</p>		
<p>C2 – Development, including alterations and additions shall:</p> <p>(i) improve the appearance of buildings, particularly along the roads which serve a gateway function to Sydney Airport and the Sydney CBD; and</p> <p>(ii) Comply with Sydney Airport’s regulation in regard to safety, lighting and height of buildings.</p>	<p>The proposed hotel is of a modern design which will incorporate modern materials which will be an improvement to the current structures on the site.</p> <p>The landscaping to the front of the building will soften the built form and enhance the existing streetscape. However concerns is raised that the parking levels will be visible from the street and adjoining levels it considered the treatment to these levels needs further improvement.</p> <p>The proposal will comply with the Sydney Airport’s regulation with regard to safety and lighting and SACL has raised no objections to the proposed maximum height of 48.050 metres AHD, subject to conditions to be imposed on any consent</p>	<p>Yes</p>
<p>C7 – Development shall be designed and constructed in accordance with Australian Standard AS2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction)</p> <p>Note: Details to be included in the Development Application. For further details in relation to Aircraft Noise refer to Part 3J – Development Affecting Operations at Sydney Airport.</p>	<p>An Acoustic Report prepared by Acoustic Logic was submitted with the application and made recommendations to ensure that the development when built complies with AS2021-2000.</p>	<p>Yes</p>
<p>C8 – The introduction of noise abatement measures to achieve compliance with current AS 2021 must be done in a manner that does not compromise the</p>	<p>The proposed development incorporates noise abatement measures to achieve compliance with AS 2021-2000 and so as not to compromise the architectural design of a building or impact on the character of</p>	<p>Yes</p>

Part and Control	Proposed	Complies
architectural design of a building or impact on the character of an existing streetscape.	an existing streetscape.	
C9 – All development that is in, or immediately adjacent to, the rail corridor or a busy road must be designed in accordance with NSW Department of Planning ‘Development Near Rail Corridors and Busy Roads – Interim Guidelines, December 2008’.	The proposed development has been designed in accordance with NSW Department of Planning ‘Development Near Rail Corridors and Busy Roads – Interim Guidelines, December 2008’.	Yes
<p>6.3.1 Amalgamation and subdivision</p> <p>Development to comply Part 3E to ensure consistency with the Desired Future Character</p>	Proposal has demonstrated that sites to north can develop independently of the proposed development	Yes
<p>6.3.5 Setbacks</p> <p>Side Setback - 2m</p> <p>Front – 3m landscape</p> <p>9m to Building</p> <p>Rear nil to 3m</p>	<p>Side setback – 1.2 m over a distance of 2.7m (Fire Stairwell) on the western boundary.</p> <p>Remainder of building setback 3m.</p> <p>2.5m setback to awning and between 7.5 to 8.5m to the building is proposed. Given the landscaped appearance that will result, the setback and open air nature of the awning do not contribute to additional bulk and as such the front setback is considered acceptable.</p> <p>Rear setback is approximately 2.9m</p> <p>The small non-compliances are considered acceptable given these are the same extent to what has already been approved.</p>	No – Considered acceptable
<p>7F.2 General Requirements – Hotels & Motel Accommodation</p> <p>C1 – The maximum stay permitted is 3 months.</p>	A Plan of Management has been submitted confirming the maximum stay period permitted will be for 3 months.	Yes

Part and Control	Proposed	Complies
C2 – The main access point is to be located at the main street frontage of the property. Access Points should be avoided at the boundaries of the property where and impact on noise or privacy could result for adjoining residences.	The main access point has been provided off Baxter Road. There are no residential properties immediately abutting the subject site.	Yes
C4 – The minimum size for a visitor’s room is 5.5m ² for the bedroom floor area for each person staying within the room.	The rooms are all 22m ² plus.	Yes
C7 – A small kitchenette is permitted if adequate cupboards and shelves are provided.	The proposal incorporates a kitchenette within each hotel room.	Yes
C9- Bathrooms must be provided in accordance with the <i>Building Code of Australia</i> .	A separate bathroom is provided within each hotel room in accordance with the BCA.	Yes
C10 – The design and operation of hotel and motel accommodation must take into account possible noise impacts on adjacent properties and the surrounding area.	An Acoustic Report by Acoustic Logic has been prepared for the site. There are no residentially zoned properties in the area and it is therefore considered that the proposed hotel will not have any adverse noise impacts on adjacent properties or the surrounding area.	Yes
C11 – A Plan of Management (POM) is required to be submitted. The POM is a written report which describes how the ongoing operation of hotel and motel accommodation will be managed to reduce its impact upon the amenity of surrounding properties. The POM allows Council to exercise control over the	A Plan of Management has been provided with the application.	Yes

Part and Control	Proposed	Complies
ongoing operation of a premises by requiring, as a condition of consent, that the premises operate in accordance with the POM. A condition of consent may require that a POM be regularly revised and submitted to Council.		
C12- The building is to comply with Parts C, D, and E of the BCA.	The proposal has been reviewed by a building consultant confirming compliance has been achieved by the proposal with regards to fire safety requirements.	Yes
C13 – Each room is to comply with Parts C, D E and F5 of the BCA so as to ensure there is adequate fire safety in the building and adequate sound insulation between each room.	The proposal has been reviewed by a building consultant confirming compliance has been achieved by the proposal with regards to fire safety requirements.	Yes

Table 3 – BBDPCP 2013 Compliance Table

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

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

(c) The suitability of the site for the development

These matters have been considered in the assessment of the development application. The subject site is currently a commercial warehouse building used for the purposes of a car/truck rental business. A Contamination Report prepared by Environmental Investigations has been submitted which concludes that the site can be made suitable for the proposed use based on carrying out the recommendations contained within the report. Notwithstanding this a condition has been imposed upon the Consent that a Remedial Action Plan be submitted to Council prior to the commencement of any remedial action works or any excavation, demolition or other building works and shall demonstrate how the site will be made suitable for the proposed residential development. In addition the subject site is affected by the 25-30 ANEF contour and also affected by road traffic noise. In this regard the applicant has

submitted an acoustic report which demonstrates that the development can meet the acoustic requirements of both affectations.

Accordingly, it is considered that the site is suitable for the proposed development. The proposed development being for the demolition of the existing factory buildings; Construction of three levels of car parking for a total of 60 vehicles and a eight (8) storey hotel comprising 150 rooms (including 8 accessible rooms); a sky lobby, bar, lounge and restaurant with outdoor terrace on Level 9; an on-site drop-off and pick up zone for a bus with vehicle entry and exit points along Baxter Road; a shuttle bus service and site preparation works business identification signage at 113 Baxter Road, Mascot, located in the B5- Business Development zone is considered to be a suitable development in the context of the site and the locality.

(d) Any submissions made in accordance with the Act or Regulation

These matters have been considered in the assessment of the development application. In accordance with the Botany Bay Development Control Plan 2013 Part 2 – Notification and advertising, the development application was notified to surrounding property owners for thirty (30) days from 21 January 2015 to 23 February 2015 and two (2) submissions were received.

As amended plans were received post the first JRPP meeting, the plans were required to be readvertised, in accordance with Council’s DCP. The application was placed on public exhibition from 1 April 2015 until 20 April 2015 (taking into consideration Public holidays during the exhibition period).

(e) The public interest.

These matters have been considered in the assessment of the development application. It is considered that approval of the proposed development is not in the public interest as it will have a significant adverse impact upon the locality in terms of visual impact arising visibility of the car parking levels, non-compliance with car parking and the impact it will have on the existing road network.

Other Matters

External Referrals

Sydney Airports Corporation Limited (SACL)

The subject site 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 without prior approval of the Civil Aviation Safety Authority.

Correspondence received from Sydney Airports Corporation Limited (SACL) dated 16 April 2015, confirms that the existing approval is still valid which grants approval to a maximum height of the building to 48.050 metres AHD.

Conclusion

The Joint Regional Planning Panel, Sydney East Region (JRPP) is the consent authority for the development application. The design currently before the Panel has been the subject of a

design review process. The view is expressed that the application given the findings of the assessment process should be supported.

The proposal has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979* and the *Botany Bay Local Environmental Plan 2013*. The proposal is permissible in the B5 – Business Development zone, and is considered to result in a development which is suitable in the context. It is therefore recommended that the Panel grant approval to the application subject to the conditions in the attached schedule.

RECOMMENDATION

In view of the preceding comments, it is RECOMMENDED that the Joint Regional Planning Panel (JRPP) for the Sydney East Region, as the Consent Authority, resolve to:

- (a) Grant consent to the Clause 4.6 variation request under Botany Bay Local Environmental Plan 2013 to permit a maximum FSR of 3.13:1 (4637m²) being an additional 192.2m² above the maximum permissible of 3:1 (4,444.8m²); and
- (b) Approve Development Application No. 14/306 for the demolition of the existing factory buildings; Construction of four levels (including one level at grade) of car parking for a total of 60 vehicles and a eight (8) storey hotel comprising 150 rooms (including 8 accessible rooms); a sky lobby, bar, lounge and restaurant with outdoor terrace on Level 8; an on-site drop-off and pick up zone for a bus with vehicle entry and exit points along Baxter Road; a shuttle bus service and site preparation works business identification signage at 113 Baxter Road, Mascot, subject to the Conditions imposed in the attached schedule.

Premises: 113 Baxter Road, Mascot

DA No: 14/306

SCHEDULE OF CONSENT CONDITIONS

GENERAL CONDITIONS

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

Drawing No.	Author	Dated Received by Council
Architectural Plans, Elevations and Sections and Drawing No.: DA0.00 Cover Sheet (Issue B) DA0.01 Site Analysis & Demolition Plan (Issue A)	Fox Johnston	25 March 2015

Drawing No.	Author	Dated Received by Council
DA0.02 Site Plan (Issue B) DA1.00 Basement Carpark (Issue A) DA1.01 Ground Floor Plan (Issue C) DA1.02 Level 1 Carpark (Issue C) DA1.03 Level 2 Carpark (Issue C) DA1.04 Level 3 Carpark (Issue B) DA1.05 Level 1 (Issue C) DA1.06 Level 2-6 Typical Plan (Issue C) DA1.07 Level 7 (Issue C) DA1.08 Sky Lobby(Issue C) DA1.09 Roof Plant (Issue B) DA1.10 Roof Plan (Issue C) DA2.01 Section AA (Issue C) DA2.02 South Elevation (Issue B) DA2.03 East Elevation (Issue B) DA2.04 North Elevation (Issue B) DA2.05 West Elevation (Issue B) DA2.06 Façade Sections (Issue B) DA3.02 Shadow Diagram 9am Jun21 Proposed (Issue B) DA3.04 Shadow Diagram 12pm Jun21 Proposed (Issue B) DA3.06 Shadow Diagram 3pm Jun21 Proposed (Issue B) DA4.01 Schedule of Finishes		
Landscape Plans DA01 – Ground Floor DA02 – Car park level 2 Typical Level & Schedule DA-03 – Elevation and Plant Schedule	JILA	16 December 2014
Stormwater Drainage Plans, Drawing Nos.: STW - 001 Stormwater Service Ground Level Rev 01 STW 002 Roof Level Rev 01	IGS	16 December 2014

Drawing No.	Author	Dated Received by Council
STW 003 Detail Sheet Rev 01 SW04 Concept Stormwater Design Details Rev A		

Document(s)	Author	Date received by Council
Statement of Environmental Effects	ABC Planning	16 December 2014
Construction Management Plan/ Traffic Management Plan	Construction rescue Services	16 December 2014
Waste Management Plan	Baxter International Hotel	16 December 2014
Environmental Site Assessment Report No E1909 AA Rev 2 dated 18 June 2014	Environmental Investigations Australia	16 December 2014
BCA Capability Report	Vic Lilli & Partners	16 December 2014
Traffic Impact Assessment	Traffix	16 December 2014
Acoustic Report	Acoustic Logic	16 December 2014
ESD & Energy Efficient Report	SLR	16 December 2014
Reflectivity Assessment	SLR	16 December 2014
Qualitative Wind Turbulence Report (1 report, 1 Letter) Dated 4 December 2014	SLR	16 December 2014
Clause 4.6 Variation	ABC Planning	16 December 2014

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

- 2 This Consent relates to land in Lot 620 DP1031958 and as such, building works must not encroach on to adjoining lands or the adjoining public place, other than public works required by this consent.
- 3 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.
- 4
- (a) All building work must be carried out in accordance with the provisions of the Building Code of Australia; and
 - (b) The limitations of the BCA Performance Provision FP1.5 do not apply to the Class 7 part of the building.
- 5 No additional signage, other than signage permitted as exempt or complying development, shall be installed or displayed at the premises without a development application being lodged with Council and consent thereto being given by Council in accordance with Council's guidelines and SEPP 64.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

- 6 The following conditions are imposed by the Ausgrid:
- (a) The Applicant shall make provision for a substation(s). The size and type of substation(s) required cannot be confirmed until a completed Connection Application with load details has been received by Ausgrid;
- Note:** Connections to Ausgrid's network are governed by Chapter 5A of the National Electricity Rules. Under these rules, a binding contract may be formed only after a connection application is lodged and Ausgrid has made a connection offer in response to that application. Accordingly Ausgrid cannot make any representation concerning electricity supply to your development. A duly completed connection application should be lodged as soon as possible to allow Ausgrid to respond to your Council's conditions of consent and to ensure electricity supply is available when your development is ready to be connected.

- 7 The following conditions are imposed by the Sydney Airport Corporation Limited (SACL) and must be complied with:
- (a) The PROPERTY DEVELOPMENT at 113 BAXTER 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 proposed development to a maximum height of 48.050 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 height, a new application must be submitted. **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, i.e. 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.
 - (e) 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.
 - (f) For further information on Height Restrictions please contact Mr Peter Bleasdale on 02 9667 9246.
 - (g) Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed “controlled activity” and is punishable by a fine of up to 50 penalty point.
 - (h) The height of the prescribed airspace at the site is 51.0 metres above Australian Height Datum (AHD). In accordance with Regulation 9 of the Airports (Protection of Airspace) regulations Statutory Rules 1996 No 293, “a thing to be used in erecting the building, structure or thing would, during the erection of the building, structure or thing, protrude into PANS OPS airspace for the Airport, cannot be approved.

Bird and Obstacle Hazard Management

- (i) The area in which the proposed development is located is in the vicinity of Sydney (KS) Airport. To minimise the potential for bird habitation and roosting, the Proponent must ensure that non-bird attracting plant species are used in any landscape design.
- (j) Any landscaping design must minimise the attractiveness for foraging birds, i.e. site is kept clean regularly, refuse bins are covered, and detention ponds are netted.
- (k) All trees to be planted shall not be capable of intruding into the Obstacle Limitation Surface when mature.

Planning for Aircraft Noise and Public Safety Zones

Note: Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use the land planning tool for Sydney Airport was endorsed by Airservices on 13 March 2009 (Sydney Airport 2029 ANEF).

Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport boundary, it is recommended that proposed land uses which have high population densities should be avoided.

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

- 8 The applicant must prior to issue of the Construction Certificate, pay the following fees:
- | | | |
|-----|----------------------------|---------------|
| (a) | Builders Security Deposit | \$137,865.00; |
| (b) | Development Control | \$1,350.00 |
| (c) | Tree Maintenance Bond | \$6,000.00 |
| (d) | Section 94 Contribution | \$192,782.86 |
| (e) | Construction of Cul-de-sac | \$30,000.00 |
- 9 Prior to the issue of any Construction Certificate, the applicant shall pay \$30,000 towards the construction of a cul-de-sac at the eastern end of Baxter Road.
- 10 Section 94 Contributions are required to be paid in accordance with Condition 8(d) above, The City of Botany Bay being satisfied that the proposed development will increase demand for services and facilities within the area, and in accordance with Council's Section 94 Contribution Plans 2005-2010 a sum of **\$192,782.86 (indexed as of April 2015)** listed below towards the provision of services is to be paid to Council prior to the issuing of an Construction Certificate.
- | | | |
|-----|----------------------|-------------|
| (i) | Community Facilities | \$20,242.00 |
|-----|----------------------|-------------|

(ii)	Administration	\$3,074.00
(iii)	Shopping Centre Improvements	\$13,108.00
(iv)	Open Space & Recreation	\$142,680.00
(v)	Transport Management	\$13,678.86

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 fees applicable at that time

- 11 Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's infrastructure shall be submitted to Council and Principal Certifying Authority.

The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.

- 12 Prior to the issue of a Construction Certificate and subject to the approval of the Civil Aviation Safety Authority (CASA), the applicant is to provide roof-mounted solar collector panels below a height of RL48.050m AHD to the rooftop area of the building. The collectors shall collect sufficient electricity to supply at least 20% of the building's energy requirements. Details of the panel system are to be provided with the Construction Certificate, including the approval of CASA.

- 13 A Construction Management Program shall be submitted to, and approved in writing by the Council prior to the issue of a Construction Certificate. The program shall detail:

- (a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed,
- (b) Access to and egress can only be obtained from O'Riordan Street to Baxter Road and at no times shall construction vehicles approach the site from Botany Road to Baxter Rd.
- (c) The proposed phases of construction works on the site and the expected duration of each construction phase,
- (d) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken,

- (e) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,
- (f) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site,
- (g) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period,
- (h) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site,
- (i) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent,
- (j) Proposed protection for Council and adjoining properties, and
- (k) The location and operation of any on site crane.

Note: A crane may require prior approval from Sydney Airports Corporation.

The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.

- 14 A detailed Traffic Management Plan for the pedestrian and traffic management of the site during construction shall be prepared and submitted to the relevant road authority (Council or Roads and Maritime Services) for approval. 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) during construction, access can only be obtained to Baxter Road from O'Riordan Street.
- (d) if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.

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.

- 15 Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by Council:

- (a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1.
 - (b) For commercial developments, the applicant shall provide longitudinal sections along the extremities and the centre line of each internal driveway/access ramp at a scale of 1:25. These long sections shall extend from the horizontal parking area within the property to the centre line of the roadway. The sections shall also show the clear height from the ramp to any overhead structure.
- 16 Prior to the issue of any Construction Certificate, the applicant shall contact “Dial Before You Dig” to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from “Dial Before You Dig” shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction.
- 17 Prior to the issue of any Construction Certificate, detail design and construction plans in relation to stormwater management and disposal system for the development shall be submitted to the Principal Certifying Authority for approval.
- (The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and to be in accordance with Council’s Development Control Plan ‘Stormwater Management Technical Guidelines’, AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. All drawings shall correspond with the approved architectural plans.)
- The plans shall incorporate but not be limited to the following:
- (a) Provision of an On-site Infiltration system in accordance with but not limited to Part 5 of the SMTG. A part infiltration, part OSD system may be considered in exceptional circumstances when it can be demonstrated to Council that all other options to regulate the discharge from the site have been exhausted,
 - (b) Infiltration rates shall be determined by a suitably qualified geotechnical engineer and shall be part of the geotechnical report submitted to Council or alternatively the rate of 0.25L/m²/s shall be used,
 - (c) Provision of a minimum 10kL rainwater tank collection system for internal reuse in accordance with Section 4 of Botany Bay’s SMTG,
 - (d) No pump-out shall be used to drain seepage from the basement due to the elevated water table level. That is the basement shall be designed as a “fully tanked” structure,
 - (e) The pump-out can only be utilized to dispose runoff that may enter the basement carpark from driveway access to the basement,
 - (f) The pump out system from the basement carpark proposed shall discharge to the on-site stormwater infiltration system,
 - (g) Incorporate a Stormwater Quality Improvement system to ensure compliance with Section 16 of Botany Bay’s SMTG,
 - (h) The water quality improvement system and WSUD strategy proposal shall be designed to capture and treat at least 85% flows generated from the site.

- (i) Any proposed discharge to Council and/or RMS Kerb and Gutter shall be limited to 10L/s. If a higher rate is proposed, a connection shall be made to RMS/Council's underground stormwater drainage system. Any connection to a Sydney Water or RMS stormwater system will require specific approval from the relevant organisation, and
 - (j) The submission of detailed calculations including computer modelling where required to support the proposal
- 18 The measures in the acoustical report prepared by Acoustic Logic, received by Council 12 December 2013, shall be undertaken in accordance with the provisions of AS 2021 – 2000: Acoustics - Aircraft Noise Intrusion - Building Siting and Construction to establish components of construction to achieve indoor design sound levels in accordance with Table 3.3 of AS2021 – 2000 shall be incorporated into the construction of the building.
- 19 A sufficient area shall be provided onsite to enable separate stockpiling of excavated materials for sampling and analysis prior to removal or reuse on site. Details of this area shall be provided in the Erosion and Sediment Control Plan (ESCP) prior to the release of the construction certificate.
- This plan shall incorporate and reference the construction environmental management plan and address site limitations
- 20 Should any excavation occur at a level equivalent to 5m below existing ground level at the lowest point of the site an Acid Sulfate Soils Management Plan (prepared by a suitably qualified and experienced environmental/geotechnical consultant) shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate. This plan shall include any site specific procedures and mitigation measures required and shall include a site analysis from a NATA registered laboratory. The plan shall provide details of the following:
- (a) Site specific mitigation measures to both minimise the disturbance of acid sulfate soils as well as any measures relating to acid generation and acid neutralisation of the soil;
 - (b) Management of acid sulfate soil affected excavated material;
 - (c) Measures taken to neutralise the acidity of any acid sulfate soil affected material; and
 - (d) Run-off control measures for the acid sulfate affected soil.
- This report shall be provided prior to the issue of a construction certificate and all recommendations of the report shall be implemented during works on site.
- 21 To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:
- (a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services,

- (b) Negotiate with the utility authorities (eg AusGrid, Sydney Water, Telecommunications Carriers and Council in connection with:
 - (i) The additional load on the system, and
 - (ii) The relocation and/or adjustment of the services affected by the construction.

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

22

- (a) As part of this development, the Ausgrid power and lighting poles along Baxter Road will need to be decommissioned and new underground and above ground infrastructure shall be provided as specified by Ausgrid or any other affected service provider. The location of the new electrical pillars and new lighting poles shall be confirmed with Council prior to the issue of the Construction Certificate.
- (b) Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.

23

The landscape areas shown on the concept plan by *JILA, DA01-DA03, Rev 1 dated December 2013* shall be the subject of detailed landscape construction documentation (plans and specifications) submitted to and approved by the City of Botany Bay's Landscape Architect. The landscape documentation is to be prepared by a suitably qualified landscape architect, in accordance with DCP 2013. The detailed (construction level) plan shall include, but not be limited to:

- a) A detailed planting plan at 1:100 scale showing all plant locations, centres, numbers and pot sizes. there is to be a dense 3-tier planting of trees, shrubs and groundcovers in all landscaped areas.
- b) All trees shall be min. 100 litre.
- c) The fire egress path on the eastern boundary is to be relocated to the building façade to make the deep soil area near the boundary available for canopy tree planting. A small planter shall be retained to accommodate climbers.
- d) Details of the proposed climbing frame/trellis for all areas proposed.
- e) Details for landscaping at the rear boundary and planter boxes required.
- f) Relocation of the fire hydrant booster assembly and gas meter/regulator assembly in the front setback to alternative location out of the setback or within the basement/level 1 as per other utilities
- g) An increase in width to the main planter in the front setback to achieve DCP compliance.
- h) areas of paving, schedule of materials, edge treatments and sectional construction details.
- i) all fencing, privacy screening and pergolas – elevations and materials.
- j) Planter box on slab sectional details. Planter box depths to be in accordance with Council's DCP which requires 900mm soil depth for planting trees.

- k) Trees shall be used extensively throughout the site and be of an appropriate scale to ameliorate and soften buildings and provide a measure of screening and privacy for adjoining landuses. Deep soil zones (side/rear setbacks) must include larger canopy trees. Trees to be predominantly native, evergreen species.
- 24 A public domain improvements plan shall be submitted for approval by Council. The plan shall be undertaken by a suitably experienced landscape architect and shall include, but not be limited to, new street tree planting, incorporation of existing street trees, full width segmental footpath paving with tree pit cut outs (to Council specification), street tree pit treatments and tree guards (where required). The plan shall be in accordance with Council specification and requirement. Civil drawings shall be included providing levels and detailed footpath construction sections in accordance with Council's engineering and landscape requirements and are required to align with the landscape drawings.
- 25 Planter boxes constructed over a concrete slab shall be built in accordance with the following requirements:
- (a) Ensure soil depths in accordance with Council's Landscape DCP. 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.
 - (e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
- 26 The Applicant shall submit to Council details of the construction and fit out of the food premises. Such details must demonstrate compliance with the following requirements:
- (a) the Food Act 2003,
 - (b) Food Regulations 2004;
 - (c) the Food Standards Code as published by Food Standards Australia and New Zealand; and

(d) the Australian Standard AS 4674-2004: Construction and fit out of food premises.
Details to be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

- 27 Prior to the issue of the Construction Certificate the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.
- 28 Prior to the issue of the construction certificate, amended plans showing a widened vehicle crossing to at least 12.5m with swept path diagrams to show the bus can manoeuvre on site through the utilisation of the loading dock to turn be submitted to Council and the Principal Certifying Authority.

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

- 29 The Development is to be constructed to meet the requirements detailed in the approved acoustic report (Acoustic Logic, Council Dated 16 December 2014), and the following construction noise requirements:
- (a) 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) Construction period of 4 weeks and under:
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 20 dB(A).
- (c) Construction period greater than 4 weeks and not exceeding 26 weeks:
the L₁₀ sound pressure level measured over a period of not less than 15 minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A).
- (d) Time Restrictions
- | | | |
|-------|--|----------------------|
| (i) | Monday to Friday | 07:00 am to 06:00 pm |
| (ii) | Saturday | 07:00 am to 04:00 pm |
| (iii) | No Construction to take place on Sundays or Public Holidays. | |
- (e) All possible steps should be taken to silence construction site equipment.
- (f) 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 free copy of the sign is available from Council's Customer Service Counter.

- 30 Erosion and sediment control devices shall be installed and functioning prior to the commencement of any demolition, excavation or construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines.

These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum three (3) month period after the completion of the development, where necessary.

- 31 Where any shoring is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising structural engineer, showing all details, including the extent of encroachment and the method of removal (or any other method) and de-stressing of shoring elements, shall be submitted with the Construction Certificate to the Principle Certifying Authority along with Council's (or other) consent if the works intrude on Council's (or other) property.

- 32 For any water from site dewatering to be permitted to go to stormwater, the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for marine water. The results of all testing must be completed by a NATA accredited laboratory.

All laboratory results must be accompanied by a report prepared by a suitably qualified person indicating the water meets these guidelines and is acceptable to be released into council's stormwater system. If it is not acceptable, details of treatment measures to ensure the water is suitable for discharge is to be provided in this report.

Reports shall be provided to council prior to discharge of groundwater to the stormwater system

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

- (a) Permit to erect hoarding on or over a public place, including Council's property/road reserve;
- (b) Permit to construction works, place and/or storage building materials on footpaths, nature strips;
- (c) Permit for roads and footways occupancy (long term/ short term);
- (d) Permit to construct vehicular crossings, footpath, kerb and gutter over road reserve;

- (e) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever;
- (f) Permit to place skip/waste bin on footpath and/or nature strip;
- (g) Permit to use any part of Council's road reserve or other Council lands;
- (h) Permit to stand mobile cranes and/or other major plant on public roads and all road reserve area;

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

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

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

34 Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:

- (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.
- (c) The provisions of toilet facilities in accordance with this clause must be completed before any other work is commenced.

35 To ensure that the 2 existing Council street trees are protected during construction, the following is required :

- a) Prior to commencing demolition the trees are to be physically protected by fencing underneath the canopy dripline using 1.8 metre high chainwire fence hessian to form the tree protection zone (TPZ). the fence shall remain in place until construction is complete. fencing shall be erected to ensure the public footway is unobstructed.

- b) All detailed construction certificate plans shall show trees to be protected and the TPZ.
- c) The TPZ's are a "no-go" zone. there shall be no access to the property, no stockpiling, storage or sorting of waste or building materials, no construction work, no concrete mixing, no excavation or filling, no service trenching.
- d) where unavoidable foot access is required in the tpz, provide temporary access with timber sheets to minimise soil compaction, spillage or root damage.
- e) Excavation within the canopy dripline or within an area extending 1 metres outward of the canopy dripline shall be carried out manually using hand tools to minimise root damage. Tree roots 40mm in diameter or greater that require pruning shall be done only under the direction of Council's tree officer.
- f) Ensure that there is no damage to the canopy, trunk or root system of any tree. There shall be no canopy pruning unless approval has been granted by council's tree officer under separate application.
- g) There shall be no trenching for new subsurface utilities within the primary root zone of any street tree. Any such structures in close proximity to trees must accommodate tree roots without damage or pruning.

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 will require remedial pruning work or other specified work.

- 36 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.
- 37 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

- 38 Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
- (a) WorkCover NSW requirements. An appropriately licensed asbestos removalist and must complete all asbestos works if they consist of the removal of more than 10m² of bonded asbestos and/or any friable asbestos
 - (b) Protection of the Environment Operations Act 1997;
 - (c) Protection of the Environment Operation (Waste) Regulation
 - (d) DECC Waste Classification Guidelines 2008.
- 39 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.
- 40 The management of potential and actual acid sulfate soils shall be conducted in accordance with all recommendations within the Acid Sulfate Soil Management Plan required to be submitted prior to the construction certificate including:
- (a) Site specific mitigation measures to both minimise the disturbance of acid sulfate soils as well as any measures relating to acid generation and acid neutralisation of the soil; and
 - (b) Management of acid sulfate affected excavated material;
 - (c) Measures taken to neutralise the acidity of any acid sulfate affected material; and
 - (d) Run-off control measures for the acid sulfate affected soil.
- 41 During demolition, excavation, construction and any associated deliveries activities, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any construction-related vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road related areas, 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 Council's lands.
- 42 Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.

- 43 During Demolition, Excavation and Construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in the vicinity of the development shall also be safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
- 44 If an excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:
- (a) Must preserve and protect the building/ fence from damage; and,
 - (b) If necessary, underpin and support such building in an approved manner;
 - (c) Must at least be 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 the 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;
 - (d) Any retained existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piling, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
 - (e) If the soil conditions required it:
 - (i) Retaining walls associated with the erection of a building or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided, and
 - (ii) Adequate provision must be made for drainage.
- 45 During construction, the applicant shall ensure that all works and measures have been implemented in accordance with approved Traffic Management Plan and Construction Management Plan at all times.
- 46
- (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) 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), prior to being disposed of to a NSW approved landfill or to a recipient site;

- (c) Any material containing asbestos found on site during excavation shall be removed and disposed of in accordance with:
 - (i) WorkCover NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10sqm of bonded asbestos and/or any friable asbestos;
 - (ii) Protection of the Environment Operations Act 1997;
 - (iii) Protection of the Environment Operations (Waste) Regulation;
 - (iv) DECC Waste Classification Guidelines 2008.

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

- 47 All construction works of the new driveways shall be undertaken in accordance with the approved Engineer design as identified in Condition No. 31 and shall be completed to the satisfaction of the Engineering and Regulatory Services Department at no cost to Council.
- 48 Prior to the issue of the Occupation Certificate:
 - (a) Replace all the existing above ground electricity and telecommunication cables to underground cables that adjoin the site and road reserve area fronting Baxter Road in accordance with the guidelines and requirements of the relevant utility authorities and Ausgrid. The applicant shall bear all the cost of the construction and installation of the below ground cables and any necessary adjustment works. These works and payments shall be completed prior to the issue of the Occupation Certificate; and
 - (b) 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.
- 49 Any damage not shown in the photographic survey submitted to Council before site works have commenced will be assumed to have been caused by the site works (unless evidence to prove otherwise). All damages as a result from site works shall be rectified at the applicant's expense to Council's satisfaction, prior to occupancy of the development and release of damage deposit.
- 50 Prior to the issue of the Occupation Certificate, inspection reports (formwork and final) for the works on the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied.

- 51 Prior to the issue of the Occupation Certificate the Workplace Travel Plan needs to be updated to address its implementation strategy and success measures.
- 52 Prior to the issue of the Occupation Certificate the applicant must submit to the Principal Certifying Authority an acoustic report to verify that the measures stated in the acoustical assessment report prepared by Acoustic Logic Consultancy Pty Ltd, updated and received by Council 16 December 2014 have been carried out and certify that the construction meets AS2021-2000 and AS3671-1989 and specified indoor sound levels. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australia Acoustical Consultants).
- 53 Prior to the issue of the Occupation Certificate, documentation from a suitably qualified engineer shall be submitted to the Principal Certifying Authority certifying that the loading dock, pick-up/drop-off zone, car parking areas (including queuing area, turning area and disabled parking area), driveways and vehicular access paths 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.
- 54 Prior to the issue of the Occupation Certificate, minimum of *sixty (60)* off-street car parking bays shall be provided to the development in accordance with the approved architectural plans.
- 55 Prior to the issue of the Occupation Certificates, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and all relevant standards.
- 56 Prior to the issue of Occupation Certificate, the applicant shall carry out the following works:
- On Baxter Road, adjacent to development, reconstruct existing Kerb and Gutter for the full length of the property in accordance with Council Infrastructure Specifications,
 - On Baxter Road, adjacent to development, demolish existing concrete footpath and construct new paved footpath as per Council's Infrastructure and Landscape Architect specifications, and
 - On Baxter Road, adjacent to development, reconstruct full width of road asphalt, in accordance with Council's Infrastructure Specifications.
- 57 Prior to the issue of the Occupation Certificate a sign shall be erected within or adjacent to the garbage room encouraging residents/guests to recycle and not place recyclables into waste bins. The sign shall be a minimum of A3. Details of an acceptable wording for the sign are available from Council's Internet site at <http://www.botanybay.nsw.gov.au>.

- 58 Prior to the issue of the Occupation Certificate the operator shall enter into a commercial contract for the collection of trade waste and recyclables arising from the premises. A copy of all contracts and receipts shall be kept on the premises and made available to Council Officers on request.
- 59 In order to ensure that the constructed rainwater re-use and OSD/absorption 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 system. 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 system, 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 the issue of the Occupation Certificate.
- 60 Prior to the issue of the Occupation Certificate, all applications associated with works on Council's land must be made at least 7-10 days prior to the programmed completion of works and all construction must be completed and approved by Council.
- 61 Prior to the issue of the Occupation Certificate 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.
- 62 The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation, the conditions of consent and to council's satisfaction at all times.
- (a) An experienced landscape contractor shall be engaged to undertake the landscaping 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.
 - (b) The contractor shall be engaged weekly for a minimum period of 26 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.
 - (c) At the completion of landscaping on the site, the applicant is required to obtain a certificate of compliance from the landscape consultant to certify that the landscaping has been installed in accordance with the council approved landscape plan. The certificate is to be submitted to the City of Botany Bay Council prior to the issue of an occupation certificate.
- 63 The public domain and council footpath area shall be upgraded with new paving, street furniture and street tree planting. The public footpaths shall be re-constructed in accordance with Council specification. The footpath dimensions, location, paver type

and construction methods shall be in accordance with these specifications only. Pavers shall be ordered accounting for adequate lead time for manufacture. Construction hold points and council inspections are required at the following points :

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

Council approval of public domain works is required prior issue of occupation certificate.

64 Prior to the issue of the Occupation Certificate:

- (a) Lighting (lux) levels for this development must include the installation of low glare/high uniformity lighting levels in line with Australian Standard AS:1158. Lighting sources should be compatible with requirements of any surveillance system installed within the development. (Poor positioning choices in relation to light can cause glare on the surveillance screens). The luminaries (light covers) should be designed to reduce opportunities for malicious damage. Lighting within the development needs to be checked and maintained on a regular basis.
- (b) Any lighting on the site shall be designed so as not to cause nuisance to other residences in the area or to motorists on nearby roads, and to ensure no adverse impact on the amenity of the surrounding area by light overspill; and,
- (c) All lighting shall comply with AS4282-1997 Control of the obtrusive effects
- (d) The porte cochere to the building shall be lit in accordance with Condition 66(a), (b) and (c).

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

65 A shuttle bus required to service the Hotel must be provided to transport occupants to and from the development site to the Sydney Airport. Should the shuttle bus no longer be provided, for whatever reason a separate development application shall be submitted to Council to provide an alternative travel and parking arrangement for the use.

66 The bus zone and pick-up/drop-off zone shown on the approved architectural plans shall be set aside for bus and pick-up/drop-off purpose only and shall not be used for other purposes. No vehicles shall be permitted to park in these areas.

67 The operations of the premises 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.

68 The use of the premises shall not give rise to air impurities in contravention of the Protection of the Environment Operations Act 1997 and shall be controlled in accordance with the requirements of this Act.

69

(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.

70 All waste and recycling containers shall only be collected during daylight hours.

71 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.

72

(a) The approved Waste Management Plan for the site prepared by (Fox Johnston, dated 16 December 2014) shall be complied with at all times during demolition works, construction works, and use of the premises; and

(b) The building owner shall be provided with at least one copy of the waste management plan. The approved Waste Management Plan shall be complied with at all times.

73 The operation of the development and movements of vehicles shall comply with the following requirements:

(a) The largest size of vehicle accessing the development shall be restricted to MRV;

- (b) Garbage collection and loading and unloading activities associated with the delivery shall take place wholly within the loading dock;
- (c) Qualified traffic controllers shall be present when the delivery/service vehicle reverses to the loading dock;
- (d) No deliveries to the premises shall be made direct from a public places, public streets or any road related areas (eg. footpath, nature strip, road shoulder, road reserve etc);
- (e) Vehicular manoeuvring area shall be kept clear at all times. All vehicles shall be parked in the marked parking bays;
- (f) Maximum number of delivery vehicles on-site shall be limited to one (1).
- (g) The loading dock must be clear of delivery or any other vehicles when the shuttle bus is manoeuvring on site.

74

- (a) The operations of the site must at all times fully comply with the requirements of the approved Plan of Management for the site; and
- (b) At all times the approved Workplace Travel Plan shall be fully complied with.
- (c) The sub-leasing of car parking spaces is strictly prohibited.

75 Should the external fabric of the building(s), walls to landscaped areas and like constructions be subject to graffiti or similar vandalism, then within seven (7) days of this occurrence, the graffiti must be removed and the affected surface(s) returned to a condition it was in before defilement.

76 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. 14/306 dated as 16 December 2014 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.

Advisory Note

The following is advice by the NSW Police Service:

- (a) As the proposed development may be exposed to Break and Enter Steals, Stealing, Steal from persons, Malicious Damage and Steal from Motor Vehicle offences, a closed circuit surveillance system (CCTV) which complies with the Australian Standard - Closed Circuit Television System

(CCTV) AS:4806:2006 shall to be implemented to receive, hold or process data for the identification of people involved in anti-social behaviour prior to the issue of the Occupation Certificate. The system is obliged to conform with Federal, State or Territory Privacy and Surveillance Legislation;

- (b) The CCTV system should consist of surveillance cameras strategically located in and around the development to provide maximum surveillance coverage of the area, particularly in areas that are difficult to supervise. Cameras should be strategically mounted outside the development buildings and within the car parking areas to monitor activity within these areas. One or more cameras should be strategically mounted at entry and exit points to monitor activities around these areas (underground car park, foyer entrance);
- (c) Any proposed landscaping and vegetation should adhere to the following principles:
 - (i) Shrubs bushes, plants should remain under 900mm in height;
 - (ii) Branches or large trees should start at a height of two (2) metres and higher;
 - (a) 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;