

JOINT REGIONAL PLANNING PANEL
(Sydney East)

JRPP No	2015SYE047
DA Number	15/22
Local Government Area	City of Botany Bay
Proposed Development	<p>Nominated Integrated Development Application, for a mixed use development comprising of:</p> <ul style="list-style-type: none"> • Demolition of existing structures; • Remediation of land; • Construction of a 14 storey mixed use building containing commercial and residential at ground floor and residential apartments above the ground floor, for a total of 184 apartments, with a proposed building height of approximately 45.5m above the existing ground level and a proposed floor space ratio of approximately 3.67:1; • Provision of a total of 268 car parking spaces, provided over 2 basement levels as well as at the western portion of the ground floor; • Ancillary works to facilitate vehicle access, drainage landscaping, and road widening; • Closure of existing vehicular access from Gardeners Road and construction of a temporary driveway connecting Bourke Street to the proposed basement car park. The driveway is in the location of the future New Road at the southern end of the subject site; • Land Subdivision to enable dedication of New Road to Council; • Stratum subdivision to enable basement parking to be provided beneath the New Road.
Street Address	653 Gardeners Road, Mascot
Applicant/Owner	Icek Holdings Pty Ltd
No. of Submissions	Two (2) in opposition
Regional Development Criteria	The Sydney East Joint Regional Planning Panel has the function of determining the application as the Capital Investment Value of the proposal exceeds \$20 million. The CIV is \$70,507,285.
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • Environmental Planning & Assessment Act 1979, Part 4 – Development Assessment • Environmental Planning & Assessment Regulation 2000, Part 6 – Procedures relating to development applications • State Environmental Planning Policy (Infrastructure) 2007

	<ul style="list-style-type: none"> • State Environmental Planning Policy No. 55 – Contaminated Land • State Environmental Planning Policy 2004 (BASIX); • State Environmental Planning Policy No. 65 – Design Quality of Residential Flat buildings • Botany Bay Local Environmental Plan 2013 • Botany Development Control Plan 2013
Documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> • Amended Architectural Plans prepared by Allen, Jack and Cottier • Statement of Environmental Effects prepared by SJB Planning • Amended Clause 4.6 Statements Requesting Exception to FSR and Building Height Development Standards prepared by SJB Planning • Economic Assessment of Proposed Apartment Mix prepared by Hill PDA • Legal advice provided to the applicant by Maddocks • Letter to Council provided to Council by the RMS • Acid Sulfate Soil Management Report prepared by Douglas Partners • Acoustic Assessment prepared by Acoustic Logic • BASIX Certificate 595120M • BCA Compliance Report prepared by Building Certificates Australia • Construction Environmental Management Plan prepared by Evolve Project Consulting • Cost Plan Summary (including CIV) prepared by Altus Page Kirkland • Erosion and Sediment Control Plan prepared by Evolve Project Consulting Pty Ltd • Geotechnical Report prepared by Douglas Partners • Landscape Design Report prepared by Oculus • Pedestrian Wind Environment Statement prepared by Windtech Consultants • SEPP 65 Design Statement and Compliance Table prepared by AJ+C • Site Auditor Letter, Environmental Site Assessment and Remediation Action Plan - Coffey • Site Flood Study prepared by WMA Water • Statement of Compliance – Access for People with a Disability prepared by Accessible Building Solutions • Stormwater Management Plan prepared by Calibre Consulting • Traffic Impact Assessment prepared by GTA • Waste Management Plan prepared by Evolve Project Consulting Pty Ltd
Recommendation	Refusal
Report by	Brendon Clendenning – Senior Assessment Planner

RECOMMENDATION

That the Sydney East Joint Regional Planning Panel (JRPP), as the Determining Authority resolve to refuse consent for the construction of a thirteen storey mixed use development including 272msq of retail floor space at ground level; including 184 residential apartments DA-15/22, for the following reasons:

Reasons for Refusal

1. The Roads and Maritime Services have refused to provide the concurrence required by Clause 100 of *State Environmental Planning Policy (Infrastructure) 2007*, relating to development on a proposed classified road. Concurrence is unable to be granted as the development is proposed within the proposed classified road, and would interfere with future road widening (*Environmental Planning and Assessment Act 1979 s79C(1)(a)(i)*).
2. Sydney Trains have been unable to provide the concurrence required by Clause 86 of *State Environmental Planning Policy (Infrastructure) 2007*, relating to excavation in, above or adjacent to rail corridors. Concurrence is unable to be granted as the package of information required to assess the impacts of the proposal on the Airport Railway Tunnel is not adequate, and Sydney Trains are not able to properly consider the matters outlined within Clause 86(4) of *State Environmental Planning Policy (Infrastructure) 2007* (*Environmental Planning and Assessment Act 1979 s79C(1)(a)(i)*).
3. The proposal is not consistent with the Design Principles outlined within *State Environmental Planning Policy No.65 Quality of Residential Flat Development*, Specifically, the proposal does not comply with the following principles:
 - a) The proposal is unable to be contained within the developable area of the site, and the density is therefore inappropriate for the site and context as required by Principle 3: Density.
 - b) Inadequate acoustic amenity is provided to the ground floor dwellings, as required by Principle 7: Amenity.
 - c) The design does not provide a dwelling mix that responds to the desired future community as required by Principle 9: Social dimensions and housing affordability.

(*Environmental Planning and Assessment Act 1979 s79C(1)(a)(i)*).
4. The proposed development is not consistent with the objectives of the B4 Mixed Use zone under *Botany Bay Local Environmental Plan 2013* as the proposal does not integrate suitable business, office, residential, retail and other development, as the ground floor residential units are not suitable in the location.
5. The proposed does not comply with the maximum floor space ratio required by the *Botany Bay Local Environmental Plan 2013*, and the submitted 4.6 variation request is not supported, as the proposed floor space is unable to be contained within the developable area of the site (*Environmental Planning and Assessment Act 1979*

s79C(1)(a)(i)).

6. The proposed development does not comply with Part 9A Mascot Station Town Centre Precinct of the Botany Bay Development Control Plan 2013 (*Environmental Planning and Assessment Act 1979 s79C(1)(a)(iii)*). Specifically, the proposal does not comply with the following:
 - a) The proposal does not comply with the unit mix requirements outlined within Part 9A.4.4.7, and the proportion of studio and one bedroom apartments is excessive.
 - b) Further to reason 1. above, the proposal does not comply with the setback requirements to Bourke Street outlined within Part 9A.4.3.4, as inadequate provision has been made for the portion of the proposed classified road to be acquired.
 - c) The ground floor units are provided with poor amenity, and the private open space areas are not designed away from noise sources as required by Part 9A.4.5.1, and the primary outdoor private open space areas are located on the street frontages, contrary to Part 9A.4.4.3.
 - d) The proposal does not provide a complete commercial frontage to Bourke Street, as required by Part 9A.4.4.4.
 - e) Insufficient information has been provided to demonstrate that vehicles are able to manoeuvre into the service parking bays as required by Part 3A.3.4.
7. The proposal will result in adverse social impacts on the locality given the provision of an unsatisfactory dwelling mix, will result in adverse impacts on the built environment in relation to the impacts to the proposed road widening, and has not demonstrated that the proposal will not generate adverse impacts on the Airport Rail Tunnel (*Environmental Planning and Assessment Act 1979 s79C(1)(b)*).
8. The proposed development is not suitable in the context of the site and locality given the issues in relation to road widening , road noise, and acoustic amenity impacts to ground floor apartments(*Environmental Planning and Assessment Act 1979 s79C(1)(c)*).
9. Granting approval to the development is contrary to the public interest (*Environmental Planning and Assessment Act 1979 s79C(1)(e)*).

EXECUTIVE SUMMARY

Council received Development Application No. 15/22 on the 17 February 2015 seeking consent for the construction of a thirteen storey mixed use development including 190 residential apartments, and 148msq of retail floor space at ground level. The development application is required to be referred to the Joint Regional Planning Panel pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as the Capital Investment Value of the proposal is \$70,507,285.

The Development Application is also Nominated Integrated Development, pursuant to Section 91 of the EP&A Act as the development involves temporary construction dewatering and therefore requires concurrence from the NSW Office of Water for an aquifer interference activity. In a letter dated 28 October 2015, the NSW Office of Water has granted its General Terms of Approval to the proposed development.

The proposal seeks works within an area shown on the Land Acquisition Map as a Classified Road Widening, which would require the concurrence of the RMS. The RMS have indicated that they are not able to provide concurrence for the proposal given the works to Bourke Street. Further, the proposal requires excavation above or adjacent to the rail corridor, which requires the concurrence of Sydney Trains, who have indicated that further information is required in order for concurrence to be able to be granted.

The development application was notified for a period of 30 days from 8 April 2015 to 8 May 2015. Two submissions in objection were received in relation to the application.

In addition to the matters raised by the relevant external authorities, in Council's view, the proposed dwelling mix, and the location of dwellings at the ground floor, are not satisfactory, and are additional grounds for refusal of the application.

Clause 4.3(2) of BBLEP 2013 states that the maximum building height for the subject site is 44m. The application proposes a building height of 45.48m, which exceeds the 44 metre height limit by 1.48m, representing a non-compliance of 3.4%. In addition, the proposal penetrates the Obstacle Limitation Surface, and further advice has been provided from Sydney Airport Corporation Limited (SACL) on this matter. A Clause 4.6 Variation to the building height requirement has been submitted and the height variation is generally supported, as the additional height does not result in any undue adverse impacts on the amenity of adjoining properties in terms of privacy or overshadowing.

The maximum FSR permitted by BBLEP 2013 for the subject site is 3.2:1. The development application seeks an FSR of 3.67:1 (18,184m²), representing a non-compliance with Part 4.4(2) of BBLEP 2013 of 14.7%.

The Applicant has submitted a Clause 4.6 variation to the development standard applying under Clause 4.4.

Following Council's initial assessment, a number of issues were raised. Despite the issues relating to development within a classified road being unresolved, Council accepted an amended proposal, which reduced the amount of apartments from 190 to 184. However, the assessment ultimately concludes that the development should be refused given that the RMS refuses to grant concurrence to the proposal. The proposal partly lies within land that is

reserved for road widening, and in this regard is not able to be supported. Sydney Trains are also not able to provide concurrence, as information is still outstanding with respect to the impact of the proposal on the Airport Rail Tunnel.

1. SITE DESCRIPTION

1.1 Site Location

The subject site is located in Mascot between Kent Street to the west and O’Riordan Street to the east, with a frontage to Gardeners Road to the north. The site is regular in shape and is known as Lot 100 in DP 1191017, and has a total site area of 1,195m².

The land currently accommodates a brick building with metal awnings, concrete aprons and at grade car parking and is used for the hire and service of rental campervans.

The properties surrounding the site are commercial/warehousing in nature to the immediate north, east and west. Semi-detached residential dwellings adjoin the site to the south, facing Miles Street and immediately to the south is an open hardstand car park in association with 589 Gardeners Road, with access from Miles Street.

A significant amount of the site is marked as “Classified Road (SP2)” on the BLEP 2013 Land Reservation Acquisition Map. The site is affected by plans for the creation of a new local road to the south as set out in Figure 6 in Part 9A (MSTCP) of the BDCP 2013. The site is located adjacent to the underground rail line and is also encumbered by several easements.

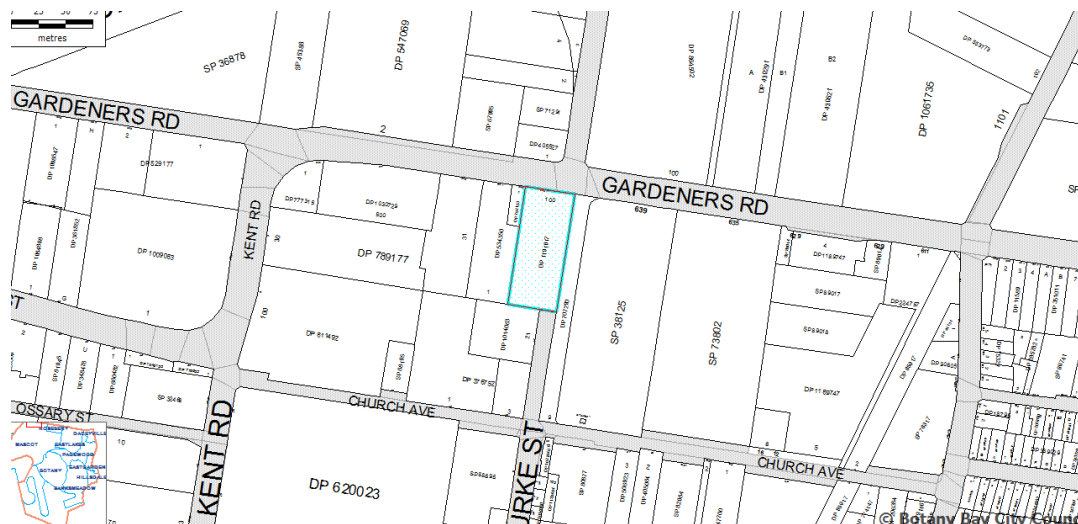


Figure 1 Locality Plan



Figure 2 Subject site as viewed from the north of Gardeners Road.



Figure 3 View of the eastern frontage of the site - looking north along Bourke Street towards Gardeners Road



Figure 4 View of the northern frontage of the site.



Figure 5 View looking along the southern boundary of the site delineated by the wire fence and brick wall with vehicular access to adjacent property at No.42 Church Avenue in the centre of the photo

1.2 Description of the Locality

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

The site lies at the northern end of the Mascot Station Town Centre Precinct (the MSTCP). The precinct is located in close proximity to major regional road networks and Port Botany.

Due to the past industrial use of the majority of the land in the locality, land in the area is susceptible to contamination, resulting in the majority of sites requiring some level of remediation. In addition, shallow groundwater is present in this locality.

Recent approvals in this location include a mixed use development involving in excess of 5,000m² of retail floor space (including a supermarket and specialty stores) and over 900 apartments at 19-33 Kent Road. This development is now under construction. To the immediate west of the site is the property known as 659-665 Gardeners Road, which is currently characterised by various industrial and commercial uses. However, a recent development approval (DA 13/135) issued for 659-665 Gardeners Road granted consent for the construction of a mixed use development called “Avantra”, which is currently under construction. Upon completion, the Avantra development will result in a mixed use development containing a 12 storey mixed use building addressing Gardeners Road and a 13 storey residential flat building addressing the New Street to the south. The development includes a four (4) storey podium for each frontage (i.e. Gardeners Road and the New Street frontages) which drops to a two (2) storey podium through the centre of the site, between the two (2) towers. The podium levels are built to a nil setback to the eastern boundary (i.e. the boundary common with the subject site).

To the immediate south of the site is the property known as 42 Church Avenue which accommodates industrial and commercial type buildings. The northern edge of that site is identified in the BBDCP 2013 as being land that will form part of the east west orientated New Street. Land to the south west of the subject site (being part of 42 Church Avenue) has also been identified to be used for the purpose of a public park in the future.

To the immediate north of the site, on the opposite side of Gardeners Road at 532-538 Gardeners Road, is an existing industrial and commercial building of two (2) to four (4) storeys in scale. Diagonally opposite the site to the north east at 520-530 Gardeners Road, is the Mascot Bunnings store. To the immediate east of the site, on the opposite side of Bourke Street, is a two (2) storey scale commercial and industrial building at 639 Gardeners Road.

Outside of the MSTCP, there is a mixture of land uses. To the north of the precinct is the southern end of the City of Sydney LGA. This area primarily consists of industrial land uses and building types. Further west of the precinct are industrial lands that are intersected by the Alexandria Canal, which runs in a north to south direction and defines the boundary between the Botany Bay and Sydney City LGAs.

East of the MSTCP in the direction of Botany Road, sits a primarily low density residential area that comprises one (1) and two (2) storey low scale dwellings. To the south of the precinct the land is zoned B5 Business Development and IN1 General Industrial, and beyond that is Sydney Airport.

A significant portion of the site, adjacent to Bourke Street, is marked as “Classified Road (SP2)” on the *Botany Bay Local Environmental Plan 2013 (BBLEP 2013)* Land Reservation Acquisition Map (LRA Map). The site is also affected by plans for the creation of a new local road to the south as set out in Figure 6 in Part 9A ‘Mascot Station Town Centre Precinct’ of the Botany Bay Development Control Plan 2013 (BBDCP 2013). The site is located adjacent to the underground rail line and is also encumbered by several easements. The figure below depicts both the new local road and the land affected by the Bourke Street road widening.

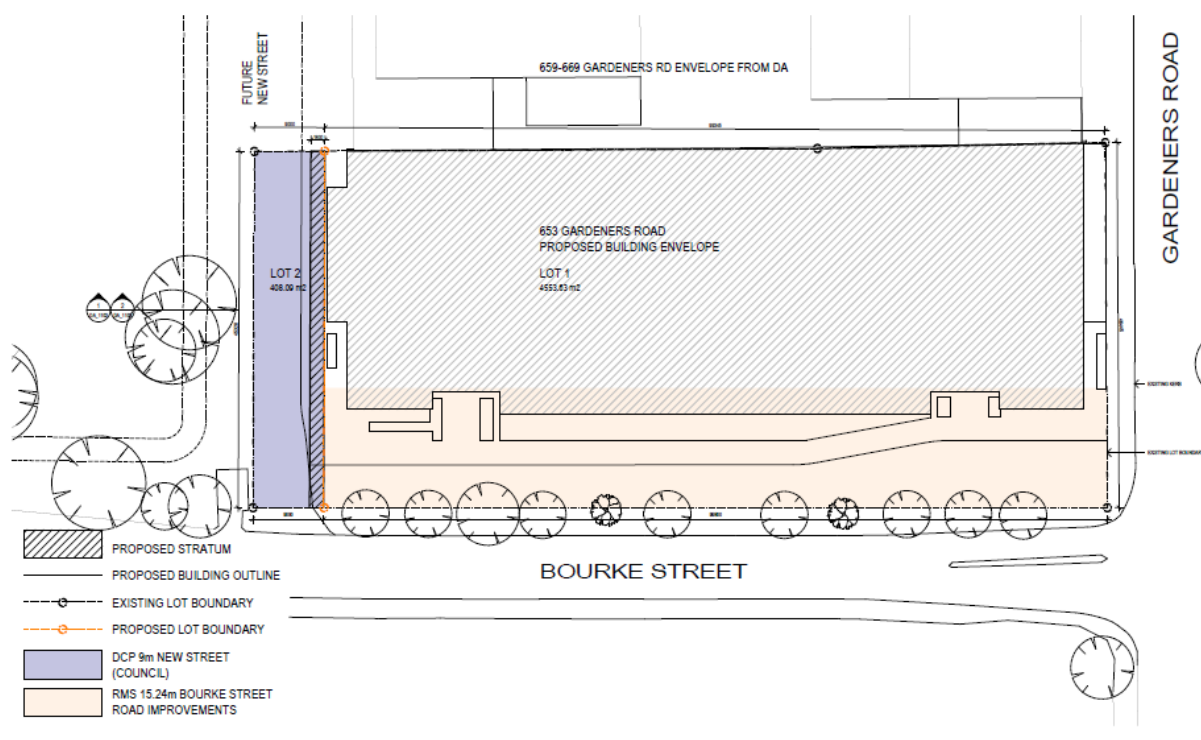


Figure 6 Plan submitted with the application showing the proposed subdivision and road widening areas. The application nominates the road widening area as being for Bourke Street road improvements

2. DEVELOPMENT HISTORY

The following table outlines the development history at the site:

Application No.	Description	Decision	Date
DA-00/265	The use of the existing premises for multiple uses	Refused by Council	23/11/1999
DA-00/382	Warehouse of furniture and medium sized electrical & telecommunication goods and building materials with ancillary office	Approved by Council	12/04/2000
DA-00/564	Use of the whole site and buildings for campervan and car rental centre, and the construction of alterations and additions to the existing facade of the building premises.	Approved by Council	20/12/2000
DA-00/564/2	Section 96(2) - tenants operational requirements	Approved Under Delegation	20/12/2000
DA-00/382/2	Section 96(2) -minor Modifications Of Consent	Withdrawn	19/02/2001
DA-00/564/3	Section 96(2) - tenants operational requirements	Approved Under Delegation	20/03/2001
DA-01/511	Signage to be erected on eastern fascia of building	Approved Under Delegation	20/07/2001

DA-02/067	Erection of temporary sign	Approved by Council	18/09/2001
DA-00/564/4	Section 96(1A) - remove timber lattice	Approved Under Delegation	11/06/2003
DA-00/564/5	Section 96(1A) Application to amend Development Consent No. 00/564 for the use of the site and buildings at 653 Gardeners Road, Mascot, for campervan and car rental centre. The consent is to expire on 21 December 2006. The Section 96 Application seeks to extend the consent for a further 12 months and to extend the hours of operation for cleaning and repair of vehicles to 24 hours per day, 7 days a week.	Approved by Council	23/08/2006
DA-04/347	Masterplan development for the demolition of the existing buildings and construct a seven to eight storey mixed use development comprising of showroom, commercial offices, parking.	Withdrawn	10/08/2012

The following table outlines the history of the subject application:

Date	Progress of Application
17 February 2015	Application lodged with Council.
8 April 2015 – 8 May 2015	Advertising period.
15 April 2015	Additional information sought from the NSW Office of Water.
5 May 2015	Letter received from RMS indicated that concurrence would not be provided unless amendments were provided which demonstrated that the structures were to be erected clear of the land required for road widening of Bourke Street.
20 May 2015	Briefing meeting with panel.
27 May 2015	Letter sent to applicant requesting additional information.
16 June 2015	Meeting between applicant and Council officers.
24 July 2015	Additional information provided to Council.
25 September 2015	Further clarification sought from Council.
22 October 2015	Clarification provided by applicant.
28 October 2015	Concurrence received from NSW Office of Water.
19 November 2015	Sydney Trains outline reasons that concurrence cannot be granted.

3. THE PROPOSAL

The development application requests consent for the demolition of existing structures and site remediation; construction of an 14 storey mixed use development comprising of 148sqm of retail floor space fronting Gardeners Road; 184 residential apartments (78 x studio, 46 x 1 bedroom, 56 x 2 bedroom, and 4 x 3 bedroom) and 2 levels of basement car parking to accommodate 268 spaces.

Specifically, the proposal involves the following:

- The demolition of all existing structures on site except for an existing sub-station in the north-west corner which is to be retained;
- Remediation works;

- Construction of a new 14 storey mixed use building above two (2) basement levels. The building will accommodate 142m² of retail floor space within two (2) ground floor tenancies, a residential flat building with 184 dwellings, 268 parking spaces, bicycle parking, storage and ancillary facilities and services;
- Closure of existing vehicular access from Gardeners Road and construction of a temporary driveway connecting Bourke Street to the basement car park. The driveway is in the location of the future New Street;
- Landscaping of the site, including the communal open spaces for residents and the temporary landscaping of the land in front of the eastern frontage of the proposed building at ground level until the time of the road improvements to Bourke Street;
- Associated civil engineering works;
- Subdivision of the site is proposed to allow the excising of the land for the future creation of the New Street. The land to be excised involves a strip along the southern edge of the site; and
- Stratum subdivision to enable the proposed basement parking that sits underneath the New Street to be managed by the occupants of the proposed building.

The application proposes works within the area reserved for road widening, including basement car parking, and ground floor private open space areas, and the easternmost part of the proposed tower.

Vehicular access is intended to be provided from the Future New Street, and the Statement of Environment Effects (SEE) indicates that subdivision is proposed in order to enable New Street to be excised for completion of the road to be provided by Council. A temporary driveway is proposed in this location. There is no proposed subdivision to the area shown within the LRA Map, as the SEE indicates that it is intended that a section of Bourke Street will be acquired by the RMS in the future.

Residential Flat Component

The proposed development is comprised of one residential flat building, which is accessible to pedestrians from Bourke Street and to vehicles from the proposed New Road. The building contains two pedestrian entries at either end of the Bourke Street frontage, with vehicular access at from the south-western corner of the site on the New Road frontage. Two lifts are located together adjacent to each entrance foyer. The ground floor is characterised by commercial premises at the Bourke Street intersections and the majority of the remainder of the ground floor comprising studio apartments with individual pedestrian entries. At grade parking is provided at the western side of the proposed ground floor).

Level 1 also contains studio apartments at the Bourke Street and Gardeners Road frontages, and also contains larger apartments with several of them accessed directly from the communal open space area. The majority of the remaining levels feature a central corridor with apartments at either side, and at each end. Each level from Basement to Level 3 are provided with a zero lot line to the western adjoining property. The levels from Level 4 and above are provided with a setback to that boundary. Two storey units are provided at Level 12 and Level 13.

Plant is proposed to the roof areas above Level 12 and Level 13 and skylights are also proposed over the Level 13 apartments. A communal landscaped terrace is proposed at Level 1 above the ground floor carpark.

The following table provides a summary of compliance with key development standards and controls:

Control	Required	Proposal	Complies
FSR	3.2:1	The proposal seeks to provide 18,184m ² of gross floor area. The site area is 4,961m ² , which would give an FSR of approximately 3.67:1.	No Clause 4.6 Variation lodged.
Height	44m	45.48m	No Clause 4.6 Variation lodged.
Active Street Frontages	Commercial frontage to Gardeners Road and a retail frontage to Bourke Street required.	Two corner retail tenancies provided, and two entrance lobbies are provided to Bourke Street. However, the majority of the Bourke Street Gardeners Road frontages are provided with non-active frontages.	No.
Dwelling Mix	The combined total number of one-bedroom and studio dwellings shall not exceed 25% of the total number of dwellings within any single site area in residential zones.	Dwelling mix provided as follows: Studio: 78 One bedroom: 46 Two bedroom: 56 Three bedroom: 4	No.
Unit Sizes	Studios 60m ² 1 Bedroom 75m ² 2 Bedroom 100m ² 3 Bedroom 130m ²	All apartments comply with this requirement.	Yes.
Car Parking	Residential Studio = 1 space per unit 1 bedroom = 1 space per unit 2-3 bedroom = 2 spaces per unit Total of 244 spaces required Visitor = 1 space per 7 units Total of 27 required Retail 1 space/80sqm of GFA as per the Mascot TMAP. Total of 2 required	Residential 238 provided 28 visitor spaces provided Retail 2 provided	No.

	<p><i>Disabled</i></p> <p>10% of resident parking to be allocated to adaptable dwellings</p> <p>Total of 25 required.</p> <p><i>Bicycle</i></p> <p>27 (10% of total parking).</p> <p><i>Total car parking</i></p> <p>273</p>	<p><i>Disabled</i></p> <p>19 provided, with an additional two provided for visitors.</p> <p><i>Bicycle</i></p> <p>30 provided</p> <p><i>Total car parking</i></p> <p>268 spaces</p>	
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4. PLANNING CONSIDERATIONS

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

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

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

In this regard, the development application was referred to the NSW Office of Water. In a letter dated 28 October 2015, NSW Office of Water has provided its General Terms of Approval for the proposed development.

4.2 The provisions of Environmental Planning Instruments (S79C(1)(a)(i))

4.2.1 State Environmental Planning Policies

4.2.1.1 State Environmental Planning Policy (Infrastructure) 2007

Clause 86 - Excavation in, above or adjacent to rail corridors

The proposed development seeks consent for works within the vicinity of the rail corridor (Airport Tunnel), and requires concurrence from Sydney Trains.

In an email dated 19 November 2015, Sydney Trains advised that were not yet in a position to issue its concurrence, as despite ongoing consultation between Sydney Trains and the Applicant's consultant, to date the package of information required to enable a thorough assessment had not been adequate. An excerpt from the email is provided below:

"The issues which are critical and need resolution are:

- *The Flac modelling shows that the total ground movement at tunnel level exceeds 3mm requirement contained in Section 5.0 of the Airport line tunnel protection guidelines.*

- *It is unclear from the bulk excavation drawing if there is the minimum 10m of cover over the tunnel crown as shown in Figure 4 in the Airport line tunnel protection guidelines. Scaling off the Flac output it appears that there is less than 10m cover between the underside of the basement excavation in zone 1 and the crown of the tunnel. This does not comply with Figure 4 in the Airport line tunnel protection guidelines.*
- *The proposed construction sequence includes excavation to RL-1 and then internal propping of the walls. During excavation the sheet piles will act as cantilever walls and deflect towards the excavation. A detailed construction methodology is required showing how these props will be installed and how at rest pressures will be maintained behind the sheet piles.*
- *Buoyancy effects have not been considered. Additional calculations are required to show that there is sufficient factor of safety against failure due to buoyancy.*

Until we receive response to these issues we cannot make an assessment as mandated by Clause 86(4) of the ISEPP, being:

- *the potential effects of the development (whether alone or cumulatively with other development or proposed development) on:*
 - (i) *the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and*
 - (ii) *the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and*
- *what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects”.*

The applicant advised Council as follows:

“We have been liaising with (Sydney Trains) to resolve the engineering issues to enable the matter. We have completed 99% of the matter having completed a Finite Element Analysis , geotechnical surveys and other engineering analysis . The last correspondence received from them was on the 5th Nov in relation to our answers on 30 Sep 15. We were advised by them to await their reply to our answers in regards to engineering questions asked by them early Oct 15 and answered by us on 16 Oct 15 to which we have not received an answer before we send back answers to their letter of 5th Nov”.

Notwithstanding the above, an assessment of the information submitted has been completed, and therefore it is considered that the application should be refused for the reasons outlined by Sydney Trains.

Clause 100 - Development on proposed classified road

The subject site contains land identified within the LRA Map as being subject to Classified Road Widening (SP2). Currently the western alignment of Bourke Street, between the intersections of Gardeners Road and Church Avenue, is an irregular shape, and the use of this portion of the site for the purposes of a classified road would enable the western boundary of Bourke Street to continue in line with its western boundary further to the south, and to the

north across the intersection with Gardeners Road. The required road widening is depicted in Figure 7 below.



Figure 7 Land Reservation Acquisition Map showing the area of the site that is affected by road widening

Clause 100 of *State Environmental Planning Policy (Infrastructure) 2007* sets out that the Roads and Maritime Services must provide concurrence for certain developments proposed on land reserved for the purposes of a classified road. This includes development with a capital investment value (CIV) of greater than \$150,000, as well as development for the purpose of dwellings, or any other building, that is to be held under strata title. The proposed building footprint is partially within the area identified on the LRA Map area, including entire private open space areas, and a significant portion of the basement parking.

The applicant has provided legal correspondence, prepared by Maddocks Lawyers, which suggests concurrence under Clause 100 is not required. In essence the advice argues that:

- As the land is zoned as B4 Mixed Use, and not SP2 Infrastructure, the zoning is inconsistent with the idea that the land is reserved or set aside for road purposes.
- There is no operative provision within the BBLEP 2013, which explains the meaning or importance of the Land Reservation Acquisition Map.

The application was referred to the RMS who provided comments that were contrary to the applicant's legal advice. The position of the RMS is that Clause 100 of *State Environmental Planning Policy (Infrastructure) 2007*, is itself the operative provision, which gives effect to the Land Reservation Acquisition Map. The RMS have argued that if the land were zoned SP2 (Classified Road), anything other than roads would be prohibited, but Cl.100 of the Infrastructure SEPP anticipates development for purposes other than roads, which therefore implies that Cl.100 does not apply exclusively to land zoned SP2. The RMS also indicated

that concurrence could not be provided for the current proposal, given the works proposed within the area that is affected by the proposed classified road.

These works include part of the structure at each level of the proposed building. The images below indicate areas of different levels of the proposed building, which are affected by the LRA Map.

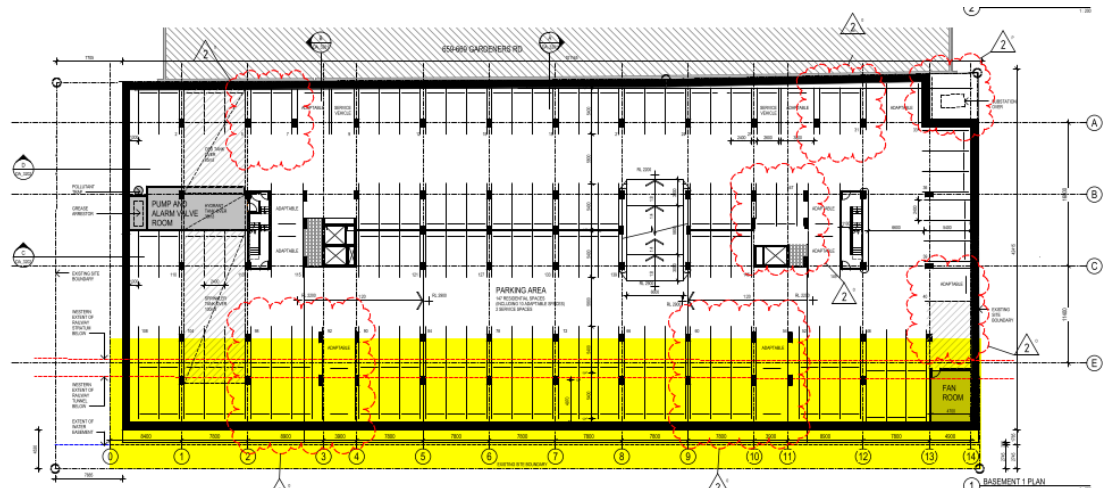


Figure 8 Basement 1 Plan with the highlighted section depicting the approximate area identified on the Land Reservation Acquisition Map

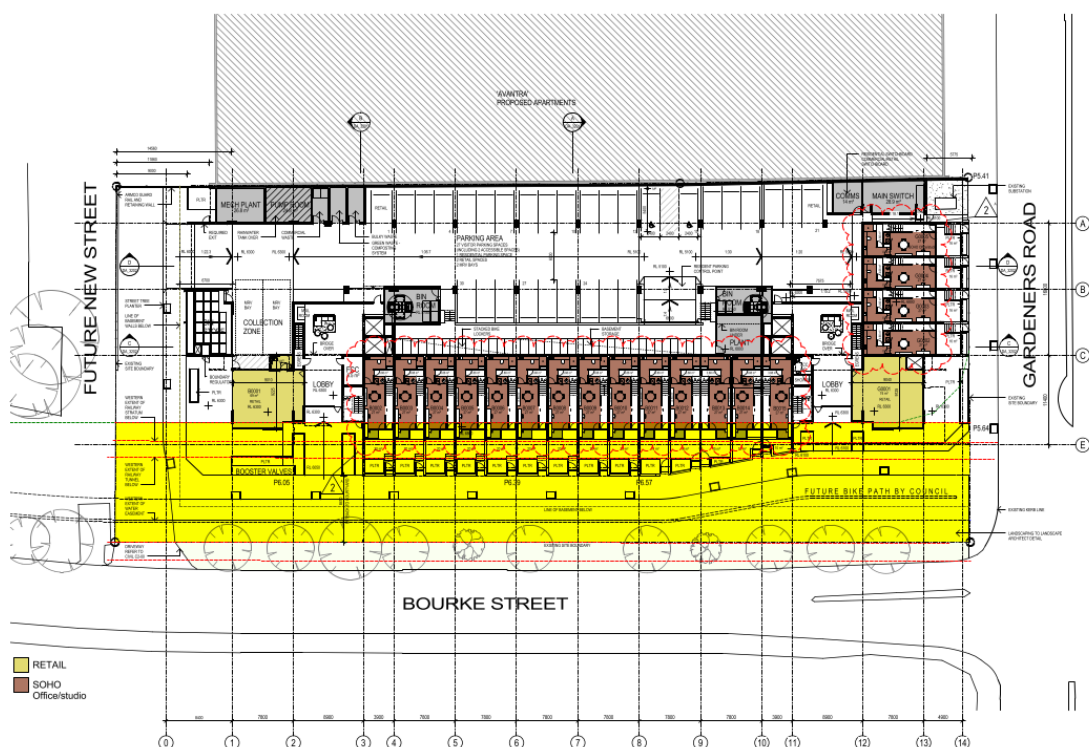


Figure 9 Ground Floor Plan with the highlighted section depicting the approximate area identified on the Land Reservation Acquisition Map

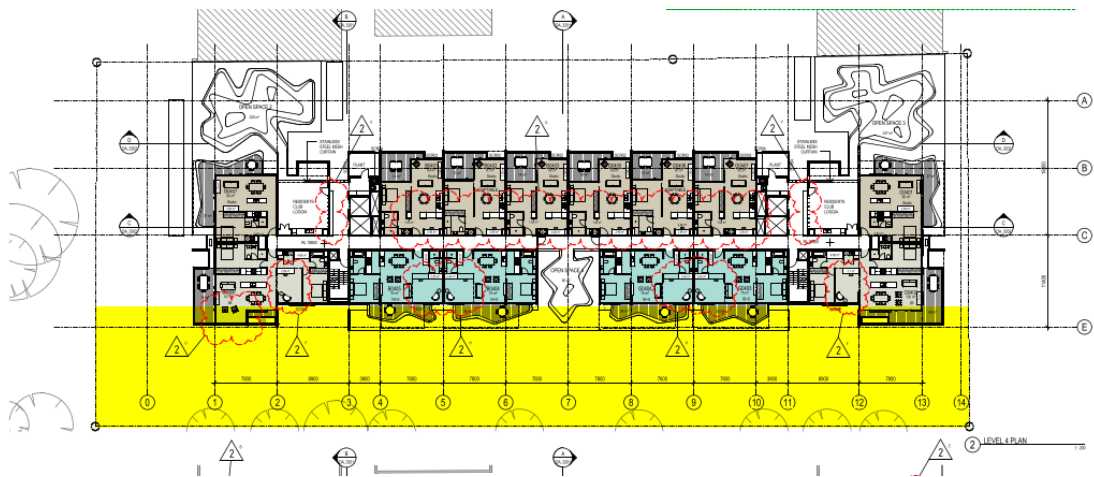


Figure 10 Level 4 Plan with the highlighted section depicting the approximate area identified on the Land Reservation Acquisition Map

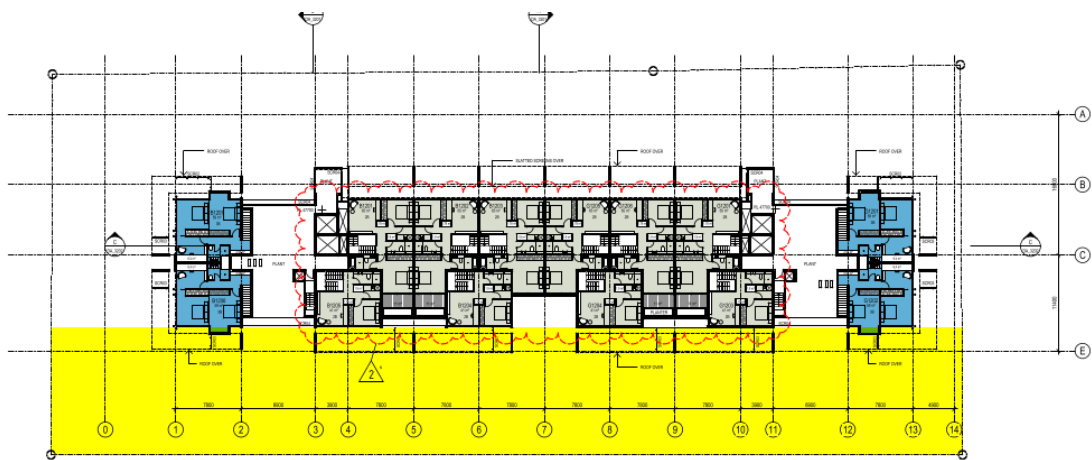


Figure 11 Level 13 plan with the highlighted section depicting the approximate area identified on the Land Reservation Acquisition Map

As the RMS has refused to provide concurrence for the proposal, it is considered that the proposal should be refused as it would interfere with future road widening.

Clause 104 - Traffic Generating Development

The proposed development falls within the provisions of Schedule 3 of the SEPP – Traffic Generating Development, which requires the proposal to be referred to the RMS. The application was accompanied by a Traffic Impact Assessment Report prepared by GTA Consultants, dated 13 February 2015. Plans and documentation were referred to the NSW RMS for consideration and comment.

In its letter dated 5 May 2015, the RMS indicated that a number of parking spaces should be reduced as the provision of unconstrained parking space would discourage the use of sustainable transport modes, and that a reduction in the number of spaces may enable the construction of the development clear of the land required for road purposes. However, the proposal falls short of the amount of parking required by the Botany Bay Development Control Plan 2013. Further comment is provided later in this report.

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

The provisions of SEPP 55 have been considered in the assessment of the development application. Clause 7 of SEPP 55 requires Council to be certain that the site is, or can be made, suitable for its intended use at the time of determination of an application.

A contaminated site auditor accredited with the NSW EPA has been appointed. An Auditor Interim Advice Letter No.1 has been provided with the application which addresses the proposed residential use for the site. The Interim Advice reviewed the '*Stage 2 Environmental Site Assessment, 653 Gardeners Road, Mascot*', 12 February 2008 (Project Ref: ENVILCOV00417AA-R01i2) and the '*Remediation Action Plan, 653 Gardeners Road, Mascot, NSW*', 19 March 2008 (Project Ref: ENVILCOV00417AA-R02i1) completed by Coffey and concluded that the site can be made suitable for the proposed residential uses if remediated in accordance with the 'Remediation Action Plan, 653 Gardeners Road, Mascot, NSW' dated 19 March 2008, Coffey.

It has been demonstrated that the site can be made suitable to accommodate the intended use and it satisfies the provisions of SEPP No. 55.

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

The provisions of SEPP 65 have been considered in the assessment of the development application. The applicant has submitted a SEPP 65 assessment of the proposed development along with a design verification statement prepared by Jim Koopman of Allen Jack + Cottier, dated 13 February 2015, to verify that the plans submitted were drawn by a Registered Architect and achieve the design quality principles set out in Part 2 of SEPP 65.

Draft Amendments to SEPP 65 (Apartment Design Guide)

State Environmental Planning Policy (SEPP) No. 65 was amended on 19 June 2015. Clause 31(2) of the SEPP states:

“If a development application or an application for the modification of a development consent has been made before the notification on the NSW legislation website of the making of *State Environmental Planning Policy No 65- Design Quality of Residential Flat Development (Amendment No 3)* and the application has not been finally determined before the commencement of that amendment, the application must be determined as if the amendment had not commenced.”

Therefore based on the above the application is assessed under the pre-June 2015 SEPP 65 and Residential Flat Design Code (RFDC), and not the new Apartment Design Guide (ADG).

Assessment of SEPP 65 Design Principles

The ten design principles outlined within SEPP 65 are addressed within the design verification statement, provided by the project architect is Appendix A. Council's assessment of the SEPP 65 issues is embodied in the comments from the Design Review Panel (DRP) and discussion below.

Prior to the lodgement of the application, the application was referred to the DRP for preliminary consideration. The proposal provided a 16-storey development with two towers

in a layout similar to that provided at the neighbouring Avantra development at 659-665 Gardeners Road. The panel was supportive of the scheme in principle; however, provided some feedback on improvements to specific aspects of the design.

Changes were made to the design considered by the DRP prior to lodgement, such that a single tower was provided at a height of thirteen storeys to Bourke Street. The SEE indicates that this redesign was necessary, given wind tunnel effects created by the two tower design, and that a building containing 16 storeys was not achievable given the proposal would have intruded on the Obstacle Limitation Surface.

Following the lodgement of the subject application, the proposal was presented to Council's Design Review Panel for consideration on 5 March 2015 as part of the assessment undertaken against the subject SEPP. The DRP provided written comments on 19 March 2015, which outlined recommendations to be incorporated into the design of the development. The following recommendations were forwarded to the applicant in a letter dated 27 May 2015:

Built Form

- *The deletion of one part storey i.e. between grids 3 and 11 in the middle height of the building (the applicant may demonstrate that this is not required based on the proposed floor space ratio).*
- *The treatment of the top two storeys should be less dominant to reduce visual impact and the apparent height of the building when viewed from both the streets and the internal courtyard. This could be achieved by: returning the façade frames as a roof at two levels below the top in lieu of the top level. The top two levels could still read as a "top" to the building but be recessed and less assertive.*
- *The treatment of the lower four balcony balustrades at the podium corners would benefit from a different architectural treatment to achieve a stronger expression of the podium.*

Landscape

- *Provide screen tree planting along the western boundary of open space 1 to provide an effective foliage screen to the projecting podium storey of the adjoining redevelopment.*
- *Consider the provision of street verge hedge rows similar to the existing hedge on the Gardeners Road verge which should be protected and retained. Provide a toddler play area as part of open space 1.*

Amenity

- *As discussed at the Panel meeting acoustic impact on the residential amenity of the residential units especially at the lower floor levels needs to be addressed.*
- *Measures which could be considered are balcony screening/enclosures and treatment of balcony soffits. In addition the width of the balcony openings at the podium levels might be reduced (particularly on Gardiners Road and near the corner) resulting also in greater visual 'solidity' to the base. Since outlook at the lower levels is largely to the roads, there would be nothing lost in relation to amenity.*
- *Provide some natural light and cross ventilation at the northern end of the carpark at ground level.*

Social Dimensions

- *The two common pedestrian entries from Bourke Street could have individual identities through external materials/colour/graphics so that they are differentiated from one another.*
- *Provide a bench seat in an alcove adjacent to each of the lift lobbies at each level.*

An amended proposal addressed these requirements as follows:

Built Form

Two formal study renders were prepared by the project architect showing the impact of reducing the facades frame (awning) height in the central part of the building.



Figure 12 Images depicting the proposal on the left, with the amendments recommended by the DRP shown on the right.

The images above demonstrate that:

- The lowering of the external façade frame by two (2) levels will actually block views through to the sky from locations in Bourke Street;
- Retention of the external frames to the two top floors will allow views through to the sky from Bourke Street due to the setback of the upper most level from the eastern building alignment; and
- Although the external frames maybe higher, the glimpses of the sky between the frames and the building setback will reduce visual massing and result in a less imposing building from the street.

The study renders demonstrates that there is benefit in retaining the original façade design.

Further, the proposal has been amended to provide a stronger expression of the podium as suggested by the DRP. The amendments included to provide the podium with a stronger architectural expression are as follows:

- The planter to the podium top has been extended;
- The podium frame has been re-coloured black; and
- The external frame has been deleted to Level 4 to accentuate the change between the podium and the tower.

Landscape

The landscape plan has been amended to provide screen planting along the western boundary of open space 1 to provide an effective foliage screen to the projecting podium storey of the adjoining redevelopment. The plans have been amended to include a toddler play area as part

of the principal communal open space area. Additionally the plans have identified the retention of the existing street verge hedge row on the Gardeners Road verge where possible. The plans also show that the courtyards of the units addressing Gardeners Road include planters which adopt a similar alignment to the hedge row.

Amenity

The use of the ground floor has been amended to small office/home office (SOHO) units. The design has also been amended to include additional screening to the podium level balconies. Specifically, the amended plans include operable horizontal aluminium louvres to the balconies of units addressing the intersection of Gardeners Road and Bourke Street and also at the opposing end of the building. The plans were also amended to include sound-absorptive acoustic plywood for the treatment of all balcony soffits at the lower four (4) levels to reduce road-noise.

Natural lighting and ventilation to the northern end of the car park was not provided, given a skylight would likely be required and such an element would reduce the amenity and design quality of the spaces at Level 1. The natural ventilation and indirect natural lighting provided at the southern end of the car park is deemed to be satisfactory.

Social Dimensions

The applicant indicated a willingness to accept a condition of consent requiring a differentiation in external colour treatment for the two common pedestrian entries from Bourke Street in order to provide individual identities for the entries. The plans were amended so that they indicate the provision of a bench seat in an alcove adjacent to each of the lift lobbies at each level.

The applicant has generally provided a satisfactory response to the issues raised by the DRP. However, contrary to the information provided within the SEPP 65 Design Statement, the assessment of this application concludes that the residential flat component of the application is not consistent with the SEPP 65 design principles. Specifically, the proposal is not consistent with:

- Principle 3: Density, as the proposal is unable to be contained within the developable area of the site; and,
- Principle 7: Amenity, in relation to the amenity of the ground floor units; and,
- Principle 9: Social dimensions and housing affordability, in relation to the proposed dwelling mix.

Further discussion on these matters is provided elsewhere within this report.

4.3 Botany Bay Local Environmental Plan 2013 (S79C(a)(i))

4.3.1 Summary of Assessment of Controls

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

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Landuse Zone	N/A	The site is zoned B4 – Mixed Use under BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed residential flat building and commercial premises are permissible with Council's consent under BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	No	<p>The objectives of the B4 Mixed Use zone are as follows::</p> <ul style="list-style-type: none"> ▪ <i>To provide a mixture of compatible land uses;</i> ▪ <i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling</i> <p>The proposal development is not consistent with the second of the two objectives, in relation to the amenity of the ground floor units, and the proposed dwelling mix.</p>
Does the height of the building comply with the required standard?	No	The proposed building height is 45.48m, which is greater than the 44 metres permitted by Clause 4.3 of BBLEP 2013. As such, the Applicant has submitted a Clause 4.6 variation to the height limit.
Does the FSR comply with the required standard?	No	<p>Site Area = 4,961 m² GFA = 18,184 m² FSR = 3.67:1 which exceeds the maximum FSR of 3.2:1 permitted under Clause 4.4 of BBLEP 2013. As such a Clause 4.6 variation has been submitted in respect of Clause 4.4.</p>
Is the site within land marked "Area 3" on the FSR Map	N/A	The subject site is not identified as being within "Area 3" on the FSR map.
If the land is affected by road widening, does the proposal comply with the requirements?	No	The subject site is affected by road widening on the Land Acquisition Map. Refer to earlier discussion in relation to Clause 100 of <i>SEPP (Infrastructure) 2007</i> .
Is the site identified on the Key Sites Map?	N/A	The subject site is within the Mascot Station Town Centre Precinct. Refer to Clause 6.16 discussion below.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not identified as a Heritage Item or within a Heritage Conservation Area.
The following provisions in Part 6 of the LEP apply to the development:		

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
6.1 – Acid sulfate soils	Yes	<p>Clause 6.1 – Acid Sulfate Soils. The subject site is affected by Class 2 Acid Sulfate Soils. The development application is accompanied by an Acid Sulfate Soils Management Report prepared by Douglas Partners dated 21 December 2014. The report indicates that</p> <p><i>Sampling and testing was restricted to 4.5 m below ground surface level and therefore disturbance of materials to greater depths may encounter acid sulphate soils particularly in bored piles which will presumably be taken to bedrock. It would, therefore, be prudent to carry out a detailed assessment when you obtain development approval and, on the basis of sampling and testing at anticipated depths of soil disturbance, a decision can be made of whether an acid sulphate soil management plan is required.</i></p> <p><i>However, given the DP experience with extensive drilling, sampling and monitoring of disturbed soils during piling at Sydney Airport we believe there is a high probability that any spoil from deep excavations or pile drilling will need to be treated before off-site disposal. It would be sensible to wait until the development is approved and the final designs are prepared so that the sampling and testing can be targeted to the locations and depths required for deep foundations and deep excavations.</i></p> <p>The proposal is able to comply with the requirements of this clause.</p>
6.2 – Earthworks	Yes	<p>Clause 6.2 – Earthworks. The proposed development seeks to demolish the existing buildings and excavate the subject site for basement car parking. The development application is Nominated Integrated Development and as such, the NSW Office of Water has provided its General Terms of Approval for the proposed development.</p>
6.3 – Stormwater management	Yes	<p>Satisfactory stormwater plans submitted to Council.</p>
6.8 - Airspace operations	Yes	<p>Clause 6.8 – Airspace Operations. The subject site lies within an area defined in the schedules of the <i>Civil Aviation (Buildings Control) Regulations</i> that limit the height of structures to 50 feet (15.24 metres) above existing ground level without prior approval of the Civil Aviation Safety Authority. The application proposes a building which exceeds the maximum height and</p>

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		<p>was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration. SACL raised no objections to the proposed maximum height of RL 51.00 AHD;</p> <p>Conditions were recommended by SACL to be imposed on any consent. SACL also advised that approval to operate construction equipment must be obtained prior to any commitment to construct. The development is considered to be consistent with Clause 6.8 of BBLEP 2013.</p>
6.9 – Development in areas subject to aircraft noise		<p>Clause 6.9 – Aircraft Noise. The subject site lies between the ANEF 20 and ANEF 25. An acoustic report has been submitted with the development application, which indicates that the development has been designed to comply with the requirements of AS2021-2000. The development is consistent with Clause 6.9 of BBLEP 2013.</p>
6.16 – Design excellence	Yes	<p>Clause 6.16 Design Excellence. The proposed design has been the subject of consideration by Council's Design Review Panel and is considered to be generally satisfactory with respect to the matters contained within Clause 6.16. However, further discussion is provided on design excellence in relation to SEPP 65.</p>

The objectives and provisions of BBLEP 2013 have been considered in relation to the subject development application. The proposal is not considered to be consistent with the objectives of the B4 Mixed Use zone, and is recommended for refusal. Further discussion is provided elsewhere within the assessment against the Botany Bay Development Control Plan 2013.

4.3.2 Building Height - Clause 4.6 Exception

Clause 4.3(2) of BBLEP 2013 states that the maximum building height for the subject site is 44m. The application proposes a building height of 45.48m, which exceeds the 44 metre height limit by 1.48m.

Accordingly, the proposal is inconsistent with the Height of Buildings development standard pursuant to Clause 4.3 of the BBLEP 2013. The applicant has submitted a variation to Clause 4.3 pursuant to Clause 4.6 requesting a greater maximum building height.

Consent may be granted for the proposal subject to Clause 4.6, notwithstanding that the proposal would contravene this development standard, as the Height of Buildings 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.

In *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*), Preston CJ set out the following 5 different ways in which an objection to a development standard may be well founded:

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.*

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 & NSW LEC 90 (*Four2Five*), the Court established that the construction of Clause 4.6 is such that it is not sufficient for the applicant to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standards, as required by Clause 4.6(3)(b), or for the consent authority to be satisfied that the proposed development is consistent with 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, as required by Clause 4.6(4)(a)(ii). The Court outlines, that Clause 4.6 requires that in addition to the requirements listed above, the applicant must also establish that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, as is required by Clause 4.6(3)(a). This may involve reference to reasons 2-5 outlined within *Wehbe*.

The requirements of 4.6(3)(a), 4.6(3)(b), and 4.6(4)(a)(ii) are each addressed separately below:

Is the development standard unreasonable or unnecessary in the circumstances of the case?

The applicant has submitted that a development that strictly complies with the 44m height standard is unreasonable or unnecessary in this circumstance for the following reasons:

- *The additional height, (above the height allowed under the control) is positioned on the site in a manner that is unlikely to result in significant adverse impacts upon adjacent properties or the public realm by way of overshadowing, visual massing, view loss and privacy impacts.*
- *There is minimal difference in the impacts between a building that strictly complies with maximum building height control and the proposed development in that:*
 - *Visual and acoustic privacy impacts: The top most section of the 14th storey numerically represents the component of the building which is non-compliant. The arrangement of the 14th storey, including its setback to the*

western side boundary, is such that the additional height will not generate any significant privacy impacts.

- *Visual impacts: Due to the setback arrangements and relatively slender nature of the building, there is a nominal difference in visual impacts between the proposed building and a complying building.*
- *Overshadowing impacts: The difference in shadow impacts on adjacent sites of a compliant building compared to the proposed building are minimal. This is due to the fact that the building has been arranged as a relatively slender and taller building which results in thinner, faster moving shadows compared to wider more 'squat' style of development which results in wider and slower moving shadows.*
- *The proposed development will result in a better urban design outcome compared to a compliant development (refer to discussion under section 3.3).*
- *The level of non-compliance with the building height control is consistent with the degree of variations contemplated and accepted by the consent authority with respect to development in similar situations within the Mascot Station Town Centre Precinct.*
- *The development satisfies the objectives of the zone and the development standard.*
- *A development that strictly complied with the standard would likely result in a lesser urban design outcome and would not respond as well as the proposal does to the site's prominent position at the northern entry to the Mascot Station Town Centre Precinct.*
- *It could be said that the development standard may have been abandoned with respect to its application within the Mascot Station Town Centre Precinct. This is the case due to the consistent variation of the standard by the relevant consent authority since the introduction of BLEP 2013.*
- *It is noted that Council has acknowledged as much in recent assessment reporting of mixed use development in the vicinity of the site (e.g. Development Assessment report for DA 13/200 relating to development at 19-33 Kent Street).*
- *Notwithstanding the abandonment or otherwise of the standard, there are numerous examples of approved development that exceed the building height development standard within the vicinity of the site as set out in the Table below:*

<i>Site Address & DA No.</i>	<i>Approved Height</i>	<i>Approval Date</i>
<i>619-629 Gardeners Road (DA10/324)</i>	<i>51mAHD</i>	<i>3 August 2011</i>
<i>7 Bourke Street (30-34 John Street) (DA09/378)</i>	<i>49.1mAHD</i>	<i>1 November 2011</i>
<i>208 Coward Street (DA 11/67)</i>	<i>51mAHD</i>	<i>5 December 2011</i>
<i>2-4 Haran Street (DA 13/213)</i>	<i>51mAHD</i>	<i>1 June 2013</i>
<i>19-33 Kent Street (DA 13/200)</i>	<i>51 m AHD (being 47.1 m above the ground level)</i>	<i>20 March 2014</i>
<i>39 Kent Street (DA 13/227)</i>	<i>51 m AHD (being 47.2 metres above ground level)</i>	<i>16 July 2014</i>

659-669 Gardeners Road (DA 13/135)	50.2m AHD (being 44.70m above ground level)	21 August 2014 (LEC Approval)
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Having regard to reasons 2-5 outlined in *Wehbe* above, the 4.6 variation request has demonstrated that the development standard is unreasonable or unnecessary in the case.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The applicant has submitted that in the circumstances of the case, there are sufficient planning grounds to justify contravening the development standard being:

The particular circumstance of this site that distinguishes it from others is its position at the northern entry to the Mascot Station Town Centre Precinct, a fact recognised by the Botany Design Review Panel.

The variation to the building height control will result in a better planning outcome for the site compared to a compliant development.

In the circumstances of the case, there are sufficient planning grounds particular to the site to justify contravening the development standard being:

- The proposed non-compliance with the height control will result in a better urban design outcome at the site.*
- The site is located at the main northern entry to the Mascot Station Town Centre Precinct. Height differentiation is a recognised urban design element used to emphasize a location or a place and also to provide variation and visual separation between buildings.*
- The proposed height of the building will visually differentiate it from the approved building immediately to the west of the site at 659-669 Gardeners Road (approved height of 44.7m). The proposed height will also provide a visual focus and visual recognition of the northern entry into the Mascot Station Town Centre Precinct.*
- The additional height, above the height limit and above the approved adjacent building, will visually accentuate the subject building (even if only incrementally) and will present a well-considered building of high architectural merit to people entering the Mascot Station Town Centre Precinct.*
- The differentiating of the site is consistent with the Botany Bay Design Review Panel's comments. The Panel identified that the site has particular attributes related to its location within the Precinct and its exposure to view from the north and south. The Panel indicated support for a scale and massing as proposed given the site's important location and context and despite the non-compliance in height.*
- The visual catchments of Gardeners Road and Bourke Street contain a number of buildings which have been approved that will present a scale that will set the character. The proposed development will not be determinative in respect of the character of the locality, rather it will delineate the main northern entry point into the Mascot Station Town Centre Precinct and will be complementary to the character of that Precinct.*

- *The site is capable of accommodating the proposed height and the development is of an intensity and scale commensurate with the evolving character and the prevailing urban conditions and capacity of the locality. Overall, the increased height of the development will result in a better urban design outcome for the site and the wider Mascot Station Town Centre Precinct compared to a compliant development.*
- *The subject site is heavily constrained by easements and road improvement requirements. In particular the site is affected by two road widening constraints. One relates to the widening of Bourke Street and affects the eastern portion of the site. The second relates to the creation of a new local road to the south of the site. This second road widening affects the entire southern end of the site.*
- *The excising of the southern end of the site for the purpose of the creation of a new public road will provide a significant public benefit and is a 'planning ground' that is particular to the proposed development.*
- *Additionally, the two road widening requirements significantly reduce the developable area of the site and thereby impact on the concentration and arrangement of floor space and the height of redevelopment at the site.*
- *The development will provide additional residential accommodation in an area with excellent access to public transport services, an aim of the strategic planning vision for this locality.*
- *The proposal will not set a precedent in terms of density or height for development in the vicinity.*
- *The proposal satisfies the objectives of the B4 Mixed Use zone and the objectives of the building height standard and the proposed building height is considered appropriate within the strategic planning context of the B4 Mixed Use zone in the Mascot Station Town Centre Precinct.*
- *The non-compliance with the standard does not contribute to significant adverse environmental impacts in terms of overshadowing, visual impacts or view loss.*
- *The development as proposed is consistent with the provisions of orderly and economic development.*

Having regard to reasons 2-5 outlined in *Wehbe* above, the 4.6 variation request has demonstrated that there are sufficient planning grounds to support the non-compliance.

Will the proposed development 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?

The objectives of the B4 zone are outlined as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The applicant has submitted that the proposal is consistent with the desired future character of the B4 Mixed Use zone in the Botany South Precinct as follows:

- (a) *To provide a mixture of compatible land uses.*

The proposal includes retail premises and residential dwellings which are both forms of land uses envisaged for the zone.

- (b) *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The site has excellent access to public transport and is an accessible location. It is approximately 200m from the Mascot Train Station. Additionally the site is within 200m walking distance of bus stops which serve 4 bus routes along Gardeners Road and Coward Street.

The proposal makes allowance for road improvements to Bourke Street along the eastern edge of the site which, in accordance with Council's vision, may include the construction of a bicycle way.

The development includes bicycle storage facilities in locations and of a capacity that is consistent with Council's requirements.

The proposed non-compliance with the building height control in no way affects the developments compliance and satisfaction of the zone objectives.

Given the circumstances of the case, the provision of a strict numerical compliance would be unreasonable on the basis that the proposed development achieves compliance with the objectives of the standard and the zone, and is compatible with adjoining development.

The relevant components of Clause 4.3 are provided below:

4.3 Height of Buildings [relevant clauses quoted]

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

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

The applicant has submitted that the proposal remains consistent with the objectives of the building height standard outlined in subclause 4.3(1) as follows:

- (a) *To ensure that the built form of Botany Bay develops in a coordinated and cohesive manner.*

On balance the variation, which is between 900mm to 1.48m only above the 44m height control, is relatively minor and represents a 3.4% variation to the

standard. The degree of the variation is consistent with variations to the height control approved for development within the vicinity of the site as demonstrated in Table 1 of this Statement.

The development has been designed to physically and architecturally respond to the approved developments at adjacent sites and also to the desired future character and proposed built forms for adjacent sites as identified in the BLEP 2013 and the applicable Parts of the DCP.

Approval of the development will not set a precedent and will not represent development uncoordinated, ill-considered or ad-hoc development.

(b) To ensure that taller buildings are appropriately located.

The scale of the development is consistent with the scale of recently approved developments within the vicinity of the site, which have been completed and or are yet to be constructed, including developments along Gardeners Road, Bourke Street, Church Avenue and Kent Street.

The building is relatively slender and, although comparable, it will be slightly taller than the recently approved building to the west at 659-669 Gardeners Road (DA 13/135) which has realised a height of 44.70m (50.2m AHD) above ground level.

It is noted that the Botany Architectural Design Review Panel, as part of pre-lodgement consideration, supported a building above the maximum height limit at the site based on the sites' prominence and importance within the Mascot Station Town Centre Precinct.

In that context, the additional height proposed, although relatively marginal, will provide an appropriate degree of differentiation from the approved building at 659-669 Gardeners Road and, combined with the high quality façade detailing, the additional height will help signify the location as a main entry into the Mascot Station Town Centre Precinct.

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

The desired future character of the area is outlined within the Part 9A of the Botany DCP 2013 and is also represented by the development consents granted by the consent authority for a particular locality.

In this respect, the proposal responds to the sites prominent location within the Mascot Station Town Centre Precinct, is generally consistent with the maximum building height for the locality being only a 900mm (sic) to 1.48m above the 44m height control and is consistent with the height of other approved buildings in the vicinity (refer to the Table 1).

The proposed height is considered to be consistent with the desired future character of the MSTCP.

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

The building is designed so that the additional 900mm to 1.48m in height is well setback from the western side boundary and is otherwise arranged and

articulated in a manner that is unlikely to significantly adversely affect the amenity of surrounding properties.

Although tall, the building is a relatively slender building and it will achieve good separation between existing and future buildings on adjacent sites.

Consequently the building is unlikely to result in significant adverse visual massing and bulk and scale impacts, disruption of views, loss of privacy and overshadowing impacts above the impacts that could be reasonably expected from a compliant development.

- (e) *To ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.*

The building is of a similar height to that of approved development in the vicinity and is generally consistent with the desired future character of locality.

The design of the building, in particular the elevation character and façade treatments are of a high quality and the proposal will improve the streetscape and provide a positive addition to the evolving skyline of the Mascot Station Town Centre Precinct when viewed from adjoining roads and public places.

The applicant has demonstrated that the proposed development will be in the public interest because it is consistent with the objectives of the height of building development standard and the objectives for development within the B4 zone.

Public Interest and Public Benefit

Preston CJ noted that there is a public benefit in maintaining planning controls and a variation to a development standard should not be used in an attempt to affect general planning changes throughout the area. It is considered that in the current case, the planning control may be varied as it will not affect the pattern of development within the locality.

On the basis of this assessment, it is concluded that the variation is not contrary to the public interest and is able to be supported.

Matters of State or Regional Importance

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

Summary

The Clause 4.6 Exception to the height of buildings development standard has been assessed in accordance with relevant case law. It is considered that the proposal is consistent with the underlying objectives of the standard identified.

It has been established that the proposed variation is appropriate and strict adherence to the development standard in this instance is reasonable and necessary. Maintaining and enforcing

the development standard in this case is unreasonable and does not prevent the orderly and economic development of this site.

It is considered that the applicant's Clause 4.6 is well-founded and the departure to the height of buildings development standard is within the public interest. On this basis, it is recommended that the development standard relating to the maximum building height for the site pursuant to Clause 4.3 of the BBLEP 2013, be varied in the circumstances as discussed above.

4.3.3 Floor Space Ratio - Clause 4.6 Exception

The maximum FSR permitted by BBLEP 2013 for the subject site is 3.2:1. The applicant has indicated that the development application seeks an FSR of 3.67 (18,184m²), which does not comply with Part 4.4(2) of BBLEP 2013.

It should be noted that for the purposes of the calculation of floor space ratio, the site area includes both the portion of the site to be subdivided as part of the new street, as well as the area within Bourke Street, affected by the Land Reservation Acquisition Map (LRA Map).

The BBLEP 2013 states that land on which the proposed development is prohibited shall not be included within the calculation of site area. The portion of the site that is affected by the LRA Map is zoned B4, which indicates the proposal is permissible on that portion of the site. **However, this area is not able to be developed for the purposes of a residential flat building, given it is marked within the LRA Map for the purposes of road widening.** This area of land is approximately 1,668m², and its exclusion from site area would result in a floor space ratio of approximately 5.56:1.

Irrespective of the extent of the non-compliance, the proposal is inconsistent with the FSR development standard pursuant to Clause 4.4 of the BBLEP 2013. The applicant has submitted a variation to Clause 4.4 pursuant to Clause 4.6 requesting a greater FSR.

The requirements for a clause 4.6 assessment established in *Wehbe v Pittwater Council [2007] NSW LEC 827* as outlined in the discussion in relation to Building Height as discussed as follows:

Is the development standard unreasonable or unnecessary in the circumstances of the case?

The applicant has submitted that a development that strictly complies with the 44m height standard is unreasonable or unnecessary in this circumstance for the following reasons:

- *The additional floor space, i.e. above the FSR control, is sited or designed on the site in a manner that is unlikely to result in significant adverse impacts upon adjacent properties or the public realm by way of overshadowing, visual massing, view loss or privacy impacts.*
- *There is minimal difference in the impacts between a building that strictly complies with FSR control including:*
 - *Visual and acoustic privacy impacts: The building is compliant with building separation controls and is provided with appropriate screening and vegetation to mitigate privacy impacts to the western neighbouring property. The arrangement of the building on the site will not generate any significant privacy impacts.*

- *Visual impacts: Due to the setback arrangements and slender nature of the building, there is a nominal difference in visual impacts between the proposed building and a complying building (noting that the building is only 900mm to 1.48m above the height control).*
- *Overshadowing impacts: The difference in shadow impacts on adjacent sites of a compliant building compared to the proposed building are minimal due to the fact that higher elements (those which include the additional GFA) are generally centred and are setback from the western boundary. The building has been arranged as a relatively slender and taller building which results in thinner, faster moving shadows compared to wider more 'squat' style of development which result in wider and slower moving shadows. The building complies with building separation guidelines and setback controls and the extent of shadows related to the width and depth of the building are of a degree that could be reasonably expected from a compliant development.*
- *The proposed development will results in a better urban design outcome compared to a compliant development. The building will be better differentiated from adjacent buildings and will provide a well-considered visual focus to people entering the Mascot Station Town Centre Precinct.*
- *The level of non-compliance with the FSR control is consistent with the degree of variations contemplated and accepted by the consent authority with respect to development in similar situations within the Mascot Station Town Centre Precinct.*
- *The development satisfies the objectives of the zone and the development standard.*
- *In this instance, it could be said that the development standard may have been abandoned with respect to its application within the Mascot Station Town Centre Precinct. This is the case due to the consistent variation of the standard by the relevant consent authority since the introduction of BLEP 2013.*

It is noted that Council has acknowledged as much in recent assessment reporting of mixed use development in the vicinity of the site (e.g. Development Assessment report for DA 13/200 relating to development at 19-33 Kent Street).

- *Notwithstanding the abandonment or otherwise of the standard, there are numerous examples of approved development that exceed the FSR development standard within the vicinity of the site as set out in the Table below:*

<i>Address</i>	<i>FSR Control</i>	<i>Approved FSR</i>	<i>Approval Date</i>
<i>1-5 Bourke Street</i>	<i>3.3:1 (BLEP 1995)</i>	<i>3.35:1</i>	<i>11 August 2004</i>
<i>230 Coward Street (aka 25 John Street)</i>	<i>2.5:1 (BLEP 1995)</i>	<i>4:01</i>	<i>23 August 2006</i>
<i>8 Bourke Road & 37 Church Avenue</i>	<i>3.3:1 (BLEP 1995)</i>	<i>4.24:1</i>	<i>13 May 2009</i>
<i>24-26 John Street</i>	<i>2: 1 (BLEP 1 995)</i>	<i>3.46:1</i>	<i>6 September 2009</i>
<i>214 Coward Street</i>	<i>2.5:1 (BLEP 1995)</i>	<i>4.5:1</i>	<i>16 December 2010</i>

7 Bourke Street & 30-32 John Street	2.9:1 (BLEP 1995)	4.16:1	13 January 2011
208-210 Coward Street	3.2:1 (BLEP 2013)	4.44:1	2 December 2011
5 Haran Street	3.2:1 (BLEP 2013)	3.4:1	1 June 2013
2-4 Haran Street & 1 Church Avenue	3.2:1 (BLEP 2013)	3.79:1	21 August 2013
19-33 Kent Street (DA 13/200)	3.2:1 (BLEP 2013)	3.67:1	20 March 2014
671 -683 Gardeners Road (DA 13/172)	3.2:1 (BLEP 2013)	3.34:1	14 May 2014
13A Church Avenue	3.2:1 (BLEP 2013)	3.6:1	11 June 2014
39 Kent Street (DA 13/227)	3.2:1 (BLEP 2013)	4.21:1	16 July 2014
659-669 Gardeners Road (DA 13/135)	3.2:1 (BLEP 2013)	3.34:1	21 August 2014 (LEC Approval)
246 Coward Street (DA13/173)	3.2:1 (BLEP 2013)	3.67:1	11 September 2014

Are there sufficient environmental planning grounds to justify contravening the development standard?

The applicant has submitted that in the circumstances of the case, there are sufficient planning grounds to justify contravening the development standard being:

The particular circumstance of this site that distinguishes it from others is its position at the northern entry to the Mascot Station Town Centre Precinct, a fact recognised by the Botany Design Review Panel.

The variation to the FSR control will result in a better planning outcome for the site compared to a compliant development.

The site is affected by constraints unique to the site in the form of easements and road improvement requirements. These circumstances will result in a reduced developable area as well as a public benefit through the dedication of land for the creation of a new public road to the south of the site.

Additionally, there is a disconnect between Council's minimum unit size requirements and the RFDC unit size requirements resulting in a development that is approximately 4,700m² larger in area than a RFDC compliant development for the same amount of units.

In the circumstances of the case, there are sufficient planning grounds particular to the site to justify contravening the development standard being:

- *The proposed non-compliance with the FSR control will result in a better urban design outcome at the site.*

The site is located at the main northern entry to the Mascot Station Town Centre. The proposed scale of the building will visually differentiate it from the approved building immediately to the west of the site at 659-669 Gardeners Road. The

proposed building will provide a visual focus and visual recognition of the northern entry into the Mascot Station Town Centre Precinct.

The differentiating of the site is consistent with the Botany Bay Design Review Panel's comments. The Panel identified that the site has particular attributes related to its location within the Precinct and its exposure to view from the north and south. The Panel have indicated support for a scale and massing as proposed given the site's important location and context and despite the non-compliance in FSR and height.

The visual catchments of Gardeners Road and Bourke Street contain a number of buildings which have been approved that will present a scale that will set the character. The proposed development will not be determinative in respect of the character of the locality, rather it will delineate the main northern entry point into the Mascot Station Town Centre Precinct and will be complementary to the character of that Precinct.

The site is capable of accommodating the proposed density and the development is of an intensity and scale commensurate with the evolving character and the prevailing urban conditions and capacity of the locality. Overall, the increased FSR of the development will result in a better urban design outcome for the site and the wider Mascot Station Town Centre Precinct compared to a compliant development.

- *The subject site is heavily constrained by easements and road improvement requirements. In particular the site is affected by two road widening constraints. One relates to the widening of Bourke Street and affects the eastern portion of the site. The second relates to the creation of a new local road to the south of the site. This second road widening affects the entire southern end of the site.*
- *The excising of the southern end of the site for the purpose of the creation of a new public road will provide a significant public benefit and is a 'planning ground' that is particular to the proposed development.*
- *Additionally, the two road widening requirements significantly reduce the developable area of the site and thereby impact on the concentration and arrangement of floor space and the height of the redevelopment of the site.*
- *The proposed variation to the FSR is in part a function of compliance with Council's DCP requirements for minimum unit sizes which are significantly larger in area than the minimum unit sizes outlined in the Residential Flat Design Code (RFDC) and other like Councils.*
- *The development will provide additional residential accommodation in an area with excellent access to public transport services, an aim of the strategic planning vision for this locality.*
- *The proposal will not set a precedent in terms of density or height for development in the vicinity.*
- *The proposal satisfies the objectives of the B4 Mixed Use zone and the objectives of the FSR standard and the proposed FSR is considered appropriate within the strategic planning context of the B4 Mixed Use zone in the Mascot Station Town Centre Precinct.*

- *The non-compliance with the standard does not contribute to significant adverse environmental impacts in terms of overshadowing, visual impacts or view loss.*
- *The development as proposed is consistent with the provisions of orderly and economic development.*

Will the proposed development 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?

The objectives of the B4 zone are outlined as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The applicant has submitted that the proposal is consistent with the desired future character of the B4 Mixed Use zone in the Botany South Precinct as follows:

(a) To provide a mixture of compatible land uses.

The proposal includes retail premises and residential dwellings which are both forms of land uses envisaged for the zone.

(b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

The site has excellent access to public transport and is an accessible location. It is approximately 200m from the Mascot Train Station. Additionally the site is within 200m walking distance of bus stops which serve 4 bus routes along Gardeners Road and Coward Street.

The proposal makes allowance for road improvements to Bourke Street along the eastern edge of the site which, in accordance with Council's vision, may include the construction of a bicycle way.

The development includes bicycle storage facilities in locations and of a capacity that is consistent with Council's requirements.

The proposed non-compliance with the floor space ratio control in no way affects the developments compliance and satisfaction of the zone objectives.

Given the circumstances of the case, the provision of a strict numerical compliance would be unreasonable on the basis that the proposed development achieves compliance with the objectives of the standard and the zone, and is compatible with adjoining development.

The applicant has submitted that the proposal remains consistent with the objectives of the floor space ratio standard outlined in subclause 4.3(1) as follows:

(a) To establish standards for the maximum development density and intensity of land use.

The control will continue to prescribe maximum floor space ratio and the proposal will not alter that. Council will be able to continue to consider applications and variations based on merit and in accordance with the provisions of Clause 4.6. (b) To ensure that taller buildings are appropriately located.

- (b) To ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality.*

The bulk and scale of the development is consistent with the scale of recently approved developments within the vicinity of the site, which have been completed and or are under construction. This includes developments along Gardeners Road, Bourke Street, Church Avenue and Kent Street.

The proposal is generally consistent with the maximum building height for the site and locality, having a relatively minor variation of only 900mm to 1.48m above the 44m height control.

The building is relatively slender and marginally taller than the building approved at the adjacent site (at 659 Gardeners Road) however the design is a thoughtful response to the prominent location of the site at the main northern entry point to the Mascot Station Town Centre Precinct and provides visual differentiation to the adjacent development.

The building will achieve good separation to buildings on adjacent sites (as they are redeveloped) and the building does not represent a development that is out of scale or comparatively bulky when considered against the existing and desired future character for 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,*

The desired future character of the area is outlined within the Part 9A of the Botany DCP 2013 and is also represented by the development consents granted by the consent authority for a particular locality.

Sites to the east, west and south of the subject property are all within the Mascot Station Town Centre Precinct and all have the same fundamental building controls (including height and FSR) and are therefore likely to be developed in a similar manner to the proposed building.

Properties to north, on the opposite side of Gardeners Road, are outside the Botany LGA. These properties have controls which will realise development of a lower scale and lesser density compared to development in the Mascot Station Town Centre Precinct. Nonetheless the proposed FSR is commensurate with development on the southern side of Gardeners Road and the architectural design of the proposal will deliver a form of building that is appropriate for the site and the transition in built form between the two LGAs.

- (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,*

The building is of a design so that the floor space which represents the variation in FSR control is positioned in a manner that is unlikely to significantly compromise the amenity of surrounding properties.

Although tall, the building is a relatively slender building and it will achieve good separation between existing and future buildings on adjacent sites. The proposed setbacks to street frontages and the western side boundary are compliant, the building is of an appropriate and compliant length and the facades are well articulated. Consequently the building is unlikely to result in adverse visual massing and bulk and scale impacts above the impacts that could be reasonably expected from a compliant development.

The building is of a similar height to that of approved development in the vicinity and is generally consistent with the desired future character of locality. The design of the building, in particular the elevation character and façade treatment, is of a high quality and the proposal will improve the streetscape and provide a new aesthetically pleasing element to the evolving skyline when viewed from adjoining roads and public places.

(e) To minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,

The SEE submitted with the DA demonstrates that the proposal is unlikely to result in significant adverse impacts by way of overshadowing, visual and acoustic privacy, view loss and visual massing to adjoining properties and the public domain.

Given the proposal relies on the siting of the buildings within an area that is reserved for road widening, it is not considered that the proposed variation is warranted. The submitted 4.6 variation request rests on the assumption that the subject area within the LRA Map is developable land. However, this area is not developable, and the floor space ratio is not able to be contained within the developable area of the site. As a consequence, the proposed variation cannot be considered to meet the objectives of the control, and there are not sufficient planning grounds to warrant the proposed non-compliance.

Public Interest and Public Benefit

Preston CJ noted that there is a public benefit in maintaining planning controls and a variation to a development standard should not be used in an attempt to affect general planning changes throughout the area. It is considered that in the current case, the planning control may be varied as it will not affect the pattern of development within the locality.

On the basis of this assessment, it is concluded that the variation is not contrary to the public interest and is able to be supported.

Matters of State or Regional Importance

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

Summary

The Clause 4.6 Exception to the floor space ratio development standard has been assessed in accordance with relevant case law.

It has not been established that the proposed variation is appropriate and strict adherence to the development standard in this instance is reasonable and necessary. The proposed non-compliance is unreasonable and prevents the orderly and economic development of this land in this locality.

It is considered that the applicant's Clause 4.6 is not well-founded and the departure to the floor space ratio development standard is not within the public interest. On this basis, it is recommended that the request to vary this development standard, relating to the maximum floor space ratio for the site pursuant to Clause 4.3 of the BBLEP 2013, be refused.

4.4 Botany Bay Development Control Plan 2013 (s79C(1(a)(iii))

An assessment of the relevant DCP controls is in Appendix B. The following areas of non-compliance are discussed in detail:

Unit Mix

Part 9A 4.4.7 of Botany Bay Development Control Plan 2013 applies to the subject site. Part 9A 4.4.7 states that the combined total number of studio units and one bedroom units must not exceed 35% of the total number of apartments/dwellings in any single site area.

The SEE indicates that the development application proposes the following unit mix:

	TOTAL	Unit Mix
Studio	78	42%
1 bedroom	46	25%
2 bedroom	56	30%
3 bedroom	4	2%
Total	184	0%

As indicated in the table above, the total number of proposed studio and one bedroom apartments is 67%, which does not comply with Part 9A 4.4.7. In support of the proposed unit mix, the Applicant has submitted an Economic Assessment of Proposed Apartment Mix, prepared by Hill PDA (the "Hill PDA Report"), dated December 2014. The findings of the report are summarised as follows:

- *Demand for studio and 1-bedroom dwellings in Mascot is particularly strong reflecting the profile of typical buyers being 1 and 2 person households occupied by young professionals who are predominately price-conscious and are attracted by proximity to the train station. Demand is also generated by ageing persons downsizing and Asian buyers that demand place rather than space*
- *The demand for smaller units is likely to remain strong owing to declining household sizes in Mascot (from 2.8 persons per dwelling in 2001 to 2.6 persons in 2011 which was against the Sydney trend), a reduced rate of fertility and increasing production costs. The market is price-sensitive and studio and 1 bedroom units are highly demanded as these units are more affordable and more aligned to the requirements of buyers.*

- *An undersupply of smaller apartments relative to demand has resulted in marked capital appreciation and rental escalation thereby undermining affordability for both home buyers and renters.*
- *There is a strong relationship between the size of residential units and their price. In today's market a 25sqm increase in the size of a unit in the City of Botany Bay results in a \$140,000 to \$150,000 price increase and a further \$40,000 to \$50,000 with an additional basement car space. The impact of the minimum unit sizes mandated by Council's DCP therefore is to adversely impact affordability. Enforcing Council's bedroom mix and apartment size and car parking requirements is likely to result in a fall in apartments sales in the order of 25% to 30%. The result is a reduction in housing needs being satisfied.*
- *The DCP requirements undermine supply of dwellings because marginal revenue from the increase in floor space barely covers the marginal cost. There may even be some loss in profit which results in a decline in residual land values thereby undermining development feasibility.*

This matter was raised in Council's letter of 27 May 2015, and the applicant was provided with a report titled "*Review of the DCP requirements for unit mix*" prepared by SGS Economics and Planning, dated December 2014 (the "SGS Report"), which supports the validity of this development control.

This report concludes that there is likely to be a small increase (i.e. less than 25%) in the underlying demand or 'need' for studio or one bedroom housing. It can be concluded from the SGS Report, that it is important to avoid focusing on the demographic characteristics of purchased dwellings, or effective demand, which is closely related to the number of dwelling actually built and therefore takes into account a full range of market forces, including incomes, prices and availability of finance and ability/willingness of housing markets to deliver these housing types.

A focus on underlying demand, as provided within the SGS report is better able to satisfy the following objective of Part 9A.4.4.7:

"O1 To ensure housing choice is encouraged through the provision of an appropriate mix of dwelling sizes".

The Hill PDA report has not satisfactorily accounted for underlying demand, and has not demonstrated that the proposed unit mix will comply with the above objective.

Active Frontages, Acoustic Privacy & Private Open Space

Figure 49 contained within Part 9A.4.4.4 of the BBDCP 2013 indicates that a commercial frontage is required to Gardeners Road and a retail frontage to Bourke Street. Part 9A.4.4.3 also requires that any ground floor private open space be provided away from the street frontage and Part 9A.4.4.4 requires that private open space areas must not be located at grade to a street frontage. It is noted that the Street Activation Map within the BBLEP 2013 does not indicate active street frontages for the site (although the properties to the south and east are identified as active street frontages).

The application seeks to provide maisonette small office/home office (SOHO) apartments to the majority of the ground floor frontages to Bourke Street and Gardeners Road, with bedrooms provided at first floor and living areas at ground floor, and two private open space areas each provided towards the street frontage, with a larger private open space area at the

ground floor, and a smaller balcony at first floor. The level of the ground floor private open space areas to Bourke Street is approximately 300-400mm higher than the adjacent road level, which is considered to be insufficient.

Two individual corner retail tenancies are provided and two entrance lobbies are provided to Bourke Street. However, the majority of the Bourke Street and Gardeners Road frontages are provided with the SOHO frontages, which are considered to be a residential use. The SEE provides the following discussion in relation to this matter:

“The recent approvals of a large supermarket and speciality retail shops involving over 5000m² of retail floor space in the centre of the Precinct, approximately 200m to 300m from the site, draws into question the viability of large amounts of retail floor space at the site, removed from the core area.

The application therefore proposes retail tenancies to the prominent south east and north east corners with residential uses in between.

The retail tenancies will address the New Street and Bourke Street in the southeast corner and Gardeners Road and Bourke Street in the north east corner, with a terrace area ‘spilling out’ from the tenancies and offering outdoor dining possibilities and pedestrian activation.

Two (2) large residential lobbies are positioned along the Bourke Street frontage which will also provide a good activation element to this main frontage with residents coming and going through out any given day”.

As discussed elsewhere, the majority of the east-facing private open space areas units are not viable, as they are proposed within the area in which Bourke Street will eventually be widened. It is considered that non-residential uses are more appropriate uses for the ground floor of both the Bourke Street and Gardeners Road frontages, given their prominence. Gardeners Road currently experiences a high traffic volume, and Bourke Street is expected to experience a high traffic volume in the future, with provisions made for the continuation of the cycle path that exists on Bourke Road to the north of the Gardeners Road intersection. In addition, as has been acknowledged by Council’s Design Review Panel, residential units at ground floor would be provided with poor acoustic amenity, adding to the imperative to provide non-residential uses in this location.

Landscaped Area, Deep Soil Area, Site Coverage, Communal Open Space

The proposal provides for a residential flat building which occupies the entire expanse of the subject site, with parts of the building lying within the area proposed for road widening, and a portion of the basement car park within an area that is to form part of a new street. As a consequence, the proposal does not provide for any landscaped area.

The SEE indicates that, the site constraints and context of approved development at adjacent sites are such that there are no opportunities for deep soil landscaping. Specifically, the location of easements (e.g. the Airport Line rail tunnel) and the car parking requirements of the development mean that basement car parking is required to extend to the alignment of the northern, southern and western boundaries.

This is considered acceptable for this site, being in a highly accessible urban area where dense high rise development is envisioned. Rather than providing deep soil area, it is more

appropriate that that adequate communal open space, landscaping, and private open space be provided to this development. In all the proposal results in a total of 1,287m² of communal space which represents 25.9% of the current site area.

It is noted that a 3m wide deep soil zone is required at the street frontages by 9A.4.4.8 of the BBDCP 2013. This has not been provided as this area is occupied by basement parking, private open space areas, and vehicular entries. Notwithstanding the issues relating to road widening, it has been indicated elsewhere in this report that the frontage to Bourke Street would be better utilised with non-residential development. In these circumstances, a complete deep soil area might not be necessary to Bourke Street. In addition, the private open spaces would be better located to the rear of any dwellings that would front Gardeners Road. Any design that would provide rear private open space areas towards the rear could provide improved landscaping and potential deep soil area to Gardeners Road.

Setbacks

The subject site is bound by three separate roads to the north, east and south, and by a development site to the west. The required setbacks are provided within Part 9A Mascot Station Town Centre Precinct of the BBDCP 2013. The image below shows the required street setback from the block that is surrounded by Gardeners road to the north, Bourke Street to the east, the New Street to the south and Kent Road to the west.



Figure 13 Map of Required Setbacks

BBDCP 2013 states that the required setback for the majority of the street boundaries on this block (those shown in the lighter colour) is 3m for Levels 1-4, with Levels 5-13 requiring an average setback of 6m and a minimum setback of 5m-7m. This requirement applies to the entire northern frontage of the subject site, and a portion of the southern frontage.

BBDCP 2013 allows for a nil setback to be provided for Levels 1-4 of the remaining street boundaries of the subject site, being the entire eastern frontage and the majority of the southern frontage (shown in the darker colour); a setback of 3m is required for Levels 5-13.

The setbacks required for the western boundary of the subject site, which sits adjacent to the northern tower of the Avantra development that is currently under construction at 659-669 Gardeners Road, are not specifically outlined within BBDCP 2013. Part 9A.4.3.6 states that these setbacks are to be provided as per the building separation requirements outlined within the Residential Flat Design Code (RFDC), which have been listed within the table of compliance.

The development application for Avantra, DA-13(135), was approved by the Land and Environment Court on 18 September 2014. The northern tower was approved with identical setbacks on both the east and west boundaries, with a nil setback provided from ground to Level 4 and a setback of approximately 5m provided from Level 5 to Level 12.

The proposed setbacks are outlined below.

- **Northern Setback (Gardeners Road)** – Nil setback at the ground floor with a 3m setback for remaining floors above the ground floor.
- **Eastern Setback (Bourke Street)** – a 9m x 7.5m recess provided in the centre for all levels above Level 4. The proposal otherwise encroaches on the road widening,
- **Southern setback (New Street)** – Nil setback from ground floor to Level 3, with a 3m setback provided from Level 4 and above.
- **Western setback (Development Site – Avantra)** – The majority of the building envelope is setback 12m from the western boundary, however from the Ground Level to Level 3, a nil setback is provided for a portion of the boundary at both the north and south end, giving a C-shaped design for these levels. Typically, the internal areas are set back further than the adjoining balconies; however, no additional set back is provided to habitable rooms, when compared with non-habitable rooms.

The proposal seeks various non-compliances for setbacks provided to all four boundaries. It is noted that the setbacks of the Avantra development to the west constrains the opportunities for compliance with building separation requirements. In this regard, the smaller nil setbacks provided at the lower levels are considered to be an acceptable response to the context, and the separation provided at higher levels appropriate.

For reasons identified elsewhere within this report, the Bourke Street setback is not acceptable, and does not account for the proposed road widening. The remaining setbacks are generally appropriate; however, as indicated, a consistent 3m setback to the façade at Gardeners Road (requiring the setback of the ground floor to be increased) is likely to be more appropriate given the pattern of development on Gardeners Road.

Solar Amenity

Communal Open Space

In accordance with the BBDCP 2013: Part 9A.4.5.4 Solar Access and Shadow, development must demonstrate that 30% of any communal open space would receive a minimum of two hours direct sunlight between 9:00am and 3:00pm on 21 June. The SEE indicates the following:

- *Shadow diagrams are provided which indicate that the podium level open space will receive approximately 2 hours sunlight (from 10.30am to 12.30pm) in mid-winter while the open space at Level 4 will receive in excess of 3 hours sunlight in mid-winter.*
- *These calculations are based on solar access analysis which assumes the construction of the approved mixed use building at 659-665 Gardeners Road. between 9am and 3pm in mid-winter.*
- *The shadow impact of that development (in particular from the approved northern tower) is that solar access to lower levels along the common boundary and through the centre of the subject site is not achievable for long periods.*

It is agreed that the provision of solar access to the communal open space areas is difficult to achieve in this location, given the approved development at Avantra. The principal communal open space located at the western half of the first floor level is provided in a suitable location, given the constraints requiring street presentation to the remaining frontages. The building has been designed to enable good solar access to the principal communal open space area, with only three levels sitting directly to the north, and the majority of the bulk of the building sitting to the east. The shadow diagrams demonstrate that the Level 1 private open space received solar access at each 30-minute interval from 10:30am to 1:00pm on the winter solstice, with solar access maximised at 12:00pm, whereby 59% of the private open space receives direct solar access.

The western open space areas at Level 4 are provided with a compliant amount of solar access, with the north-western communal open space area provided with an uninhibited compliant level of solar access throughout the winter solstice. The eastern private open space at Level 4 receives some solar access during the morning period of the winter solstice. Given this is the smallest of the four private space areas, compliance is not considered necessary, as the objective of the control has been achieved, and the siting and location of the private open space areas, has provided a suitable response to the specific characteristics of the site.

Neighbouring Properties

The shadow diagrams submitted with the DA indicate that some overshadowing will occur to the property to the south, being No. 42 Church Avenue, which is to provide a north facing park in the centre of the site, and a communal open space within the centre of the site, as required by the BBDCP 2013. Given the proposal provides an increased setback to the taller elements of the building, than that required by the BBDCP 2013, the proposal provides an improved outcome with respect to solar access, than that envisioned by the BBDCP 2013. Subsequently, the proposal is considered acceptable in this regard.

Natural Ventilation

Part 9A.4.5.3 requires that 60% of the dwellings be naturally cross ventilated. The submitted design verification statement indicates that the proposal achieves compliance, but this relies, in part, on ventilation through common corridors, or cross ventilation that solely exists between master bedroom windows and associates en suites (noting that it is not clear if windows are openable within the en suites). Council Officers have calculated that 83 apartments receive natural cross ventilation, being 45% of the total apartments.

Given the majority of apartments are provided with generally adequate amenity through the provision of large balconies, and satisfactory solar access, and given the siting of the building is considered to be generally appropriate, this non-compliance is considered to be satisfactory.

Service Vehicles

Part 9A.3.1 requires that service bays and parking area for commercial vehicles be designed in accordance with AS2890.2 and AUSTROADS guidelines. Service bays are provided at the ground level to accommodate medium rigid vehicles (MRVs). However, turning circles have not been provided to demonstrate that MRVs are able to be accommodated in this space.

4.4 The likely impacts of the development including environmental impacts on both the natural and built environments, social and economic impacts in the locality (79C(b))

The assessment of the proposal has concluded that the proposed development will result in adverse social impacts given due to the provision of an unsatisfactory dwelling mix. The proposal will also create adverse impacts on future road widening. Furthermore, the information provided has not demonstrated that the proposal will not generate adverse impacts on the Airport rail tunnel.

4.5 The suitability of the site for the development (79C(c))

The proposed development is not suitable in the context of the site and locality, given that the proposal is partly located within an area that is within an area reserved for road widening. In addition, the site is unsuitable for the proposal, given the impact of road noise on the amenity of the ground floor apartments. Furthermore, the information provided has not demonstrated that the proposal is suitable for the site, having regard to the potential impacts on the Airport rail tunnel.

4.6 Any submission made in accordance with the act or regulations.(79C(d))

In accordance with Botany Bay Development Control Plan 2013 Part 2 – Notification and advertising, the development application, being for Nominated Nominated Integrated Development, was notified to surrounding property owners for thirty (30) days from 8 April 2015 to 8 May 2015. Two submissions were in response to the proposal, which raised the following issues:

Issue 1: Impacts of proposed building height variation, including, including solar access, privacy and view loss.

Solar access and privacy impacts have been discussed elsewhere within this report, and it is considered that the impacts of the proposal are not unreasonable having regard to the desired future character of the locality.

With respect to impacts to views, the objector provided the following image of the view that would potentially be affected by the proposed development:



Figure 14 Image provided by resident of 635 Gardeners Road

The objector has indicated that the view is towards the west from an existing 5 storey residential flat development at 635 Gardeners Road, Mascot, which was approved as a master plan in 2003. Having regard to the Planning Principles established by *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140, it is not considered reasonable to require a substantial retention of these views for the following reasons:

- The views do not contain any highly valued or iconic aspects, but instead provide a regional outlook.
- The affected elements of the views are primarily across side boundaries, being more difficult to protect.
- Although the proposal does not comply with the proposed development controls, a fully compliant proposal would likely be severe or devastating. In addition, any westward views at this location will be obliterated over time, given the height and floor space ratio limits applied to nearby sites to the west. This includes development that is currently under construction.

Issue 2: Traffic congestion, and methods of analysis used within traffic assessment. The objection requests that a comprehensive analysis of traffic conditions on affected roads be undertaken: “There should be an integrated and quantitative traffic modelling of the surrounding state and local roads which acknowledges the existing peak congestion on Church Avenue”.

A traffic report was submitted which concluded that the traffic and parking aspects of the proposed development were considered to be satisfactory. The objection appears to relate to traffic impacts in the locality generally, and not specifically to the subject proposal. However, the traffic report acknowledges the existing conditions within the locality, and the proposal does not provide excess parking beyond that required by the local controls, and does not propose land uses that generate undue traffic impacts within the area. Consequently, it is not considered that refusal on these grounds is warranted.

4.7 The public interest (79C(e))

These matters have been considered in the assessment of the development applications. It is considered that approval of the proposed development will not be in the public interest.

5. OTHER MATTERS

5.1 External Referrals

The development application was referred to relevant external authorities, including the relevant concurrence authorities being the Office of Water, Roads and Maritime Services, and Sydney Trains, and other external authorities with a potential interest in the application, including Sydney Airport Corporation Limited, Sydney Water, the NSW Police, and the City of Sydney Council. Aside from the City of Sydney Council, all authorities provided a response to Council and relevant matters are discussed elsewhere within this report.

5.2 Internal Referrals

The development application was referred to relevant internal departments within Council, including the Development Engineer, Traffic Engineer, Landscape Officer, Environmental Scientist and Environmental Health Officer. Relevant conditions were provided and would be able to be imposed as conditions of consent.

6. CONCLUSION

The Joint Regional Planning Panel, Sydney East Region (JRPP) is the consent authority for the development application, given the Capital Investment Value of the project exceeds \$20 million.

Two objections were received as a result of the public exhibition process and matters raised have been addressed in this report.

The Applicant seeks a variation to the building height and the floor space ratio development standards. The variation to the building height is supported. Variation to the FSR development standard is not supported.

Further, the proposal is unable to be approved given that the required concurrence has not been provided by relevant State infrastructure authorities the Roads and Maritime Services and Sydney Trains.

The proposal has not been design to account for the required RMS road widening to the site, the proposal results in unsatisfactory non-compliances. It is therefore recommended that the Panel grant refuse the application for the reasons in the Recommendation.

APPENDIX A – SEPP 65 DESIGN STATEMENT – ALLEN JACK + COTTIER

ARCHITECTURE
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HERITAGE
INTERIORS
GRAPHICS

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SEPP 65 DESIGN STATEMENT GARDENERS ROAD, MASCOT

BEIJING
SYDNEY

ISSUES

Issue	Date	Reason for Issue	Comment	Checked	Approved
01	13.02.15	Development Application	DA	LH, JK	JK

JK/LH

13 February 2015

*City of Botany Bay Council
141 Coward St,
Mascot NSW 2020, Australia*

Attn:

To the General Manager

RE: 653 Gardeners Road (13034)

Pursuant to Clause 50 (1A) of the Environmental Planning and Assessment Regulation 2000, I hereby declare that I am a qualified designer, which means a person registered as an architect in accordance with the Architects Act 2003 as defined by Clause 3 of the Environmental Planning and Assessment Regulation 2000.

I directed the design of the residential flat development stated above and I confirm that the design achieves the design quality principles set out in Part 2 of the State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development.

Yours faithfully
ALLEN JACK + COTTIER

A handwritten signature in black ink, appearing to read 'J. Koopman'.

Jim Koopman
Project Director
Architect 6069 (NSW)

INTRODUCTION

The proposed design for 653 Gardeners Road is for a high quality residential building with retail shops at the ground floor on the street intersections. The building is a 14-storey slim-line block form that runs north-south along Bourke Street between Gardeners Road and the DCP-proposed New Street. The building is articulated into a podium mass and a mid-rise apartment tower, with double-story penthouse apartments, yielding a total of **190** dwellings and a Gross Floor Area (GFA) of **18,189** square metres. Resident parking is provided on two basement floors and visitor parking on ground floor, yielding **268** car spaces. The visitor parking area lies behind an activated street edge, comprising retail tenancies and dwelling garden entries that front New Street, Bourke Street and Gardeners Road. **705** square metres of consolidated landscaped communal open space are provided at level 1 providing shared amenity to the residents. At level four, sunny roof terraces and loggia common areas provide additional entertaining space. Intimate garden terraces are additionally provided at levels 4 and 8, amounting to **1285** square metres of communal open space to the benefit of the residents.

DESIGN OVERVIEW

The design process can be summarised in three key actions: First, a height-conforming building was designed using the DCP character diagrams as a guide. Second, the road improvements to Bourke Street were introduced. Last, the building envelope was refined and articulated.

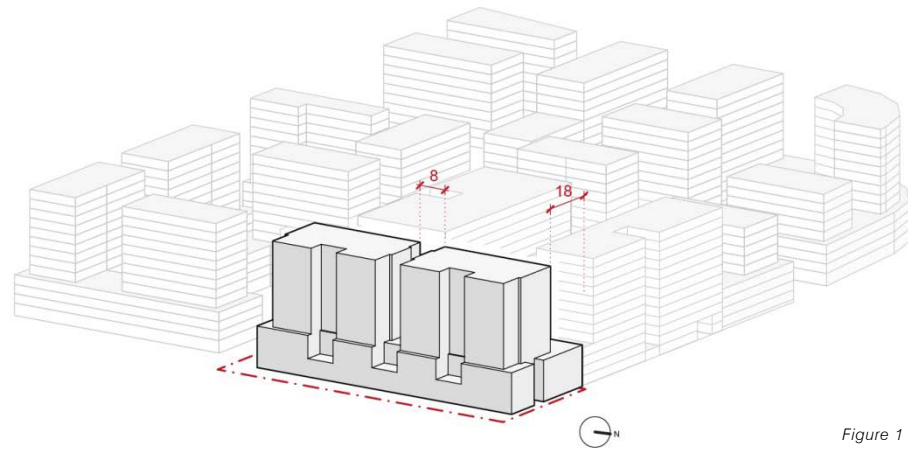


Figure 1

01. Height-conforming scheme

This preliminary design explores a height-conforming scheme without any improvements to Bourke Street. The building form is similar to that indicated in the DCP, with two linear multicore towers. The units have primarily an eastern or a western aspect. Habitable spaces and balconies facing west are designed to be a minimum of 12m from the boundary with 'Avantra', since habitable areas and balconies must face the common boundary (as recommended in the Residential Flat Design Code and draft Apartment Design Guide).

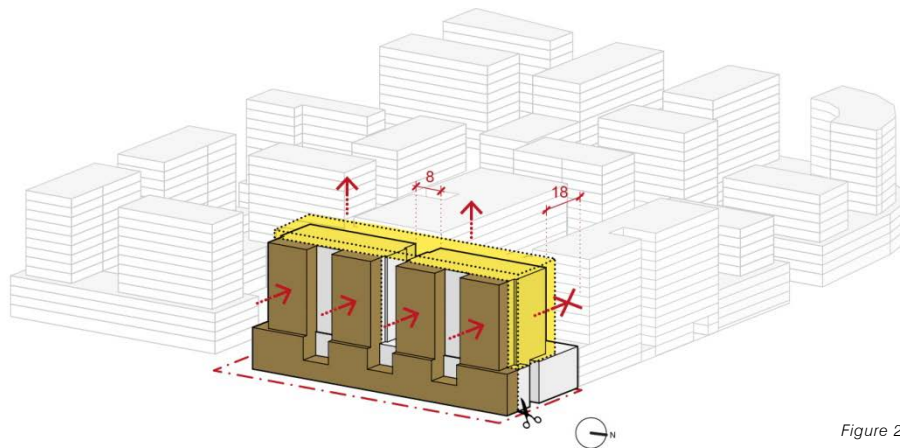


Figure 2

02. Road improvements to Bourke Street

When road improvements are introduced to Bourke Street, the tower needs to move to the west; however separations are already at a minimum for compliance on the western side. To compensate, the separation between the northern and southern towers is removed and the building envelope is increased one storey in height to 14 storeys.

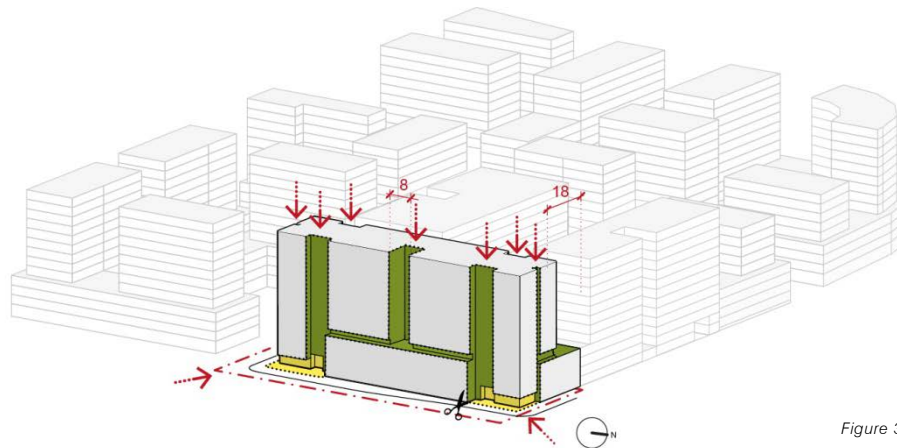


Figure 3

03. Building articulation

The building forms have an articulated podium base which is accentuated by a horizontal landscaped shadow form recess at level 4. The building forms above the podium are further articulated with open precast 'frame' elements containing balconies and vertical gardens. These frames are designed to enhance the spatial depth of the façade when viewed from ground level against the backdrop of the sky. The frames create four distinct building elements along the Bourke Street façade.

Between the frames are deep vertical recesses designed to allow for integrated vertical gardens and improve solar penetration to the units.

Building elements at the street corners are extended below the level of the podium to create a vertically proportioned architectural element. This marks a retail-activated public open space at ground. These vertical tower forms are designed to create a 'gateway' form to the Mascot Town Centre.

01. CONTEXT

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

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

The site lies within a developing area, undergoing substantial change; therefore the existing context is not fixed. As such, it is necessary to take into account the desired future character of the area.

Existing Character

- The site is located within the Mascot Station Town Centre Precinct of Botany Bay Municipal Council.
- The site is bounded by Gardeners Road to the north and Bourke Street to the east. These are arterial roads connecting St Peters to Kingsford and the airport to Surry Hills
- The existing typical land uses within the area include industrial warehouses, distribution centres, transport related uses and offices located on large sites. The area is predominantly characterised by low-rise industrial or commercial buildings, greatly at odds to their proximity to Mascot Station and location within the Mascot Town Centre.
- There is some existing redevelopment within the area including mixed use development and residential high rise.
- The site currently holds a campervan retailer and on-grade parking. There are no through-site links. The building is set back from the street edge, providing no activation of the street. The building and parking detract from the character of the street.
- The development is within 400m of Mascot Station. The walk is relatively level and less than 5 minutes from the farthest corner of the site.

Desired Future Character

- Mixed use area with ground floor retail on Bourke St and mixed commercial residential elsewhere except Gardeners Road which is to have a continuous commercial ground floor, residential or commercial above. This is to reflect the commercial character of the major road.
- Bourke Street to be a major, thriving main street: ground level retail, generous footpaths, a bike lane and facilities, bus services, street trees, street furniture and paving along Bourke Street.
- New local streets are to provide vehicular, pedestrian and cycle access. Streets to be addressed by major building facades with predominantly continuous low level street frontages.
- Building facades to align to new streets. Interface between public and private domain to be visually open at ground level, multiple building/dwelling entries and no continuous blank facades or high garden walls.
- Public domain improvements are to be made in streets adjoining development sites

- Street frontages at lower levels are to be generally continuous to provide interest for pedestrians, amenity and provide safety and security through passive surveillance
- Residential floors to be designed using environmental design strategies such as site specific apartment types, screening and the like to maintain good residential amenity
- Upper levels are to facilitate daylight access to streets and avoid street canyons with setbacks

Proposal

- The site is located on the intersection of Gardeners Road, which demarcates the northern boundary of the precinct, and Bourke Street that is to become the “thriving main street” in the Mascot Station Town Centre precinct. This location is a gateway to the precinct which requires a landmark building of high design quality.
- The Botany Bay LEP 2013 identifies this site and neighbouring properties of the precinct as B4 Mixed Use zoning up to 13 storeys in height, which contrasts with the 1-8 storey retail, commercial and industrial uses to the north. The proposal is for a built form of 14 storeys using upper level maisonette apartments to ensure the scale of the building reflects the desired future character.
- The Botany Bay DCP 2013, subsection ‘Part 9A Mascot Station Town Centre Precinct DCP 2012’ identifies a proposed ‘New Street’, aligned with the southern boundary of the site, with a land allowance of 9m. The car-park entrance to the site will be located on this road, minimizing impact on surrounding traffic flows.
- The DCP envisages improvements to Bourke Street. The improvements will have a significant impact on the feasibility and amenity of the design outcome for the site by limiting widths and separations. The traffic issues, roads and site relationships have been reviewed by traffic consultants, GTA, who have prepared a concept plan for the improvements with allowance for each of the elements envisaged by council, including footpaths, bike lanes and turning lanes. This concept plan enables reasonable building depths whilst maintaining adequate separation to adjoining development.
- This proposal provides a 3m footpath along Bourke Street with avenue planting, a landscaped verge and a dual-lane bicycle path as required by the Mascot Town Centre Master Plan. The existing street trees along the Bourke Street boundary are to be retained and augmented with additional planting and public domain improvements in the form of landscaping and integrated street furniture.
- The proposed building alignment along Gardeners Road is set back 3m from the northern boundary. Garden courtyards with low planters and clearly defined entries activate the street, enhancing the existing street character and public domain. New street tree planting identified in the Mascot Station Town Centre Precinct Master Plan is proposed.
- Retail activation is provided at both the northern and southern corners bounding Bourke Street. This responds to the desired character of Bourke Street as a main street activated by retail. Open space will be provided adjacent to each to allow for shared use and activation of the street.

02. SCALE

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

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

Proposal

- The podium height is consistent with the DCP proposed height of four storeys.
- The scale of the building is in general accordance with the scale identified in the LEP. The building height is to be a maximum RL 51m will results in a minor non-compliance with the LEP 44m height limit in the order of 1.4m.
- The height of the building is below maximum Obstacle Limitation Surfaces (OLS) height restrictions.
- DCP states that the height in storeys is to be 13. This development proposes 14 storeys which will provide upper level bedrooms in maisonette apartments. This enables lift overruns and roof plant spaces to be concealed. The increased height allows two storey architectural frame elements in a formal response to the gateway corner location of the site.
- The slight increase in building height is appropriate to its corner location, being a gateway to the new main street district along Bourke Street up to Mascot Train Station.
- Architectural features such as vertical flutes, vertical blades and off-set balcony articulation will create patterns of light and shadow to enliven the façade and reduce the perceived bulk of the building mass.
- The linear block form is articulated with the podium, maintaining a consistent four-storey presence appropriate to the pedestrian scale identified in the DCP. At the north and south corners of the site there is a more vertical articulation of pronounced balcony elements, making them more visually dominant in the context, which is appropriate for the gateway corner location of the site.

03. BUILT FORM

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

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

Desired Future Character

- Street frontages at lower levels are to be generally continuous to provide interest for pedestrians, amenity and provide safety and security through passive surveillance
- Residential floors to be designed using environmental design strategies such as site specific apartment types, screening and the like to maintain good residential amenity
- Upper levels are to facilitate daylight access to streets and avoid street canyons with setbacks

Proposal

- The proposed scheme provides for a 14-storey north-south orientated slim-line building form, with double-height maisonette apartments at the top and an articulated four-storey podium base. The linear tower form is designed to allow northern light to the communal gardens on levels 1 and 4.
- The upper level balconies are articulated from the podium base with landscaped “shadow line” form at level 4.
- Vertical blades and darker coloured recesses have been used to articulate different aspects of the block form, which will provide interest and differentiated views from the street. Along the main frontage to Gardeners Road the mid-level built form has been divided into 4 discrete vertical forms to reduce the perceived scale at the street-edge.
- The articulated four-storey podium satisfies DCP requirements for height. It maintains a continuous frontage along Gardener's Road, Bourke Street and New Street that satisfies the desired future character statement. The podium elements in Gardeners Road align in height and setback with the recently approved Avantra development. Landscaped communal roof gardens will be provided to the podium roof tops in new Street and Gardeners Road.
- A ground level setback will be provided at the north-eastern and south eastern corner in conjunction with a break in the podium form to:
 - Develop a vertical architectural feature consistent with the landmark location
 - Provide additional outdoor space for street activation
- Maisonette apartments at the upper two levels feature precast concrete frames to allow for a bold architectural expression and civic presence.
- Balcony recesses allow for vertical gardens running the full height of the facade.
- The balconies are offset to give a vertical rhythm and diversity to the facade.

04. DENSITY

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

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

Proposal

- This application proposes an increased density of **3.67:1** for this site, exceeding the Botany Bay LEP 2013 allowable FSR of **3.2:1**. This density has been proposed because it is considered to be consistent with proposed densities for other sites within the precinct that deliver public benefit.
- The proposed building makes a substantial contribution to the public domain with site planning of the building footprint being constrained in anticipation of future improvements to Bourke Street. The design allowance for the improvements results in a landscaped buffer being provided in the public domain along the Bourke Street frontage. When this is combined with the required DCP setbacks to facilitate the provision of the New Street it will result in significant improvements to the public domain and street character, and will assist in the realization of future essential street infrastructure for the public benefit.
- Provision for the future New Street required by the Mascot Town Centre Masterplan, **408** square metres (8.2% of the site area) has been allocated for road, landscape strip and pathway uses.
- **211** square metres of open space will be provided for publically accessible outdoor café use.
- The proposed density will benefit public by enabling the proposed building to better respond to the future character of a lively town centre. The increased yield will allow for a higher-quality design outcome and demonstrate investment in the precinct. In this location, a well-designed building will attract greater status and investment to the precinct. Additionally, increased height will aid in the identification of the building as a local gateway landmark.
- Higher densities are also considered to be sustainable within this area as they are supported by the site's proximity to:
 - Employment
 - Mascot Station
 - The CBD
 - The Airport
 - Public Open Space
 - The Bourke Street high street and its amenities

05. RESOURCE, ENERGY + WATER EFFICIENCY

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

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

- The development is designed to respond to the requirements of BASIX and the SEPP 65 Residential Flat Design Code.
- The area allowed for Bourke Street improvements will incorporate:
 - Storm-water management at the road slump in the form of Water Sensitive Urban Design (WSUD) rain gardens.
- Apartment layouts are optimally designed for passive response solar design principles and cross ventilation as outlined in the Residential Flat Design Code and draft Apartment Design Guide requirements. Refer to Tables 1 and 2 for further detail.
- All corner, dual aspect and double-height apartments are naturally ventilated. In order to meet SEPP 65 requirements for natural ventilation, some single-aspect apartments have been provided with a ducted breezeway, which runs above the common corridors to the eastern façade. Refer to Figure 4 for a the ventilation-paths typical floorplan.
- Outcomes of this development include:
 - 20% of the development's landscape area will utilise permeable paving, WSUD rain gardens, or deep soil planting to allow for storm-water infiltration and the development of healthy street trees;
 - 65% of apartments are cross-ventilated (refer to Table 2);
 - 72% of apartments have the required solar access in winter (refer to Table 1);
 - Collection of roof rainwater for maintenance of the gardens;
 - Provision of energy-efficient appliances
 - Integration of roof-top solar panels
 - Architectural details incorporating garden screens, operable louvre screens and awnings for privacy and solar shading.

Table 1: Solar Access in Hours

Core Bourke Living Areas

Level	BH01	BH02	BH03	BH04	BH05	BH06	BH07	BH08	BH09	BH10	BH11	BH12	BH13	BH14	BH15
GF	RETAIL	2	2	2	2	2	2	2	2	2	2	2	2	2	2
1	0.75	0.75	1	0	0	1.5									
2	0.75	0.75	0.75	2	2	2	1	0	0	1.5	1.25				
3	0.75	0.75	0.75	2	2	2	1	0	0	3					
4	2.5	1	1	1	1	1	1.75								
5	2.5	2.5	1.5	2	2	2	1.75								
6	2.5	2.5	2	2	2	2	1.75								
7	2.5	2.5	2	2	2	2	1.75								
8	2.5	2.5	2.5	2	2	2	1.75								
9	2.75	2.75	2.75	2	2	2	2.25								
10	2.75	2.75	2	2	2	2.5									
11	2.75	2.75	2	2	2	2.5									
12	6	6	6	6	6	6	6								
13															

Core Gardeners Living Areas

Level	GH01	GH02	GH03	GH04	GH05	GH06	GH07	GH08	GH09	GH10	GH11
GF	RETAIL	6	6	6	6						
1	6	6	1	1.25							
2	0	6	6	6	6	2	2	2	1	1.25	1.5
3	6	6	6	6	2	2	2	1	1.25	1.5	
4	6	6	1	1	1	1.25	1.5				
5	6	6	2	2	1.5	1.5	1.5				
6	6	6	2	2	1.5	1.5	1.5				
7	6	6	2	2	2	1.75	1.75				
8	6	6	2	2	2	2					
9	6	6	2	2	3	3					
10	6	6	2	2	3	3					
11	6	6	2	2	3	3					
12	6	6	6	6	6	6	6				
13											

TOTAL UNITS

12	13	13	13	13	12	11	7	2	2	2	1	88
TOTAL COMPLIANT 2HRS+												
9	9	8	11	11	9	7	3	1	0	0	0	66
TOTAL 3HRS+												
1	1	1	1	1	6	4	1	0	0	0	0	43
PERCENTAGE COMPLIANT 2HRS+												
75%	69%	62%	85%	85%	75%	64%	43%	50%	0%	0%	0%	75%
PERCENTAGE 3HRS+												
8%	8%	8%	8%	8%	50%	36%	14%	0%	0%	0%	0%	49%

GRAND-TOTALS

190												
137												
51												
72%												
27%												

Table 2: Naturally Ventilated Apartments

Core BOURKE															Core GARDENERS																
Level#	BH01	BH02	BH03	BH04	BH05	BH06	BH07	BH08	BH09	BH10	BH11	BH12	BH13	BH14	BH15	Level#	GH01	GH02	GH03	GH04	GH05	GH06	GH07	GH08	GH09	GH10					
GF	RETAIL	y	y	y	y	y	y	y	y	y	y	y	y	y	y	GF	RETAIL	y	y	y	y										
1n	n	n	n	n	y	y	y	n	y	y						1y	y	n	n	n											
2n	n	n	n	n	n	n	y	n	y	y	y					2y	y	y	n	y	n	n	n	n	n	n					
3n	n	n	n	n	n	n	y	n	y	y						3y	y	n	n	n	n	n	n	n	n	n					
4n	y	y	y	y	n	y	y									4y	y	n	y	y	y	n									
5n	y	y	y	y	n	y	y									5y	y	n	y	y	y	n									
6n	y	y	y	y	n	y	y									6y	y	n	y	y	y	n									
7n	y	y	y	y	n	y	y									7y	y	n	y	y	y	n									
8n	y	y	y	y	n	y	y									8y	y	n	y	y	y	n									
9n	y	y	y	y	n	y	y									9y	y	n	y	y	y	n									
10n	y	y	y	n	y	y										10y	y	n	y	y	n										
11n	y	y	y	n	y	y										11y	y	n	y	y	n										
12y	y	y	y	y	y	y	y									12y	y	y	y	y	y	y									
13																13															
TOTAL UNITS																TOTAL UNITS															
13		13		13		13		3		3		3		2		1		1		1		7		2		2		1		89	
TOTAL COMPLIANT CROSS-VENTILATED																TOTAL COMPLIANT CROSS-VENTILATED															
1		10		11		8		5		11				1		0		0		0		5		1		0		0		56	
PERCENTAGE COMPLIANT CROSS-VENTILATED																PERCENTAGE COMPLIANT CROSS-VENTILATED															
8%		77%		85%		62%		38%		85%		100%		100%		100%		100%		100%		14%		0%		0%		0%		63%	
GRAND-TOTALS																GRAND-TOTALS															
																										192					
																										125					
																										65%					

Natural Ventilation

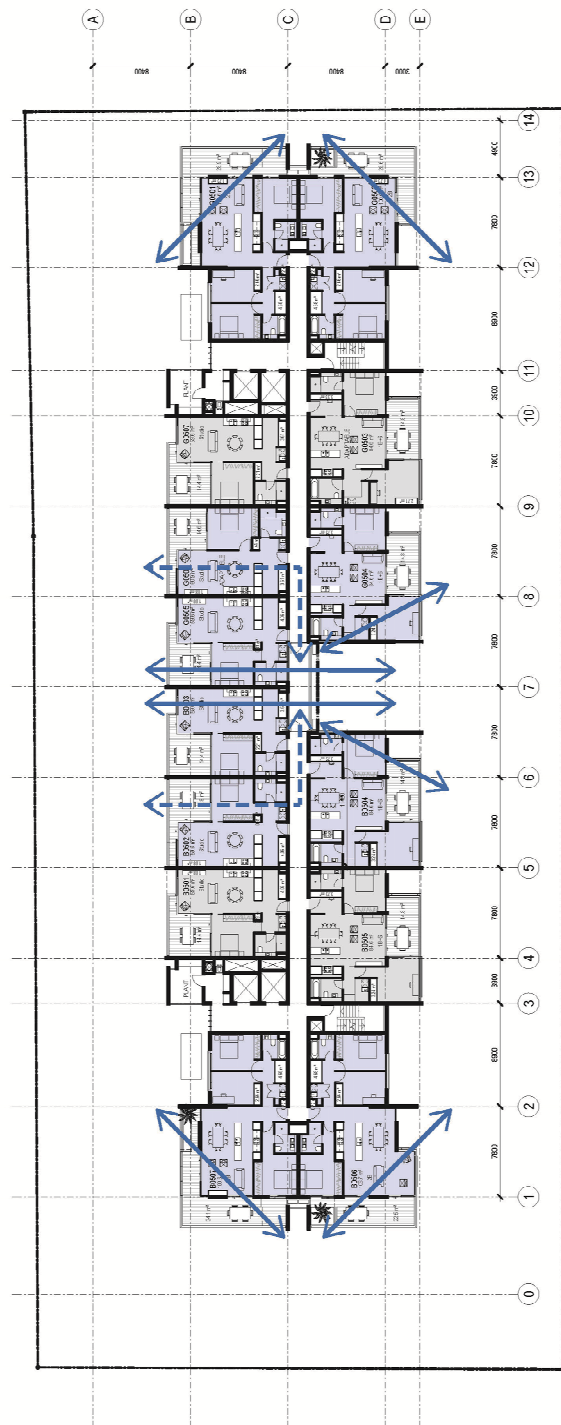
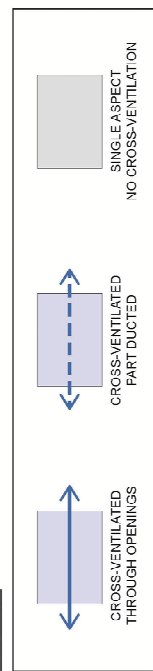


Figure 4: Corner and central apartments are cross-ventilated through windows and sliding doors. Some single aspect apartments have been provided with a ducted breezeway over the communal corridors.

LEGEND



06. LANDSCAPE

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

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

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

Existing Character

- The site currently holds a campervan retailer and on-grade parking. It is predominantly comprised of hardstand, bituminous and concrete ground cover with minimal existing natural or cultural features within the reduced site boundary. The Bourke Street verge has a row of existing eucalypts of varying maturity which softens the vista looking north from the Mascot Town Centre.

Proposal

- Street planting will be provided as outlined in the DCP and enhanced through additional planting along Gardener's Road, as well as an allowance for improvements to the public domain along Bourke Street.
- The rain garden provided at the intersection of New Street and Bourke Street will provide amenity to pedestrians and the adjacent retail provided at ground floor.
- An additional grove of trees is proposed alongside the existing trees on Bourke Street. This brings diversity and interest to the public domain, and enhances the sense of the gateway.
- All ground floor apartments have private landscaped courtyards that provide a transition zone between the public and private domain. These private landscaped courtyards also contribute to the landscape character of Bourke Street and Gardener's Road, as well as providing street address, activation and passive surveillance of the street.
- Residents have been provided with Private Open Space in excess of SEPP 65 requirements. In some instances the space has been slightly reduced from DCP requirements to accommodate vertical gardens and provide residents better access to natural light.
- Vertical gardens have been incorporated into the façade, which will provide an attractive amenity as well as appearance from the street.
- The communal open space will provide sinuous walking paths between feature trees and public facilities. There is **705** square metres of consolidated landscaped communal open space at level 1. Additional communal open spaces are provided at level 4 and level 8. Each space comprises a differentiated micro-climate, area, level of enclosure, planting and furnishing to suit a range of uses in all seasons and conditions.

07. AMENITY

Good design provides amenity through the physical, spatial and environmental quality of a development. Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.

- The development provides the following mix of units and sizes:
 - 44% studio (60m²)
 - 31% one bedroom apartments (75m²)
 - 23% two bedroom apartments (100m²)
 - 2% three bedroom apartments (130m²)
- 10% of the units are designed to the requirements of AS 4299-1995 Adaptable Housing
- Units generally comply with SEPP 65 storage requirements within the units. Some additional basement storage will be provided to accommodate items such as bicycles.
- 1285 square metres of communal open space is provided (25.9% of the site area).
- The DCP Open Space requirements have been slightly reduced in areas to provide better amenity to the units in the form of:
 - Improved solar penetration to the interiors
 - Garden beds and voids to accommodate vertical growth of trees and creepers
- There will be 110 square metres of non-residential uses (and 211 square metres of associated open space) is provided to ensure convenience and amenity for residents and neighbours.
- Communal open space will provide passive and active recreational opportunities. BBQ and picnic facilities; raised garden beds and benches for seating; grassed, paved and planted surfaces; shaded, sunny and night-time feature-lit areas will be provided.
- Balcony sizes generally exceed those required by the SEPP 65 Residential Flat Design Code to ensure quality private open space for residents. Where living room spaces are located on the building façade to achieve winter solar access the sliding doors opening to balconies have been carefully designed to open at the corners and are to be constructed without fixed mullions to maximize the flow of space between inside and outside.

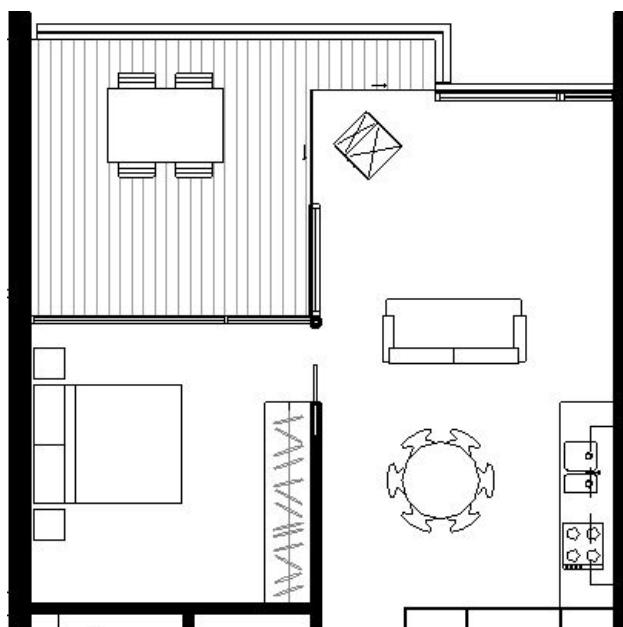


Figure5: The corner of the apartment opens completely to create a flow of space between inside and outside.

- On levels L2 and L3, interior corridors are separated by doors to horizontal fire exits and do not have access to daylight at these ends. To avoid the sense of an institutional corridor additional detailing is to be introduced at each entry door to reduce the visual length of the corridor, to create a more generous space at the thresholds to apartments, and to create visual interest in the corridor spaces, as shown in Figures 6-8.

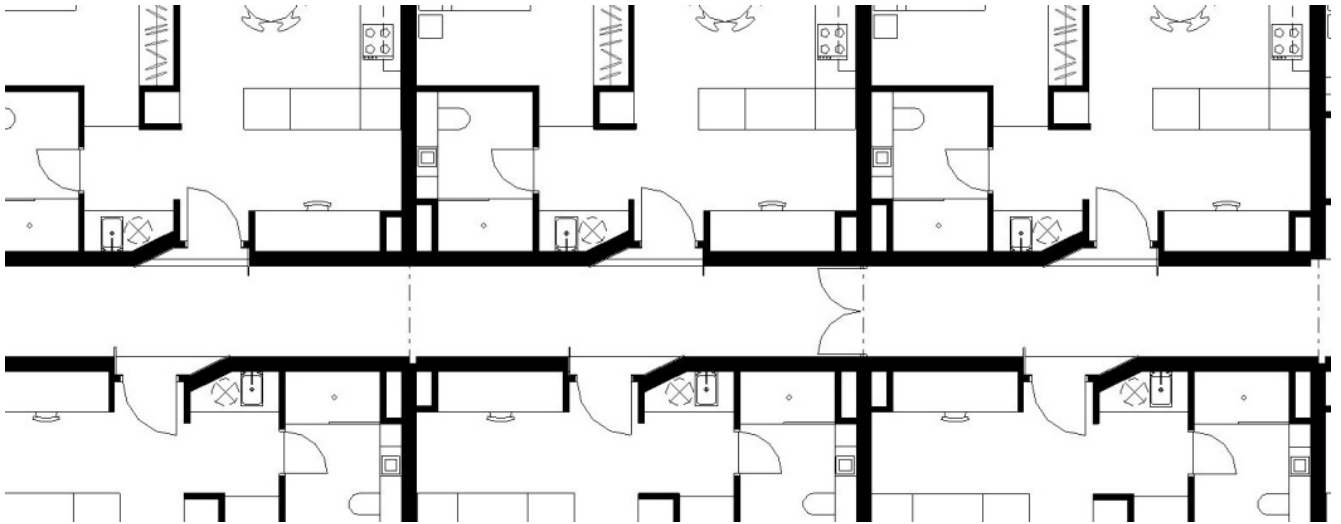


Figure 6: A centralised smoke door reduces the length of the corridor, whilst allowing for safe egress in the event of a fire.

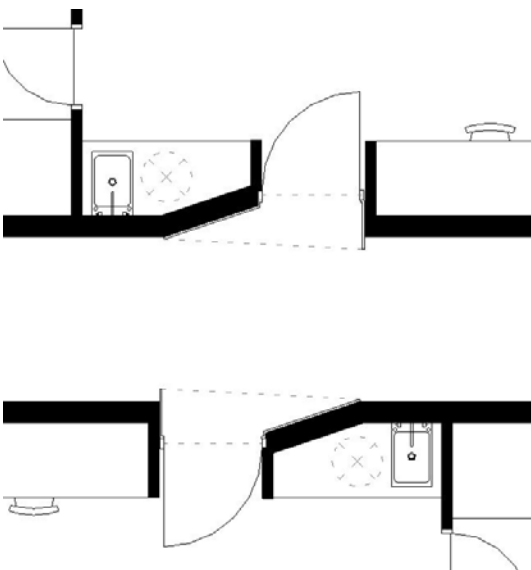


Figure 7: The front door is slightly recessed, giving a more generous threshold to each apartment.

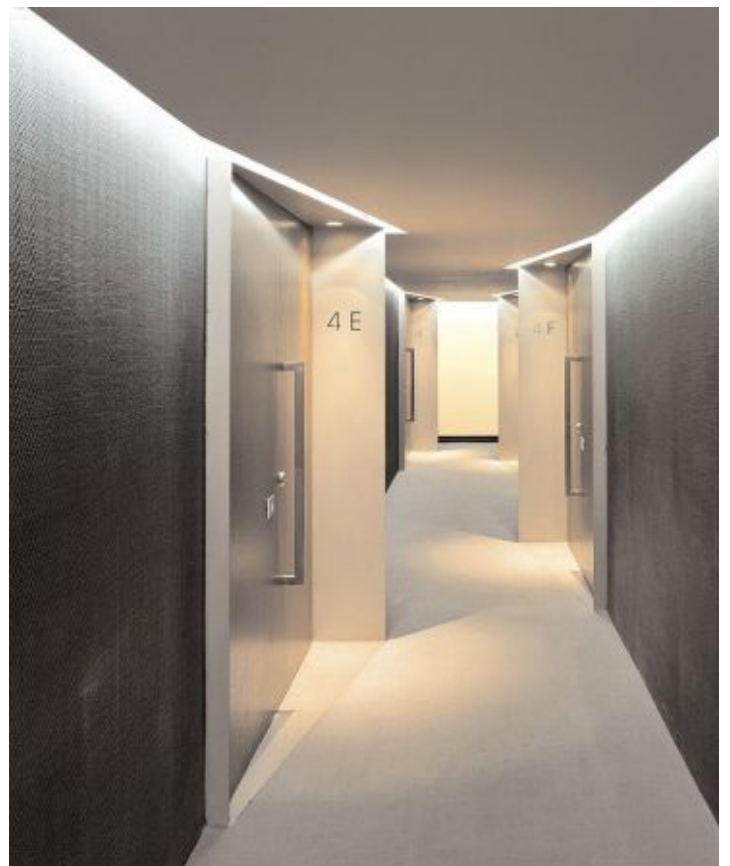
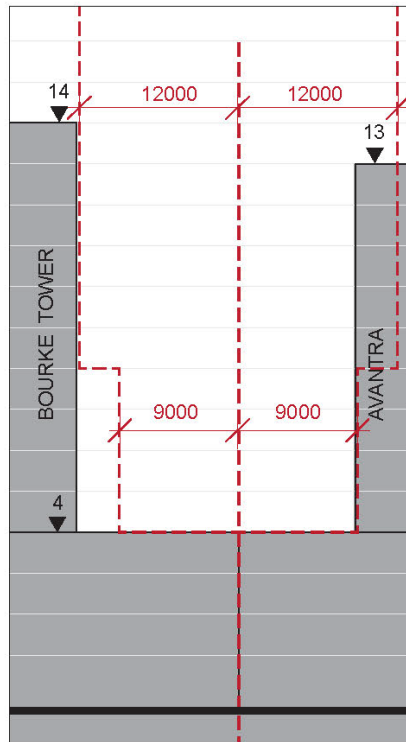
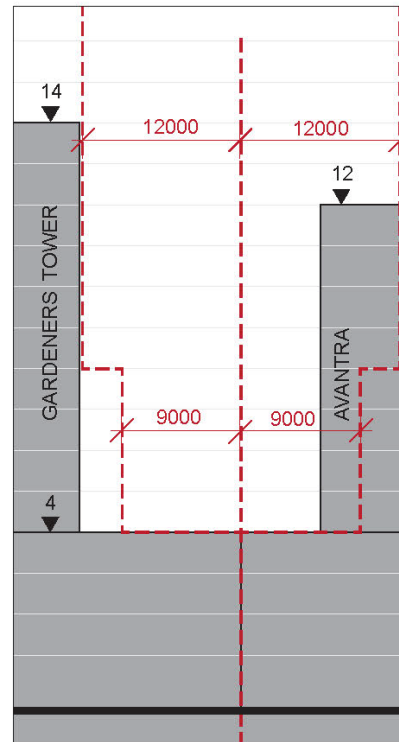


Figure 8: The 3D effect of the apartment entry detailing reduces the perceived length of the corridor and creates a more welcoming threshold.

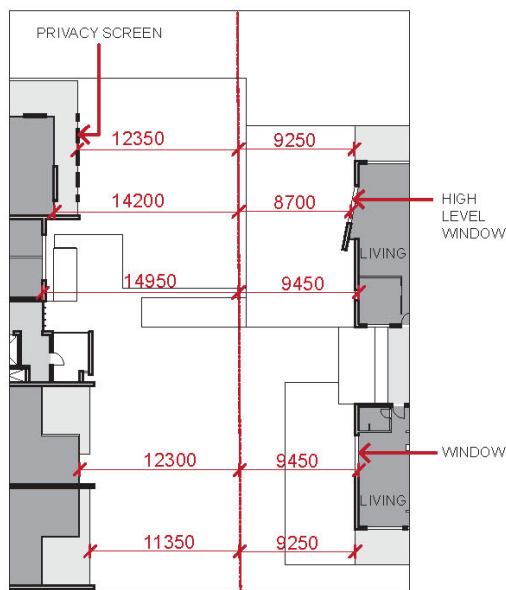
- The proposed buildings are generally setback 12m from the western boundary being 50% of the required 24m separation for habitable to habitable spaces. The 'Avantra' apartments have a recent DA approval with windows to habitable spaces facing the boundary being less than the recommended setbacks in the RFDC and draft ADG. Where this reduced separation occurs this design introduces louvered screens to balconies, ensuring adequate privacy is achieved.



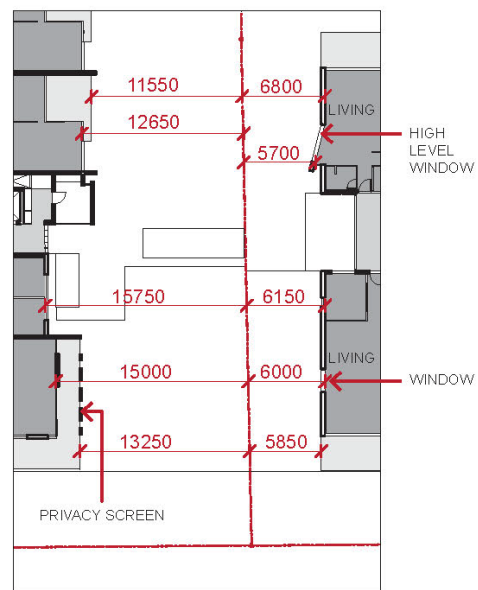
BOURKE TOWER
SECTION



GARDENERS TOWER
SECTION



BOURKE TOWER
PLAN



GARDENERS TOWER
PLAN

Figure 9: Sections and plans showing relationship between proposed 653 Gardeners Rd and council-approved plan for 659-669 Gardeners Rd.

08. SAFETY + SECURITY

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

- The address to the street has been carefully designed to ensure safe access to and egress from the building.
- The thresholds between public, communal and private areas will be clearly defined to ensure a sense of ownership and legibility between the public and private domains. In keeping with the desired future character of the area (to provide a visually open interface between public and private) a strong, legible, visual connection will be retained between the two domains.
- Retail frontages will provide lighting to the area at night, passive surveillance of the street and opportunity for night-time activation. These premises will have direct access from the street.
- The building will have clearly demarcated entry lobbies to Bourke Street, which will also enhance the activation of the street and provide passive lighting.
- Ground floor apartments have direct access to the streets and windows and private open space overlooking the street.
- Apartment buildings overlook the landscaped communal courtyards providing passive surveillance of the open space areas and to improve safety, the development is designed to avoid blind corners and hidden spaces.
- Access to each building and individual apartments will be coordinated with a security key system.
- Secure parking for residents is located within the podium with clear and direct lift access to the apartments. The ground-floor frontage of the parking area has been reduced to a compliant minimum in order to maximize opportunity for street activation and surveillance.

09. SOCIAL DIMENSIONS + HOUSING AFFORDABILITY

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

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

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

- The proposed development provides housing choice. The communal open spaces, retail uses at ground level, and ancillary open spaces will encourage social interaction amongst residents.
- The ground floor address of the building has been carefully crafted to enhance Bourke Street as the precincts' high street.
- The proposed development will create opportunities for families in the surrounding neighbourhood to move within the area when the family needs change.
- The provision of a nominal 75% studio and one bedroom apartments in the development responds to the demographic needs of single person and couple households, which together comprise the majority of the market. This is also the more affordable entry point into the market. Additionally, the apartments will be generously sized in comparison to average unit size of new developments within central Sydney, so growing families will find suitable long-term accommodation here.
- 10% of units are designed to be adaptable to the needs of people with disabilities and to facilitate inter-generational changes and changing lifestyles.
- Variety in height above ground, aspect and outlook within apartment types will result in some price differentiation.
- Communal loggia spaces are provided on level 4 in each tower with direct access to sunny roof gardens and BBQ areas to support the communal life of the building.

10. AESTHETICS

Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.

- The intent of the aesthetics are:
 - to de-formalise the usual rigid and repetitive facades in multi-unit residential development through articulation of feature horizontal and vertical components and elements
 - to use colour that appropriately reflects the stately nature of the building, with the use of contrast and highlighting of feature architectural elements
 - to use a variety of materials and textures to breakdown the mass of the building yet maintain a limited palette for cohesion over the whole.
 - to use vertical gardens and screen elements providing interest, operability and softness to the façades.
 - to provide a setback at Ground level at the Gardeners Road and Bourke Street intersection helping expose the landmark vertical expression of the balcony elements above.

This design response ensures an appropriate provision for the desired future character of the area as a Town Centre and Bourke Street as a thriving main street. The differentiated rhythm of the facades provides a strong street address at ground level whilst maintaining visual interest for pedestrians.

APPENDIX B – BBDCP 2013 COMPLIANCE TABLE

Part	Control	Proposed	Complies
3A.2 Car Parking	<p>Residential Flat Buildings: 1 space/ studio or one bedroom units 2 spaces/ two or 3 bedroom units; 1 designated visitor space per 7 dwellings</p> <p>This requires 244 resident parking spaces and 27 visitor parking spaces.</p> <p>Retail: Commercial and retail development: consistent with the recommendations of the Mascot TMAP (Transport Management and Accessibility Plan) 1 space/80sqm GFA = 2 spaces</p>	<p>A total of 268 parking spaces are proposed as follows:</p> <ul style="list-style-type: none"> • 238 residential; • 28 visitors; • 2 commercial. <p>This includes 34 tandem parking spaces.</p>	<p>No, shortfall of 6 residential parking spaces, with a large proportion of these parking spaces provided within the area reserved for the widening of Bourke Street. However, minor non-compliance considered acceptable, given the proximity to the railway station.</p>
3A.3.1 – Car Park Design	<p>C1 – All off -street parking facilities shall be designed in accordance with current Australian Standards AS2890.1 and AS2890.6 (for people with disabilities). The design of off - street commercial vehicles facilities (including parking) shall be in accordance with AS2890.2.</p>	<p>All car parking areas have been designed to comply with AS2890.1 and AS2890.6. A condition could be imposed on any consent granted to ensure compliance is met.</p>	<p>Yes</p>
3A.3.4 – On Site Loading and Unloading	<p>C1 - Service bays and parking area for commercial vehicles shall be designed in accordance with AS2890.2 and AUSTROADS guidelines.</p>	<p>The proposal incorporates a loading/unloading bay at Ground Level and two spaces for service vehicles at both Basement Level 1 and Basement Level 2. However, information has not been provided to demonstrate that vehicles are capable of manoeuvring in and out of these spaces.</p>	<p>Considered acceptable</p>
3C.2 – Access and Mobility	<p>C1 - All development including community events must comply with Table 1, which requires 20% of dwellings to be adaptable for developments containing 10 or more dwellings, and 10% of accessible spaces allocated to adaptable dwellings.</p> <p>C2 - All development must comply with the provisions of the Disability Discrimination Act 1992, BCA, the Premises Standards and the relevant Australian Standards.</p> <p>C3 - All residential development must</p>	<p>The proposed development accommodates two adaptable units on each level from G-7 and one adaptable unit on each level from Levels 8-11, for a total of 20 adaptable apartments.</p> <p>Proposal provides 21 accessible parking spaces, with 19 allocated to residents and 2 to visitors. A condition of consent may be imposed to enable allocation of parking in accordance with the DCP.</p> <p>A Statement of Compliance Access For People With A</p>	<p>No, however could be addressed via condition of consent.</p> <p>Yes</p> <p>Yes</p>

	comply with AS4299 - 1995 Adaptable Housing for those developments required to provide adaptable housing.	Disability accompanies this application, which confirms that the development complies with the adaptable housing requirements.	
3G.2 – Stormwater Management	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.	Satisfactory stormwater plans submitted to Council.	Yes
3I.2 –Safer By Design	<p>C1 - Developments are to provide connections to existing activity centres, neighbourhoods and street networks. Isolated residential developments or gated communities are discouraged.</p> <p>C2 - Developments shall facilitate a diverse range of activities that attract people, encourage interaction and provide a community focus.</p> <p>C4 - Mixed use and higher density developments are to be located in close proximity to activity centres or public transport networks</p> <p>C5 - For new development located along major arterial and main roads, active street frontages and uses are to be located on the ground floor to attract pedestrian traffic.</p> <p>C6 - Pathways shall be direct with all barriers along pathways being permeable including landscaping and fencing.</p> <p>C7 - Provide pedestrians and cyclists with a choice of formal pathways and routes.</p> <p>C8 - No entrapment spots should be included in any path.</p> <p>C9 - All paths shall be well lit.</p>	<p>The ground floor commercial tenancies will assist in providing a connection with the street.</p> <p>The development is mixed use in nature, providing both residential and commercial uses.</p> <p>Public transport networks are located on Gardeners Road, O’Riordan Street and Kent Street.</p> <p>Minimal active street frontages proposed.</p> <p>A detailed landscape plan has been submitted, which indicates that the pathway into the building and along the street frontage is direct.</p> <p>As above.</p> <p>No entrapment spaces are proposed.</p> <p>Condition able to be imposed for lighting to comply with Australian Standards.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>No, refer to Note</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
3J.2 Aircraft Noise Exposure Forecast	C2 Where building site is classified as "conditional", development may take place, subject to Council consent and compliance with AS2021-2000.	The subject site is located within the 20 ANEF contour. An acoustic report has been submitted with the development application which indicates that the design of the building alterations have been designed to comply with the requirements of AS2021-2000.	Yes

3L.1 Landscaping General Requirements	-	<p>C1 - Landscaping must comply with Council's Technical Guidelines for Landscaping on Development Sites.</p> <p>C2 - Existing trees including street trees must be preserved.</p> <p>C3 - Landscaping shall be designed to reduce the bulk, scale and size of buildings, to shade and soften hard paved areas, to create a comfortably scaled environment for pedestrians in the public domain, or from within the site, and to screen utility and vehicle circulation or parking areas.</p> <p>C4 - Landscape screening or buffers are to be included and designed so as to enhance privacy between properties and softening of walls and facades.</p> <p>C5 - Street tree planting is a Council requirement with most large developments. The species and size will be to Council specification. Landscaping in the public domain shall reinforce existing streetscape planting themes and patterns.</p> <p>C7 - Fire booster valve assemblies, electrical kiosks/substations and waste collection/storage areas must not be located in landscaped areas not in the street setback/s of a development. All such utility and ancillary areas shall be screened with either a built structure or landscaping.</p> <p>Deep Soil Zones C15 - Where possible, deep soil zones are to be contiguous with deep soil zones on neighbouring sites so as to enhance tree canopy continuation and wildlife corridors.</p> <p>Planter Beds C16 - All planter beds to be a min 1 metre wide except where otherwise stipulated in boundary setbacks for individual development types</p>	<p>Would be able to be addressed via conditions of consent.</p> <p>Screening to utilities has been provided as required.</p>	Yes, subject to conditions.
9A Mascot Station Town Centre Precinct				
9A.4.2 General Control Plans		Height, layout and future layout and built form controls provided within Figures 11-15	Proposal provides a single tower built form, rather than the two towers required within Part 9A.4.2.	No, refer to Note.

9A.4.3.3 Site Amalgamation and Subdivision	C1 The redevelopment of lots within Urban Blocks 1, 3 and 4 must conform to the amalgamation pattern in Figures 21, 22, 24 and 25 .	Figure 21 indicates that no amalgamation is required for at the subject site.	N/A
9A.4.3.4 Street Setbacks	<p>C1 All development within Urban Block 1 must comply with the street setbacks identified in Figures 30 and 31.</p> <p><u>Northern Setback (Gardeners Road)</u> Levels 1-4 - 3m Levels 5-13. Average setback of 6m and a minimum setback of 5m-7m.</p> <p><u>Eastern Setback (Bourke Street)</u> Levels 1-4 - Nil setback Levels 5-13. 3m</p> <p><u>Southern setback (New Street)</u> Levels 1-4 - Nil setback Levels 5-13. 3m</p>	<p><u>Northern Setback (Gardeners Road)</u> Nil setback at the ground floor with a 3m setback for remaining floors above the ground floor.</p> <p><u>Eastern Setback (Bourke Street)</u> Nil setback for the entire façade, with a 9m x 7.5m recess provided in the centre for all levels above Level 4.</p> <p><u>Southern setback (New Street) –</u> Nil setback from ground floor to Level 3, with a 3m setback provided from Level 4 and above.</p>	No, refer to Note
9A.4.3.5 Side and Rear Setbacks	<p>C1 All development within Urban Blocks 1, 3 and 4 must comply with the side and rear setbacks identified in Figures 11, 12, 14 and 15.</p> <p>C2 Side and rear setbacks must be landscaped to create visual separation between residential and commercial uses.</p> <p>C3 The side and rear setbacks must be deep soil (landscaped area) and must not have any underground intrusions such as underground car parking or on site detention.</p>	Deep soil landscaping not provided.	No Refer to Note.
9A.4.3.6 – Building Separation	<p>C1 Mixed Use developments containing residential units must comply with the principles and provisions of State Environmental Planning Policy No. 65 (SEPP65) and the RFDC.</p> <p><u>Western setback (Development Site – Avantra)</u> As per SEPP 65 One to four storeys/<12m:</p> <ul style="list-style-type: none"> • 12 metres between habitable rooms • 9 metres between habitable/balconies and non-habitable rooms • 6 metres between non-habitable 	<p><u>Western setback (Development Site – Avantra)</u> The majority of the building envelope is setback 12m from the western boundary, however from the Ground Level to Level 3, a nil setback is provided for a portion of the boundary at both the north and south end, giving a C-shaped design for these levels. Typically, the internal areas are set back further than the adjoining balconies; however, no additional set back is provided to habitable rooms, when compared with non-</p>	No, refer to Note

	rooms Five to eight storeys/up to 25m height: <ul style="list-style-type: none"> • 18 metres between habitable rooms • 13 metres between habitable/balconies and non-habitable rooms • 9 metres between non-habitable rooms Nine storeys +/>>25m height: <ul style="list-style-type: none"> • 24m between habitable rooms/balconies • 18m between habitable/balconies and non-habitable rooms • 12m between non-habitable rooms 	habitable rooms.	
9A.4.3.7 – Building Envelopes	C1 Residential Flat Buildings and Mixed Use Developments containing residential units must comply with the principles and provisions of State Environmental Planning Policy No 65 (SEPP 65) and the Residential Flat Design Code in relation to building depths. Note: Figures 43, 44, 45, 46, 47 and 48 are indicative of only a development outcome.	Proposal provides a single tower built form, rather than the two towers required within Part 9A.4.2.	No, refer to Note.
9A.4.4.3 – Public Domain Interface at Ground Level	C1 Development must be designed so that it has a clearly definable entry and addresses the street. C2 The primary area of outdoor private open space must not be located on the street frontage. C3 Ground floor residential with a street frontage must incorporate landscaping, ideally as part of the common area/setback, with such landscaping to provide for privacy as well as for a consistent, attractive and well maintained landscape frontage. The private terraces should also contain some landscaping. C4 The landscaped street setback area shall be on one level or at a slightly battered grade, not terraced or stepped or containing narrow planter boxes, to allow adequate lateral root space and soil volume for medium to large canopy trees. C5 Side or rear boundary fencing is not permitted fronting the public domain except where appropriate landscaping is located in front of the fence.	Area of ground floor primary outdoor space is located within the street frontage.	No, refer to Note
9A.4.4.4 Active Street Frontages and Awnings	C1 All development within Urban Blocks 1, 3 and 4 must provide retail or commercial street frontages where shown in Figures 49, 50, 51 and 52 . The subject site is required to have an	The proposed development incorporates two (2) commercial tenancies at ground level directly fronting Gardeners Road.	No, refer to Note

	active street frontage under BBDCP 2013.		
	C2 All development within Urban Blocks 1, 3 and 4 must provide awnings where shown in Figures 53, 54, 55 and 56.	Figure 53 indicates that the Bourke Street frontage should include an awning. The proposed building includes overhang above the retail tenancies, the residential lobbies and also over part of the front residential courtyards at ground level.	Yes; however, subject to area within road widening.
9A.4.4.6 Building Articulation	C2 Blank external walls of greater than 100m ² must be avoided.	There are no extensive areas of blank walls proposed that would be visible from the public domain. Podium walls on the western elevation have been designed to meet the podium walls of the approved development at 659-665 Gardeners Road and therefore will not be visible.	Yes
9A.4.4.7 Dwelling Size and Mix	C1 Dwellings are to have the following minimum areas: Studio: 60m ² 1 bedroom: 75m ² 2 bedrooms: 100m ² 3 bedrooms: 130m ²	All apartments comply with the minimum size requirements.	Yes
	C2 The combined total number of studio units and one-bedroom apartments/dwellings must not exceed 25% of the total number of apartments/dwellings within any single site area.	Proposed dwelling mix is as follows: Studio: 78 1 bedroom: 46 2 bedrooms: 56 3 bedrooms: 4 Therefore a total of 124 apartments or 67% of the total apartments are studio or one bedroom.	No, refer to Note
9A.4.4.8 Landscaped Area	C1 Landscape areas and Deep Soil Planting must be in accordance with SEPP 65. C5 Landscape areas must be effectively distributed on the site to minimise the dominance of buildings, structures and paved areas. Trees are to be selected so that the overall dimensions of the tree are in scale with the building and are site responsive and suitable for their purpose. C8 Provide a sufficient depth of soil above paving slabs, in accordance with SEPP 65 Residential Flat Design Code and the Landscape Technical Guidelines for Development Sites , to enable growth and long term health of the selected species. Soil depths and planter box dimensions must be able to	The proposal seeks to provide basement parking which covers the entire expanse of the subject site, as well as part of the proposed road widening of Bourke Street. Matters relating to landscaping would be able to be addressed through conditions of consent.	No, refer to Note

	<p>accommodate the healthy growth of medium sized (8-12 metres) canopy trees. Ensure that planter boxes are designed to optimize the long term health of plants, with suitable drainage and irrigation systems.</p> <p>C11 Developers are required to execute all nominated proposed public domain works identified on Figures 57, 58, 59 and 60, including landscaping works.</p>		
9A.4.4.9 Private Open Space and Communal Open Space	<p>C2 The minimum private open space requirement per dwelling for multi dwellings and residential flats are as follows:</p> <p>Studio/1 bedroom= 12m²; 1 Bedrooms: 15m² 2 Bedrooms: 19m² 3 Bedrooms: 24m²</p> <p>C4 The primary area of outdoor private open space must not be located at grade on the street frontage.</p> <p>C5 The minimum communal open space requirement for multi dwellings is 15% of the site area (only applies to sites with 15 or more dwellings) and residential flats is 20% of the site area</p> <p>C7 More than 70% of the communal open space area should be capable of growing plants, grasses and trees.</p> <p>C8 Communal Open Space must be deep soil consistent with SEPP 65.</p>	<p>The majority of private open space areas comply with this requirement. However some private open space areas provided within area reserved for road widening.</p> <p>Private open space provided at grade to Bourke Street.</p> <p>The communal space is comprised of 88.8m² of partially enclosed space in the form of a Residents Club Loggia at Level 4 and 1,198.20m² of open space at Level 1 and Level 4. This equates to approximately 26% of the subject site.</p> <p>More than 70% of the communal open space area is capable of growing plants, grasses and trees.</p> <p>No deep soil provided.</p>	<p>No, refer to Note</p> <p>No, refer to Note</p> <p>Yes</p> <p>No, refer to Note</p> <p>No, refer to Note</p>
9A.4.5.1 Acoustic Privacy	<p>Acoustic report required.</p> <p>C3 New development adjacent to high noise sources (e.g. busy roads) are to generally locate habitable rooms and design private open spaces away from noise sources. Alternatively, if such spaces/rooms front a major noise source they must be protected by appropriate noise shielding devices to minimize noise intrusion.</p>	<p>Internal areas satisfactory with respect to road and aircraft noise.</p> <p>Private open space areas of ground floor studio apartments are located facing towards the street.</p>	<p>Yes</p> <p>No refer to Note</p>
9A.4.5.2 Visual Privacy	<p>C1 Comply with requirements of SEPP 65 and the RDFC.</p>	<p>Architectural details incorporating garden screens, operable louvre screens and awnings have been provided for privacy. Balconies lie behind building line and windows have been located and screened to minimise overlooking.</p>	<p>Yes</p>

		Privacy screens provided throughout.	
9A.4.5.3 Natural Ventilation	C1 Comply with requirements of SEPP 65 and the RDFC: <ul style="list-style-type: none"> Sixty per cent (60%) of residential units should be naturally cross ventilated. Twenty five per cent (25%) of kitchens within a development should have access to natural ventilation. 	<ul style="list-style-type: none"> 83 (45%) of the apartments achieve compliance with the requirement. All kitchens have access to natural ventilation. 	No, refer to Note
9A.4.5.4 Solar Access and Shadow	C1 Comply with requirements of SEPP 65 and the RDFC: <ul style="list-style-type: none"> 70 percent of apartments in a development should receive a minimum of three hours direct sunlight between 9 am and 3 pm in mid-winter. In dense urban areas a minimum of two hours may be acceptable. Limit the number of single-aspect apartments with a southerly aspect (SW-SE) to a maximum of 10 percent of the total units proposed. Developments which seek to vary from the minimum standards must demonstrate how site constraints and orientation prohibit the achievement of these standards and how energy efficiency is addressed 	<ul style="list-style-type: none"> 131 (71%) of the apartments achieve compliance with the requirement. There are a total of 6 apartments (3%) with a single aspect to the south. 	Yes
	C3 Development must demonstrate: <ol style="list-style-type: none"> Neighbouring developments will obtain at least three hours of direct sunlight to 50% of the primary private open space and 50% of windows to habitable rooms; and 30% of any common open space will obtain at least two hours of direct sunlight between 9am and 3pm on 21 June. 	Information provided which demonstrates the impact of the proposal on solar access.	No, refer to Note
9A.4.5.6 Views	C1 Development is to preserve views of significant topographical features such as the urban skyline, landmark buildings and areas of high visibility. C2 Building design, location and landscaping is to encourage view sharing between properties. C3 Existing significant view corridors as viewed to and from public places must be protected.	The proposal is unlikely to inhibit prominent views of vistas to or from the site from the public and private domains. One submission has been received in relation to view loss.	Yes, refer to further discussion in relation to submissions.
9A.4.5.7 Wind Mitigation	C1 All new buildings are to meet the following maximum wind criteria: <ol style="list-style-type: none"> 10 metres/second along commercial/retail streets; 13 metres/second along main pedestrian streets, parks and 	A Wind Impact Assessment has been submitted with the application prepared by Windtech dated 22 December 2014. The recommendations to the building, which are included	Yes, subject to conditions requiring compliance with Wind Impact Assessment.

	<p>public places; and</p> <p>(iii) 16 metres/second in all other streets</p>	<p>on the architectural plans for wind mitigation include:</p> <ul style="list-style-type: none"> - Full height screens on specific edges of each corner balcony, with louvered screens required for balconies with a western aspect above Level 3; - Tree planting along each street frontage, with evergreen species required for the Gardeners Road and New Street frontages. - Full-height screen to the north of the southern ground floor outdoor seating area. - Evergreen hedging or similar to a height of 2m around the two western open space areas on Level 4 - Impermeable balustrades for all balconies. 	
9A.4.5.8 Reflectivity	<p>C1 The placement, orientation and configuration of new buildings and facades must not result in glare that produces discomfort or endangers safety of pedestrians or motorists.</p> <p>C2 The placement, orientation and configuration of new buildings and facades must not result in glare that produces discomfort</p> <p>C3 Visible light reflectivity from building materials use on new building facades must not exceed 20%.</p>	The arrangement of the proposed building and its materials are such that the proposal is unlikely to result in adverse glare impacts upon adjacent private properties or the public domain.	Yes
9A.4.6.3 Fencing	<p>C1</p> <p>(i) Solid metal panel fences (colourbond/sheet metal) of any height are not permitted along street frontages;</p> <p>(ii) Masonry/brick fences over 600mm and timber/steel picket/palisade or plain picket fences over 1 metre high may be permitted. The design of fencing over 1 metre in height must take into consideration sightline issues when exiting this or adjacent properties. The design of the fence can be modified by setback or by using splays at least 1 metre x 1 metre in size;</p> <p>(iii) A mixture of materials is preferable with a maximum of 60% solid material over the whole fence surface;</p> <p>(iv) Design should consider the need for horizontal rhythms along the street such as vertical entry elements,</p>	Proposal provides fencing to ground floor units. Fencing is generally satisfactory; however, issues are noted in relation to a lack of active frontages.	Yes

	<p>boundary markers or fence post frequency;</p> <p>(v) Where possible, the design should avoid the use of continuous lengths of fencing (a maximum of 6 metres without articulation) at the street frontage;</p> <p>(vi) Access gates shall be hung so that the direction of swing is inward; and</p> <p>(vii) Satisfactory provision shall be made for access to public utility installations..</p>		
9A.5 Public Domain Works	Street trees required on Gardeners Road and for a small portion of New Street	Would be able to be addressed via conditions of consent.	Yes, subject to conditions.
9A.5.2 Streets	New Street required over southern portion of site.	The proposal makes allowance for the excision of land from the site along the southern edge for the purpose of creating a New Street in the future in accordance with Figure 57 of Part 9A of the DCP. Conditions would be able to imposed to address relevant matters, including the creation of a stratum lot for the provision of basement parking beneath the New Street.	Yes, subject to conditions.