

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

JRPP No	2015SYE064
DA Number	13/200/09
Local Government Area	City of Botany Bay
Proposed Development	Section 96(2) application to modify Development Consent No. 13/200 that (as already modified) comprises a residential/serviced apartment/mixed use development with 811 residential apartments and 386 serviced apartments, to now change multi-purpose rooms to bedrooms (change in unit mix); change the car parking allocation to reflect the proposed change in unit mix and to provide serviced apartment parking at a rate of 1 space per 2.5 apartments.
Street Address	19-33 Kent Road, Mascot
Applicant/Owner	Karimbla Construction Services (NSW) Pty Ltd
Number of Submissions	Nil
Regional Development Criteria (Schedule 4A of the Act)	Section 96(2) Application to modify a consent for an application previously determined by the JRPP
List of All Relevant s79C(1)(a) Matters	• List all of the relevant environmental planning instruments: s79C(1)(a)(i) - o State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development; - o Botany Bay Local Environmental Plan 2013; • List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s79C(1)(a)(ii) - o Draft State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (Amendment No. 3); • List any relevant development control plan: s79C(1)(a)(iii); - o Botany Bay Development Control Plan 2013; • List any relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F: s79C(1)(a)(iv); - o Nil • List any coastal zone management plan: s79C(1)(a)(v) - o Nil

	- List any relevant regulations: s79C(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288; - o Nil
List all documents submitted with this report for the panel's consideration	1. Planning Assessment Report.
Recommendation	Refusal
Report by	Christopher Mackey – Senior Development Assessment Planner
Date of report	20 May 2015

EXECUTIVE SUMMARY

Development Application No. 13/200 was approved by Joint Regional Planning Panel - Sydney Region East on the 20 March 2014 for a mixed use development comprising of 899 residential apartments; 262 serviced apartments; three levels of basement car parking for 1,666 vehicles; 5,666sqm retail floor space including retail tenancies, a supermarket and a childcare centre. The site is located on the eastern side of Kent Road with a secondary frontage to its northern boundary to Church Avenue, Mascot.

Council received a Section 96(2) application on the 20 January 2015. This Section 96(2) application (DA13/200/09) seeks to modify Development Consent No. 13/200 that (as already modified) comprises a residential/serviced apartment/mixed use development with 811 residential apartments and 386 serviced apartments, to now change multi-purpose rooms to bedrooms (change 231 x studio apartments to 288 x 1 bedroom apartments, 277 x 1 bedroom apartments to 284 x 2 bedroom apartments and 324 x 2 bedroom apartments to 240 x 3 bedroom apartments); change the car parking numbers and allocation to reflect the proposed change in unit mix and to provide serviced apartment parking at a rate of 1 space per 2.5 apartments. The replacement of the multi-purpose rooms to an additional bedroom, changes the unit typology and therefore the unit sizes become non compliant with Part 3 of SEPP 65, the recommended internal and external areas in the Table on Page 69 of the Residential Flat Design Code (the Code).

The Section 96(2) Application was placed on public exhibition from 1 May 2015 until 15 May 2015 in accordance with Part 2 of BBDCP 2013 and was also notified to those persons who originally made a submission to the original application. No submissions were received.

The Section 96(2) Application has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979). The proposed unit sizes will now not comply with Council's minimum unit sizes, and only 55% of the units meet the recommended internal and external sizes as required in the Table on page 69 of the Code. The applicant has justified the change in bedroom numbers stating that as yield will increase additional apartments will be available to contribute to housing affordability. This is disputed. If approved, there is no indication that these apartments will be cheaper for purchasers (as this is a global economic issue) and the apartments cannot be defined as "affordable housing" under the EP&A Act. The changes will contribute to the oversupply of existing reduced sized units in the local government area. The application does not meet the objects of the Act, in that it does not provide affordable housing, nor does it encourage the proper management, development of urban areas for the purpose of promoting the social and economic welfare of the community and a better environment.

The approved development has received the benefit of both additional FSR and height above the controls in BBLEP 2013. Compliant car parking and unit sizes were reasons put forward by the applicant in their Clause 4.6 variation at the time for that additional FSR and height. The development as now proposed to be modified is not substantially the same as that originally approved by the Panel. On this basis, the application is not in the public interest and is recommended for refusal for the reasons outlined in this report.

ORIGINAL APPROVED DEVELOPMENT

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

- A total of 899 residential apartments; 262 serviced apartments; three levels of basement car parking for 1,666 vehicles; 5,666m² retail floor space including retail tenancies, a supermarket; and a childcare centre;
- Dedication and embellishment of new public land with a total area of 9,435m² including a new east-west pedestrian link, new north-south road, extension of John Street from Kent Road and land dedication along Church Avenue and Kent Road for road widening.

The original approved details of the development are as follows:

Details	Approved
Site Area	31,500m ²
Height	Quadrant 1 = 44.5 - 45.1m Quadrant 2 = 44.7 - 46.1m Quadrant 3 = 44.4 - 47.1m Quadrant 4 = 44.4 - 46.6m
Gross Floor Area (GFA)	117,296 m ²
Floor Space Ratio (FSR)	3.72:1
Unit Mix	64% studio/1 bedroom units

CURRENT APPROVED DEVELOPMENT (AS MODIFIED)

On the 14 January 2015, the JRPP resolved to approved a Section 96(2) (DA13/200/02) to make various minor changes to the approved building design; convert 88 residential apartments to 124 serviced apartments which will reduce the total residential apartments from 899 to 811, and increase the total serviced apartments from 262 to 386; increase the retail areas on level 2 Quadrant 2; and slightly narrow in part the through site link; increase the GFA by 1,958m² as a result of changes to the unit configuration and uses; and amend the elevations as a consequence of the changes in unit size and uses.

The development (as modified) are as follows:

Details	Approved
Site Area	31,500m ²

Height	Quadrant 1 = 44.5 - 45.1m Quadrant 2 = 44.7 - 46.1m Quadrant 3 = 44.4 - 47.1m Quadrant 4 = 44.4 - 46.6m
Gross Floor Area (GFA)	119,254m ²
Floor Space Ratio (FSR)	3.78:1
Unit Mix	63% studio/1 bedroom units

OTHER MODIFICATION APPLICATIONS

The other Modification Applications lodged to date are in the Table below:

DA13/200/02	Section 96(2) to make various minor changes to the approved building design; convert 88 residential apartments to 124 serviced apartments which will reduce the total residential apartments from 899 to 811, and increase the total serviced apartments from 262 to 386; increase the retail areas on level 2 Quadrant 2; and slightly narrow in part the through site link; increase the GFA by 1,958m ² as a result of changes to the unit configuration and uses; and amend the elevations as a consequence of the changes in unit size and uses. Approved by the JRPP on the 14 January 2015.
DA13/200/03	Section 96(1A) to amend Condition Nos. 3 and 4 relating to a requirement for a separate Development Application for non-residential uses and for public domain works. Approved under delegation on the 10 March 2015.
DA13/200/04	Section 96(1A) to amend Condition No. 12 relating to the requirement to upgrade the nearby intersection of Kent Road, Ricketty Street and Church Avenue. Under Assessment.
DA13/200/05	Section 96(1A) to make changes to the facades of the development and to make changes to the balcony sizes. Approved under delegation on the 10 September 2014.
DA13/200/06	Section 96(1A) to re-instate changes to the unit mix of the development that were initially proposed under DA13/200/05, but which was not consented to by Council. Under Assessment.
DA13/200/07	Section 96(1A) to amend the Section 94 Contributions; Subject of this report. Approved by Development Committee on the 4 March 2015.
DA13/200/08	Section 96(1A) to relocate air conditioning condensers to Level 4 Q1, relocate lift at Level 1 Q3, changes to stairs Level 1-12 Q4, install pool exhaust and changes to facades. Under Assessment.
DA13/200/09	Section 96(2) to change multi-purpose rooms into bedrooms and to change car parking allocation for residential units and serviced apartments. Subject of this report.

DESCRIPTION OF MODIFICATION

Unit Mix

The original approved development had 899 residential apartments comprising of 64% studio/1 bedroom units and 36% 2 bedroom units. Each unit complied with Council's minimum unit sizes in BBDCP 2013.

The approved development (as modified) has 811 residential apartments comprising of 63% studio/1 bedroom units and 37% 2 bedroom units. Each unit complied with Council's minimum unit sizes in BBDCP 2013.

The proposed modification seeks to increase the total number of unit to 812 (which is also currently being assessed under Mod 6) which will comprise of 35% (288) 1 bedroom units, 35% (284) 2 bedroom units and 30% (240) 3 bedroom units. Each unit will now be less than Council's minimum unit sizes in BBDCP 2013.

Unit Sizes

The approved development has unit sizes compliant with Council's minimum unit sizes, being:

- 60sqm for studio units;
- 75sqm for 1 bedroom units;
- 100sqm for 2 bedroom units; and
- 130sqm for 3 bedroom units.

An extract from the submitted Statement of Environmental Effects states the following:

The proposed amendments have been designed to comply with the minimum unit sizes "the Rules of Thumb" stipulated into the SEPP 65 Residential Flat Design Code. That is the apartments each have a minimum size as follows:

- 50sqm for 1 bedroom units;
- 70sqm for 2 bedroom units; and
- 90sqm for 3 bedroom units.

Council requested further clarification from the applicant on the unit size issue, as no unit layout typologies were submitted with the Section 96(2) application.

In an email dated 1 May 2015, the Applicant has advised that out of 466 apartments surveyed across Quadrants 1, 2, and 4, only 253 apartments (31%) comply with both the internal and external areas recommended in Table on Page 69 of Part 3 of the Code; 213 apartments (26%) do not comply with either the recommended internal or external areas in the Table. The applicant states that the residual 224 apartments only comply with either the internal or external area, not both. The 122 apartments (15%) not mentioned are assumed to comply with Council's DCP requirements.

Basement Car Parking

The original approved development required a total of 1666 and provided a total of 1666 car parking spaces to accommodate the different components of the development.

The approved development (as modified) under DA13/200/02 requires a total of 1545 spaces and provided a total of 1,621 parking spaces. That application re-allocated basement parking spaces in accordance with the reduction in residential apartments and increase in serviced apartments. However, it is noted that the serviced apartment parking was provided at a rate of 1 space per 1.9 apartments. The total parking provision on site was realised to be in fact 1621 spaces, not 1,666 and this was not corrected on the modified consent. A current count of spaces on the plans indicated 1,621 spaces.

The Section 96(2) application seeks to reallocate basement car parking according to the proposed change in unit size/type and mix, creating a shortfall of 189 car parking spaces for the two bedroom units. The reduction in in serviced apartment parking from 207 spaces to 154 spaces reflects a reduced parking rate of 1 space per 2.5 apartments. Overall, if the Panel is to accept the reduced parking rate for the serviced apartments, the proposal will require 1,795 and will provide a total of 1,621 spaces. A shortfall of 174 spaces.

ASSESSMENT OF MODIFICATIONS

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

1. Change to residential unit size

It is proposed to change residential apartments in Quadrants 1, 2 and 4, so that each apartment with a multi-purpose room will have that room renamed as a bedroom. As such, the unit sizes will not comply with Council's required minimum unit sizes under BBDCP 2013 or the internal and external sizes recommended in Part 3 of the RFDC under SEPP 65. The unit mix of the development will therefore change.

The following table indicates the original approved development, the modified development and the proposed changes under this proposed Section 96(2) application.

	Original Units		Approved Units		Proposed Units (includes the change in unit mix under Mod 6).	
	Unit	Dwelling Mix	Unit	Dwelling Mix	Unit	Dwelling Mix
Studio	239	27%	226	28%	-	-
1 bedroom	336	37%	288	35%	288	35%
2 bedroom	324	36%	297	37%	284	35%
3 bedrooms	-	-	-	-	240	30%
Total	899	100%	811	100%	812	100%
Serviced Apartments	262	-	386	-	386	-

TOTAL	1,161		1,197		1,198	
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The applicant states that the proposed modification will result in apartments achieving the minimum sizes in the Rules of Thumb under Part 3 of the Residential Flat Design Code of SEPP 65, as follows:

- 50sqm for 1 bedroom units;
- 70sqm for 2 bedroom units; and
- 90sqm for 3 bedroom units.

Note: The Panel should note that the applicant has not submitted amended unit typologies with the Section 96(2) application. The unit typologies approved under the original DA by the JRPP in March 2014 are not amended by the applicant at this stage.

2. Unit Mix

As indicated in the table above, the proposed unit mix will be closer to complying with Councils 25% control stipulated under BBDCP 2013.

The Section 96(2) application is not considered to be substantially the same development as originally approved by the Panel. The proposed undersized apartments are not acceptable, as they will significantly contribute to the oversupply of existing reduced sized units in the local government area. Such a large proportion of under-sized unit on one single site is also not supported, in this densely populated context. 60.1% of dwellings within the Botany local government area are classified as medium or high density dwellings as at 2011. This figure is ever increasing and no formal provision for affordable housing (as defined under the Act) is provided. Clearly, the Section 96(2) application does not provide or contribute to a variety or range of housing to meet the needs of the local population.

3. Changes to Basement and Car Parking

The Applicant proposes to reallocate the basement car parking and to create a shortfall of 174 car parking spaces, namely for the two bedroom units, where only 1.3 spaces are provided per 2 bedroom unit, with a total of 568 spaces being required for the 2 bedroom units. It is also proposed to increase the parking provision for the serviced apartments from 131 spaces to 154 spaces at a rate of 1 space per 2.5 apartments.

The parking re-allocation will result in a shortfall in the parking requirements of BBDCP 2013. With the introduction of the third bedroom into 240 of the approved apartments, the demand for resident parking increases substantially. Whilst each apartment is provided with one space, a large proportion of 2 bedroom units will only have one space. The parking provision for the development will go from surplus to significant shortfall.

The car parking requirements and provision are compared in the following table.

Car Parking Rates	Original Approved No. of	Original Approved car	Approved Modified No. of	Approved Modified car	Proposed No. of units	Proposed car parking
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	units	parking	units	parking		
1 space/Studio	239	239	227	227	-	-
1 space/1 bedroom	336	336	286	286	288	288
2 spaces/2 bedroom	324	648	298	596	284	379
2 spaces/3 bedroom	-	-	-	-	240	480
<i>Total residential spaces</i>		1,223		1,109	1,336	1,147
1 visitor space/7 dwellings	899 ÷ 7	123	811 ÷ 7	116	812 ÷ 7	116
Retail Spaces (inc. child care centre spaces)	88 + 21 child care spaces	189	88 + 21 child care spaces	189	88 + 21 child care spaces	189
Serviced Apartments (1 space per 2.5 rooms)	262	131	386	131	386	154
Total Required Spaces	1,666	1,666	1545	1,545	1,795	1,621
Total Proposed Spaces	1,666	1,666	1,621	1,621	1,621	1,621

The proposed modification to re-allocate basement car parking will result in a shortfall of 174 spaces and will have an adverse impacts on the immediate locality in terms of on street parking demand where there is limited on street car parking. On this basis, it is recommended that the Section 96(2) application be refused.

SECTION 96(2) CONSIDERATIONS

In considering the Section 96(2) Application, the matters listed in Section 79C of the Environmental Planning and Assessment Act 1979 have been taken into consideration in the preparation of this report and are as follows:

(a) The provisions of any EPI and DCP and any other matters prescribed by the Regulations.

Section 96(2) Provisions

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

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

notification or advertising of applications for modification of a development consent, and

- d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

The proposed Section 96(2) application seeks consent to modify Development Consent No. 13/200 to change multi-purpose rooms to bedrooms (change in unit size/mix); change the car parking allocation to reflect the change in unit size/mix and to increase serviced apartment parking from 131 to 154 spaces, to be provided at a rate of 1 space per 2.5 apartments.

The development as modified is not substantially the same development as approved. Physically, there are no changes to the built form when viewed from the public domain. The change in basement car parking allocation will create a shortfall of 174 car parking spaces, which is not supported in this instance. The unit configurations/typologies will change to replace the multi-purpose rooms with additional bedrooms, however there is no increase in gross floor area or change in use, only an increase in projected population/density. The change in unit layout is not reflected on any amended plans submitted by the applicant.

The original development application was approved by the JRPP with an FSR of 3.72:1, over the 3.2:1 permitted under BBLEP 2013. The Clause 4.6 variation submitted with the original development application argued that as a result of complying with Council minimum unit sizes and car parking requirements, additional gross floor area was sought. The following is a direct quote from the approved Clause 4.6 variation request.

The DCP required apartment sizes are 20% to 50% larger than the apartment sizes that are specified by the RFDC, which has a direct and negative impact on dwelling yield. To retain the financial feasibility of the project, additional GFA is required to achieve a dwelling yield that is economically viable and allows for the site to be developed in accordance with the objects of the EP&A Act, 1979;

The objects of the Act, particularly in respect of affordable housing cannot be met, where a developer then later decides to change its mind. The Section 96(2) application has not been submitted under the *Affordable Rental Housing SEPP 2009*. There is no dedicated “affordable housing” (as defined under the EP&A Act 1979) proposed. The additional FSR has been approved by the Panel and Applicants identified public benefits are no longer being provided. The car parking is proposed to be re-allocated as a result of the change in unit size/mix. The shortfall of 174 car parking spaces is significant enough to warrant refusal of the application.

The proposed additional bedrooms will unreasonably increase demand for public services and infrastructure and is not substantially the same as that development originally granted consent.

Based on the above, the Section 96(2) application is recommended for refusal.

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

The provisions of SEPP No. 65 have been considered in the assessment of the Section 96(2) application. The policy aims to improve the design quality of residential flat development in NSW namely to maximise amenity, safety and security and achieve a better built form of buildings and streetscapes. The applicant has not submitted a SEPP 65 assessment of the proposed development.

As stated previously, the applicant has submitted a Statement of Environmental Effects which states that the modification involves the change of the approved multi-purpose rooms to an additional bedroom. As such, the unit sizes will no longer comply with Council's minimum unit sizes under BBDCP 2013. 253 apartments (31%) comply with both the internal and external areas recommended in Table on Page 69 of Part 3 of the Code; 213 apartments (26%) do not comply with either the recommended internal or external areas in the Table. The applicant states that the residual 224 apartments only comply with either the internal or external area, not both. The 122 apartments (15%) not mentioned are assumed to comply with Council's DCP requirements.

Approval of the proposed modification will result in units being under-sized, contributing to the oversupply of undersized units in the local government area. The application has not been submitted as affordable infill housing under SEPP (Affordable Rental Housing) 2009, and is therefore seen as a way of circumventing the objects of the EPA & Act and the ARH SEPP 2009, as the applicant has not only achieved a bonus FSR for the subject site, but also is not required to provide "affordable housing" on site, as defined under the EP & A Act.

The Section 96(2) application is not supported as it is not considered to be substantially the same development as that originally approved by the Panel and approval of the application will create adverse social and economic impacts in the locality by not promoting a better urban environment and placing unreasonable pressure on community services and infrastructure.

Under Clause 30A(1)(b) of SEPP65, the Panel may refuse the modification application as the proposed changes will result in residential units that do not comply with the recommended minimum internal and external areas in the Table on Page 69 of the Code.

Draft State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

The Department of Planning and Environment (**DP&E**) has recently exhibited amendments to State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (known as Draft Amendment No. 3). These amendments were accompanied by a proposed draft 'Apartment Design Guide – Tools for Improving the Design of Residential Flat Development', which will replace the current Residential Flat Design Code. The proposed modifications are consistent with the provisions of the draft amendment.

It is understood that the introduction of the amended SEPP is imminent, however Council has been advised by the DP & E that there will be a savings clause, meaning that the development now lodged will be assessed under the original

controls of SEPP 65 and therefore even if the SEPP had been amended, the JRPP is still able to refuse the development based on unit size.

Botany Bay Local Environmental Plan (BBLEP) 2013

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

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Landuse Zone	Yes	The site is zoned B2 – Local Centre under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The approved residential flat building, supermarket, retail shops, serviced apartments and child care centre are all permissible with Council's consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed modification application is consistent with the following objectives in the BBLEP 2013: ▪ <i>To provide a range of retail, business, entertainment and community uses that serve the needs of the people who live in, work in and visit the local area;</i> ▪ <i>To encourage employment opportunities in accessible locations;</i> ▪ <i>To maximise public transport patronage and encourage walking and cycling.</i>
Does Schedule 1 – Additional Permitted Uses apply to the site?	N/A	Schedule 1 does not apply to the subject site.
What is the height of the building? Does the height of the building exceed the maximum building height?	N/A	The proposed modification will not alter the built form approved under Development Consent No. 13/200.
What is the proposed FSR? Does the FSR of the building exceed the maximum FSR?	No – already approved by the JRPP	The site area is 31,500m² The proposed modification will not alter approved GFA of 119,254m² The proposed modification will not alter the approved modified FSR of 3.78:1.
Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m ² min and maximum height of 22 metres and maximum	N/A	The subject site is not located in the R3 or R4 zone.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
FSR of 1.5:1?		
Is the site within land marked "Area 1" on the FSR Map?	N/A	The subject site is not located within "Area 1" on the FSR Map.
Is the land affected by road widening?	N/A	The subject site is affected by the widening of Church Avenue and Kent Road widening is also required under BBDCP 2013 and this is acknowledged in the original approval. No change proposed.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not listed as a Heritage Item or within a Heritage Conservation Area.

The objectives and provisions of the BBLEP 2013 have been considered in the assessment of the Section 96(2) application and the proposal is consistent with the provisions of BBLEP 2013.

Botany Bay Development Control Plan 2013

The DCP provisions of Part 9A - Mascot Station Town Centre Precinct have been addressed.

The proposed modifications will result in the unit sizes now not complying with Control C1 of Part 9A.4.4.7, which are discussed above. The change in unit size by renaming the multi-purpose rooms to a bedroom is not supported in this instance as it will have an adverse impact on the locality in terms of overcrowding and places unreasonable pressure of public/community services and infrastructure.

Control C1 of Part 9A.4.4.11 – Car Parking requires 2 spaces per 2 bedroom dwelling. As stated above, the proposed modification will result in a shortfall of 174 car parking spaces for the 2 bedroom units which is not supported. The shortfall will create an adverse impact on the locality in terms of additional demand for on street parking in a location where on street parking is limited. On this basis, the proposed modification does not satisfy the requirements of Part 9A of BBDCP 2013 and is recommended for refusal.

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

These matters have been considered in the assessment of the Section 96(2) Application. The proposed amendments will have a significant adverse environmental, social and economic impact on the immediate locality as the proposed changes will result in units that do not satisfy the internal and external areas recommended in Part 3 of the RFDC to SEPP 65 and the significant shortfall in off street car parking of 174 parking spaces will create adverse

impacts in the locality in terms of on street car parking demand in an area where street parking does not exist.

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

These matters have been considered in the assessment of the Section 96(2) Application. The proposed modification will result in apartments which do not satisfy the internal and external areas recommended in Part 3 of the RFDC to SEPP 65 and will result in a significant shortfall of 174 car parking spaces in an area where on street car parking does not exist. As such, this will result in adverse social and economic impacts in the immediate locality and given that this will apply to a single site area in an existing dense environment, the site is not suitable for the proposed modifications.

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

These matters have been considered in the assessment of the Section 96 Application. In accordance with Part 2 – Advertising and Notification of BBDCP 2013, the Section 96(2) Application was notified to adjoining property owners and those that originally made a submission for a period of fourteen (14) days from 1 May 2015 to 15 May 2015. No submissions were received.

(e) The public interest.

These matters have been considered in the assessment of the Section 96(2) Application. The proposed modifications are not in the public interest, as the proposed changes will result in units that do not satisfy the internal and external areas recommended in Part 3 of the RFDC to SEPP 65 and the significant shortfall in off street car parking will create adverse social and economic impacts in the locality by not promoting a better urban environment and placing unreasonable pressure on community services and infrastructure..

Other Matters

Referrals

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

Conclusion

The Section 96(2) Application to seeks to modify Development Consent No. 13/200 to change multi-purpose rooms to bedrooms (change in unit mix); change the car parking allocation to reflect the change in unit mix and to reflect the increase in the number of serviced apartments approved under DA13/200/02.

The proposed modification application has been notified in accordance with the Regulations and Part 2 of BBDCP 2013. No submission have been received.

The Section 96(2) Application has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979. The proposed unit sizes will now not comply with Council's minimum unit sizes, and only 55% of the

units meet the recommended internal and external sizes stated in the Table on Page 69 of the RFDC. This is not in the public interest as it will contribute to the oversupply of already under-sized units in the local government area and in addition does not contribute to “affordable housing” as defined under the EP&A Act 1979. The objects of the Act are now not met, in that the modification will not provide affordable housing, nor does it encourage the proper management and development of urban areas for the purpose of promoting the social and economic welfare of the community and a better environment.

The approved development has received the benefit of both additional FSR and height. Complying car parking and unit sizes were reasons put forward by the applicant in their Clause 4.6 variation for that additional FSR and height. The development as now proposed to be modified is not substantially the same as that originally approved by the Panel as it will significantly increase demand on public services and infrastructure, beyond that envisaged under the original approved development. On this basis, the application is not in the public interest as it will create adverse social and economic impacts in the locality by not promoting a better urban environment and placing unreasonable pressure on community services and infrastructure.

The modification application has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 and is recommended for refusal, for the reasons outlined below.

RECOMMENDATION

In view of the preceding comments, it is RECOMMENDED that the Sydney Region East, as the Determining Authority, resolve that pursuant to Section 96(2) of the Environmental Planning and Assessment Act, 1979, refuse the Section 96(2) Application to modify Development Consent No. 13/200 for the reasons outlined below.

REASONS FOR REFUSAL

1. The proposed Section 96(2) application is not substantially the same as that previously approved by the Joint Regional Planning Panel. The application now seeks approval for under-sized residential units and a significant shortfall in off street car parking, which previously complied with Council’s requirements under BBDCP 2013, and for which additional FSR and height was granted by the Panel.
2. The proposed Section 96(2) Application fails to satisfy the recommended internal and external areas for apartments under Part 3 of the Residential Flat Design Code of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings, in that it will create under-sized apartments. (*Environmental Planning and Assessment Act 1979 s79C(1)(a)(iii)*).
3. The proposed Section 96(2) application fails to satisfy the aims and objectives of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings in that it will result in undersized apartments that will create adverse social and economic impacts in the locality by unreasonably contributing to the

oversupply of under-sized residential units in the Botany local government area. (*Environmental Planning and Assessment Act 1979 s79C(1)(a)(iii)*).

4. The proposed Section 96(2) application fails to satisfy the off street car parking for residential flat buildings required under Part 3A of Botany Bay Development Control Plan 2013, in that a shortfall of 189 car parking spaces is proposed. (*Environmental Planning and Assessment Act 1979 s79C(1)(a)(iii)*).
5. The proposed Section 96(2) Application, and resulting under sized units and shortfall in off street car parking is not considered to be in the public interest as it will create adverse social and economic impacts in the locality by unreasonably contributing to the oversupply of under-sized residential units in the Botany local government area and places unreasonable pressure on community services and infrastructure. (*Environmental Planning and Assessment Act 1979 s79C(1)(e)*).