

JOINT REGIONAL PLANNING PANEL (East Region)

JRPP No	2016SYE007
DA Number	DA 15/191
Local Government Area	City of Botany Bay Council
Proposed Development	<p>Stage 1 Masterplan Development Application for the consolidation of 16 Lots (Lots 11-26 DP 29697) to create the subject site with a combined area of 12,602sqm to accommodate:</p> <ul style="list-style-type: none"> • Four x eight (8) storey commercial towers with a total GFA of 37,805sqm; • 3 levels (two levels above ground and one level partially below ground) of car parking for 490 vehicles, 43 bicycles and 4 loading bays under a landscaped podium; • Extensive landscaping of 8,605sqm including ground level setbacks, green façade, podium level landscaped area and green roof; • A pedestrian overpass linking the podium level on either side of the cul-de-sac at the end of Chalmers Crescent; and
Street Address	7-9, 14-18 and 19-21 Chalmers Crescent, Mascot
Applicant/Owner	F Mayer (Imports) Pty Ltd C/- Neustein Urban
Number of Submissions	Nil
Regional Development Criteria (Schedule 4A of the Act)	The development application is referred to the JRPP pursuant to Clause 3 of Schedule 4A of the Act as the Capital Investment Value (CIV) of the proposal is over \$20 million. Masterplan proposal with a CIV of \$113,700,000.00
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • Environmental Planning & Assessment Act 1979, Part 4 – Development Assessment & Schedule 4A – Development for which regional panels may be authorized to exercise consent authority functions of councils • Environmental Planning & Assessment Regulation 2000, Part 6 – Procedures relating to development applications • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy No. 55 – Remediation • Botany Bay Local Environmental Plan 2013 • Botany Bay Development Control Plan 2013
List all documents	<ul style="list-style-type: none"> • Architectural Plans- Rev K and L- prepared by Conrad Gargett

submitted with this report for the panel's consideration	<p>Riddel Ancher Mortlock Woolley</p> <ul style="list-style-type: none"> • Amended Traffic Modelling Report- prepared by Transport and Urban and Planning Pty Ltd- dated 2 June 2016 • Addendum to traffic report- Traffic and Parking Matters raised by Council- dated 2 June 2016 • Swept path diagrams- prepared by Transport and Urban Planning • Peer Review: Traffic and Parking Assessment- prepared by Parking and Traffic Consultants
Recommendation	Refusal
Report by	Angela Lazaridis – Senior Development Assessment Officer

Assessment Report and Recommendation Cover Sheet

RECOMMENDATION

It is recommended that the Joint Regional Planning Panel (JRPP) for the Sydney East Region, as the Consent Authority, resolve to **refuse** Development Application No. 15/191 for the following reasons:

1. The applicant has failed to provide the land owners written consent to lodgement of the development application for the use of part of the Chalmers Crescent road reserve and the area above the road.
2.
 - a) Pursuant to Clause 7 of SEPP 55 the Council is not satisfied that the land is suitable for the proposed development, as the applicant has failed to provide any evidence that the land is suitable for the use or could be made suitable for the use. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
 - b) Pursuant to Clause 6.1(3) of the BBLEP 2013, the Council is not satisfied that the land is suitable for the proposed development, as the applicant has not provided evidence in the form of an Acid Sulfate Soils Manual or Management Plan to demonstrate that the land is suitable for the use. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
3.
 - a) The proposed development exceeds the maximum FSR of buildings for the site as provided by Clause 4.4(2) of the Botany Bay LEP 2013 and is inconsistent with the objectives of the clause. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
 - b) The development application has not provided a Cl. 4.6 variation therefore the proposed development fails to adequately justify the contravention of the FSR development standard in Clause 4.4 of Botany Bay LEP 2013 and has not

demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and there are insufficient environmental planning grounds to justify contravening the development standard. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).

4. The proposed development exceeds the maximum Height of buildings for the site as provided by Clause 4.3(2) of the Botany Bay LEP 2013 and is inconsistent with the objectives of the clause. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
5. The contravention of the FSR and height development standard will not be in the public interest as it is not consistent with the objectives of the standard for the zone. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
6. The proposal does not comply with Control C2 of Part 3A.3.1 and Control C10 of Part 3A.3.4 of the Botany Bay DCP 2013 in that service vehicles do not enter the premises in a forward direction and all movements are not carried from the site boundaries. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(iii)*).
7. The proposal does not comply with Control C1 of Part 6.3.5 of the Botany Bay DCP 2013 in that the development is not contained within the site boundaries therefore there is uncertainty in the amount of setbacks provided to the development. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(iii)*).
8. The proposal has not adequately addressed the likely impacts of the development, being additional gross floor area, potential contamination and acid sulfate soils (*Environmental Planning and Assessment Act 1979 s79C(1)(b)*).
9. The proposal has not demonstrated the suitability of the site for the development (*Environmental Planning and Assessment Act 1979 s79C(1)(c)*).
10. The proposed development is not in the public interest as the proposed design in its current form results in adverse impacts on the amenity of the locality as a result of non-compliance with FSR, height, setbacks and off street car parking, which are inconsistent with the built form envisaged for the subject site. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(e)*).

EXECUTIVE SUMMARY

Council received Development Application No. 15/191 on 19 October 2015 seeking consent for a Stage 1 Masterplan for the consolidation of 16 Lots (Lots 11-26 DP 29697) and part of Chalmers Crescent (1,118sqm) to create the subject site with a combined area of 12,602sqm to accommodate four x eight (8) storey commercial towers with a total GFA of 37,805sqm; three (3) levels of car parking (two levels above ground and one level partially below ground) for 490 vehicles, 43 bicycles and 4 loading bays under a landscaped podium; extensive landscaping of 8,605sqm including ground level setbacks, green façade, podium level landscaped area and green roof; and a pedestrian overpass linking the podium level on either

side of the cul-de-sac at the end of Chalmers Crescent at 7-9, 14-18 and 19-21 Chalmers Crescent, Mascot.

The development application is required to be referred to the Joint Regional Planning Panel (JRPP) 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 greater than \$20,000,000.

On 24 July 2014, prior to the lodgement of the subject development application, the application was presented to the Design Review Panel for comment. The application was presented to the Panel two times prior as part of a separate development application that was withdrawn (DA-09/380). Details relating to the previous application are provided in the background section of this report. The latest comments from the Panel endorse the masterplan and state that the design continues to be an innovative initiative which could produce an excellent environment for commercial activities in the Mascot area.

The masterplan development application was placed on public exhibition for a thirty (30) day period from 4 November to 4 December 2015. Council received no objections to the application.

Council briefed the JRPP on 4 February 2016 and had subsequent discussions and a meeting with the applicant to discuss the height variation, road purchase and potential pedestrian site link. A second JRPP briefing was held on 12 July 2016 to discuss the FSR issue within the application.

There are several non-compliances with Council's controls under the Botany Bay Local Environmental Plan (BBLEP) 2013 and Botany Bay Development Control Plan (BBDGP) 2013. The non-compliances include the FSR and height of the proposal, ingress and egress of the service vehicles, departure in car parking, landscaped area on the podium, and setbacks.

The proposal originally included a portion of the eastern end of Chalmers Crescent within their site area. This was negotiated between Council and the applicant in 2006 to purchase this portion of the road (1,118sqm) to be contained within their development. In June 2016, Council made an informed decision to not sell any part of the road to the applicant for use within the development and subsequent FSR benefits. The assessment of the application is assessed on the basis of 11,484sqm of site area and not 12,602sqm site area as originally proposed by the applicant. Therefore, the FSR calculations have been modified from a compliant development (3:1) to a non-compliant development (3.3:1). Council requested that the applicant recast the architectural plans to be contained within the site boundaries and to provide a Clause 4.6 variation to the FSR Development Standard. The applicant has not provided this information and has requested the development application to be determined.

Due to the current design being built on top of the road, the overpass pedestrian crossing has not received consent by Council for its construction. Therefore the plans should be modified to contain all development within their site boundaries, within appropriate setbacks.

The height of building (HoB) of the proposed development is 46.4 metres and therefore exceeds the maximum building height of 44 metres permitted under Clause 4.3 of the BBLEP 2013. The non-compliance in height is attributed to the lift overruns and plant cores which surpass the building height by 2.4 metres. Accordingly, the proposal is seeking a variation to

the building height standard under Clause 4.6. Council is not satisfied with the Clause 4.6 variation to address the height variation, as the height relates to excess FSR for which there is no Clause 4.6 variation lodged.

Part 3A- *Parking and Access* of the BBDCP 2013 requires the development to make provision for 946 car parking spaces based on a car parking rate of 1/40sqm GFA for office premises. The development provides a total of 490 car spaces which is a shortfall of 456 car spaces. The applicant has assessed and relied on Council Transport Management Accessibility Plan (TMAP) which allows for 1/80sqm GFA for office premises that are in close proximity to public transport corridors. The site is located within 800 metres of Mascot Train Station therefore the strategy applies. Based on the numerics, the TMAP requires 473 car parking spaces therefore the development meets the car parking requirement. This is further supported by the peer review from Parking and Traffic Consultants that Council had undertaken.

Control C2 of Part 3A.3.1 and Control C10 of Part 3A.3.4 of the BBDCP 2013 requires that service vehicles enter and exit the premise in a forward direction. Swept path diagrams have been provided to demonstrate that the vehicles will reverse into the loading bays and exit in a forward direction. Council does not support this arrangement and require forward ingress and egress from the site. This site is large enough to provide this.

The 8,605sqm of landscaped area provided on the site is predominantly located on the rooftop and forms rooftop terraces over the four towers. The amount of landscaped area on the podium or ground floor departs from the standard. However, the landscaped area provided surpasses the minimum 30% landscaping applicable to sites with an area greater than 5000sqm. This is discussed in more detail under Part 3L of the BBDCP 2013. With the exclusion of the podium above the road, less landscaping (deep soil) will be provided.

Part 6.3.5 of the BBDCP 2013 requires the buildings to have a front setback of 9 metres from any road. While the setbacks are not met, the setbacks are compatible with the surrounding development in the area and will not cause any adverse impacts to sunlight and bulk and scale. Due to the exclusion of the road from within the proposal, the development will need to recast its building footprints and the location of some of the buildings. This may result in a change in the setbacks proposed. Council has requested this change to be demonstrated by the Applicant, however no amended plans have been provided. Therefore, due to the uncertainty in the building envelopes, it is difficult to make an assessment of the proposed setbacks from the boundary lines.

Pursuant to Clause 7 of SEPP 55 the Council is not satisfied that the land is suitable for the proposed development, as the applicant has failed to provide any evidence that the land is suitable for the use or could be made suitable for the use. Additionally, the Applicant has failed to provide an Acid Sulfate Soils Management Plan to demonstrate that the site is suitable for the use.

Council had requested that the applicant explore the provision for a pedestrian site link between the site and Mascot Train Station via Coward Street. The applicant has provided written evidence between the neighbouring properties and themselves demonstrating that the adjoining owners will not consent for a site link through their land at this point in time. The pedestrian site link would have provided a high quality and gateway function between the

main public node in the area and the site. The site is within the 800 metre walkable distance from the Station therefore the site link is not a requirement but a desirable element.

The Development Application for the Masterplan has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is considered to not be compliant with a number of the objectives and standards of the relevant planning instruments. Therefore, Council recommends the refusal of the masterplan development application.

BACKGROUND

Council received Development Application No. 15/191 on the 19 October 2015 seeking consent for the abovementioned development.

The application was placed on public exhibition from 4 November to 4 December 2015. Council received no objections to the application.

The application was referred to external authorities (Ausgrid, RMS, Sydney Water, NSW Police and SACL) and to Council's internal departments (Development Engineering, Traffic Engineering, Landscape Architect, Environmental Health Officer, Environmental Scientist and Strategic Planning Officer). Comments and conditions relating to the proposed masterplan have been provided relating to each discipline and are outlined in the report below.

On 1 February 2016, the applicant provided Council clarification on the applicable GFA, site area and car parking rates for the site. The applicant has assessed and relied on the car parking rates against Councils Traffic Management Accessibility Plan (TMAP) instead of Council's parking rates required under Part 3A of the BBDCP 2013. This is supported by Council.

On 4 February 2016, the development application was presented at a JRPP Panel Briefing meeting. The Panel required clarification of the scale of the development demonstrated on the architectural plans.

On 18 March 2016, Council engaged Parking and Traffic Consultants to peer review the traffic and parking report provided by the applicant. The peer review was provided to Council on 8 April 2016 for assessment.

On 29 March 2016, the applicant had a meeting with Council officers to discuss the road purchase in addition to the existing road network in the area. Discussions involved the implication of having a pedestrian site link between the site and Mascot Train Station. The applicant has stated that they had approached the owners of the northern and eastern properties in providing consent for a site link. The neighbouring owners have stated that they are unable to accommodate the Applicant's request at this time. Regardless, the applicant has accommodated this access as the proposal has been designed so that access points along the northern side of the site will be maintained in the possibility that the adjoining owners provide consent for a site link in the future. Regardless of the lack in pedestrian site link, the applicant has proposed to endorse commuter buses from the train station, car pooling and

bicycle parking within the premises. These were proposed as part Work Travel Plans to be submitted as part of any subsequent development application.

In regards to the road purchase, Council requested that the applicant provide a revised road valuation as the one assessed in 2006 was outdated. The road that was to be purchased from Council was to include the cul-de-sac along the eastern side of Chalmers Crescent, a total of 1,118sqm of road area. The road would have acted as a public right of way however would have been treated as a private road maintained by the site. On 29 April 2016, the applicant provided Council with a valuation report relating to the portion of the road to be purchased by the applicant to be included within the site.

On 29 March 2016, the applicant provided amended addendum to the traffic report prepared by Transport and Urban Planning including swept path diagrams, potential location of a site link to the north of the site and amendments to the plans referencing the correct dimensions.

On 1 April 2016, the applicant provided correspondence between themselves and the adjoining properties demonstrating written evidence that the adjoining neighbours do not consent to a pedestrian site link across their properties.

On 30 April 2016, the applicant provided a copy of the final revision (Rev L) of the car parking levels demonstrating the correct number of car spaces provided.

On 2 June 2016, the applicant provided Council with an amended traffic report and addendum to address the issues raised by the RMS, Council and external consultant.

In June 2016, Council informed the applicant that there is no support for selling part of Chalmers Crescent as part of this proposal. Therefore, the proposed site area changed from 12,602sqm to 11,484sqm to exclude the road. As the development had encompassed this portion of the road within their proposal, the applicant was required to redesign the development to contain all structures within its boundary.

On 12 July 2016, the development application was referred to a second JRPP briefing meeting to inform the Panel of the road issue and subsequent non-compliance in FSR. The Panel agreed that Council and/or the Panel cannot legally impose a condition of consent requiring the proposal to comply with an FSR of 3:1 or restrict the FSR without a Clause 4.6 being provided for consideration.

On 12 July 2016, Council reported back to the applicant on the outcome of the briefing. Council requested amended plans to be submitted for assessment demonstrating that the structure complies with the FSR and is contained within the boundary of the site. The applicant responded that they would not submit any additional information and to have the application assessed with the current plans.

Previous Development Application (DA-09/380)

On 28 August 2006, a proposal for 6-16, 7-9 and 18-21 Chalmers Crescent was presented to the Design Review Panel (DRP) for comment. The proposal was for the construction of five x 10 storey commercial buildings, which involved the demolition of all existing buildings within the consolidated site with upper level commercial office space in association with

airport operations and retail and open space with landscaping, seating, playground and multi-use playcourt on the podium and parking over three above-ground levels.

On 30 June 2009, a Development Application was lodged with Botany Bay Council for the demolition of the existing structures on site and the erection of five x 10 storey commercial towers with above ground parking. The following points below relate to this development application:

- In late 2009, the Development Application proposal was put forward to the DRP and was supported in principle subject to a number of issues being resolved, particularly those relating to access and environmental matters, although at the time, the density grossly exceeded that permissible under the then BLEP 1995 Controls (permissible FSR: 1.5:1; Height: N/A). The development originally proposed a FSR of 4.19:1 and height of 46.5 metres.
- Given the uncertainty with Council's BBLEP 2013 and the outcome of the Mascot Town Centre Transport Management Accessibility Plan (TMAP) at the time of the application, DA-09/380 did not progress for a period.
- In September 2013, amended plans were provided to Council with the basic design form essentially unchanged, with five commercial towers above a common base containing mainly above-ground parking. The FSR had been reduced to 3.5:1 and height maintained at 46.5 metres.
- In September 2013, the amended plans were put forward for review by the DRP. The amended proposal was generally supported by the Panel subject to issues raised in their report. The density of the proposal would not be endorsed unless it could be demonstrated that adequate winter sunlight would be available to the central terrace spaces and the form of the main entry required further development.
- An amended proposal was lodged in 2014 following the withdrawal of a key landholder (No. 12 Chalmers Crescent) necessitating the removal of a number of allotments, which were no longer contiguous with the combined development site. The design was amended to include a total of four commercial towers and the removal of any potential site link between the site and Mascot Station to the north.
- On 24 July 2014, the amended proposal was put forward to the DRP Panel. The Panel continued to give strong support to the amended proposal, subject to issues relating to pedestrian link to Mascot Station and density of the development being resolved. The majority of the issues raised in the September 2013 DRP meeting have been resolved.
- Additional information was requested in July 2015 requiring the proposal to be brought into compliance with the current FSR standard and height control under the BBLEP 2013 and to address the BBDCP 2013 and any relevant draft SEPPs in their SEE.
- In late August 2015, the development application was withdrawn by the applicant.

DESCRIPTION OF SITE AND SURROUNDING LOCALITY

The subject site consists of 16 individual lots with a total site area of 11,484sqm plus 1,118sqm of road (total of 12,602sqm) and is located in Chalmers Crescent, a cul-de-sac within the Mascot Business Development Precinct Area. The legal description of the allotments to which this development application relates and the existing development currently found on each site is as follows:

Property	Address	Existing development
Lot 11 DP 29697	No. 14 Chalmers Crescent	Currently on the site is a 2 storey brick factory
Lot 12 DP 29697	No. 16 Chalmers Crescent	Currently on the site is a 2 storey brick factory
Lot 13-15 DP 29697	No. 18 Chalmers Crescent	Currently erected at No. 18 is a 2 storey brick industrial building located on the northern side of Chalmers Crescent and a 2 storey industrial brick building that straddles Lots 15 and 16 DP 29697, at the end of the cul-de-sac
Lots 16-18 DP 29697	No. 19-21 Chalmers Crescent	Currently erected on the site is a part 2 and 3 storey high industrial concrete building, located on the southern corner of the cul-de-sac
Lots 19-26 DP 29697	No. 7-9 Chalmers Crescent	Currently erected on the site are two 2 storey brick industrial buildings located on the southern side of Chalmers Crescent

The subject sites are located on the north-eastern, eastern and southern side of Chalmers Crescent. The sites are south of Coward Street, west of Bourke Road, east of Kent Road and north of Qantas Drive. The sites are generally rectilinear in shape and are on generally levelled ground. The sites are currently located within the B5 – Business Development zone and are bound at the rear of the southern buildings by the IN1 – Industrial zone under the BBLEP 2013.

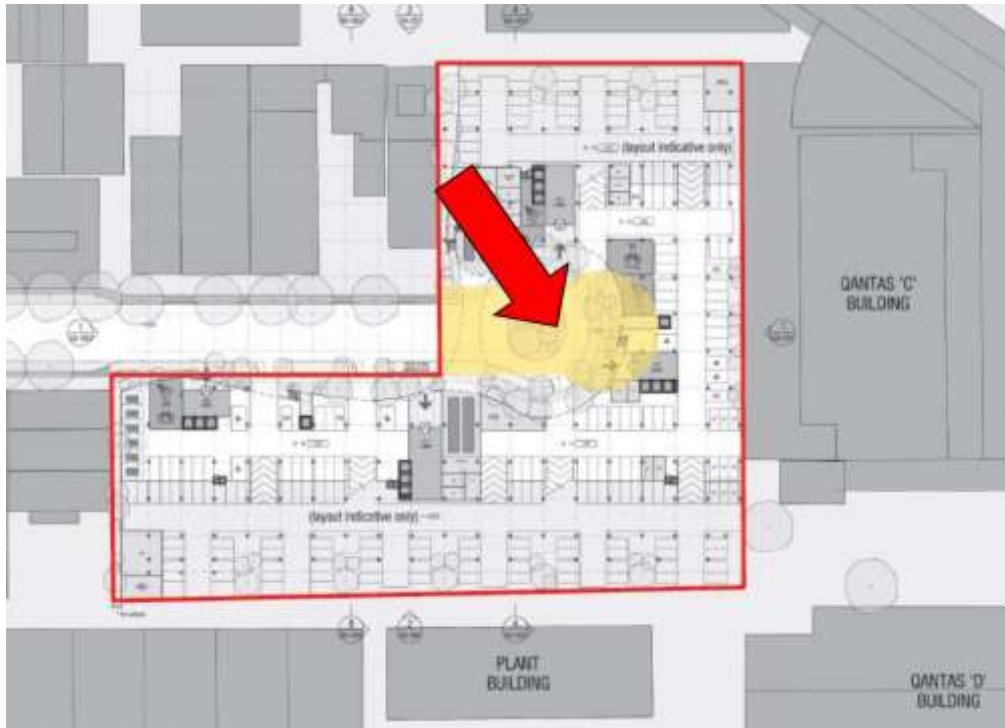


Figure 1. Locality Plan of the site with existing road highlighted in yellow



Figure 2. Aerial Map of subject site and Mascot Train Station

The sites to the north-east and east comprise of offices that are occupied by Qantas. The buildings have a maximum 7-8 storey height limit and have parking at a podium level.

Development surrounding the sites to the north, east and south comprise of Sydney Airport-related industrial buildings and offices with Qantas Airways. To the west of the sites, older two-storey industrial buildings used for a variety of warehouses and industrial uses including car sales showroom and food manufacturing. The land is positioned within Sydney's global

economic corridor in close proximity to its transport gateways: 0.5km north of Sydney Airport and 7.5km north-west of Port Botany. Mascot Station is located about 700 metres north-east from the site.



Figure 3. Existing cul-de-sac and 18 Chalmers Crescent



Figure 4. Existing development at 14-16 Chalmers Crescent



Figure 5. Chalmers Crescent facing west



Figure 6. Existing development at 7-9 Chalmers Crescent

SITE HISTORY

The below table outlines the recent development applications relevant for the site:

Application/Site	Proposed	Determination	Date
DA-03/452 5-7 Chalmers Crescent	Use of premises for food storage and construction of pallet racking	Approved	17/09/2003
DA-02/520 9 Chalmers Crescent	Use of the premises for the storage and wholesale of bottled water and soft drinks	Approved	23/01/2003
DA-06/03 16 Chalmers Crescent	Change of use and internal alterations to accommodate a cold storage room	Approved	08/11/2005
DA-09/380	Masterplan application for the	Withdrawn	21/08/2015

6-16, 7-9 and 18-21 Chalmers Crescent	consolidation of 20 lots into one lot. Demolition of existing industrial warehouse and factory buildings. Construction of five (5) separate ten (10) storey commercial buildings consisting of offices and retail at podium level with a total GFA of 69,286m ² . The proposal also includes three (3) levels of car parking at lower ground level accessing Chalmers Crescent		
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DESCRIPTION OF DEVELOPMENT

The applicant seeks consent for a masterplan proposal of a new commercial development including four commercial towers over a two storey podium and three levels of car parking at the site known as 7-9, 14-18 and 19-21 Chalmers Crescent and a part of the road reserve within Mascot.

The Masterplan will encompass the following details, subject to further development applications:

- Consolidation of 16 lots (Lots 11-26 in DP 29697) to create the subject site with a combined area of 12,602sqm (including the road purchase);
- Demolition of the existing industrial warehouses and factory buildings;
- Construction of four x eight (8) storey commercial towers comprising primarily office uses with ground floor retail space above a single two-storey parking podium. The proposal will have a total GFA of 37,805sqm;
- Three (3) levels of car parking (lower ground level, upper ground and upper ground level 1) for 490 vehicles, forty-three (43) bicycles and four (4) loading bays with access from Chalmers Crescent;
- Extensive landscaping with a total of 8,605sqm including ground level setbacks, green façade, podium level landscaped area and green roof;
- A pedestrian overpass linking the podium level on either side of the cul-de-sac at the end of Chalmers Crescent.

The Masterplan seeks specific approval for:

- Site Layout;
- Indicative building envelopes for four (4) commercial buildings (Building 1, Building 2, Building 3 and Building 4) each comprising a total of eight storeys and two storey podium;
- Maximum building heights for Buildings 1 to 4 of RL 51.00 AHD (46.4 metres to the top of the lift overrun/plant cores);
- Maximum Floor Space Ratio of 3:1 (37,805sqm GFA) for the entire site;
- Minimum Car Parking spaces of 490 car spaces.

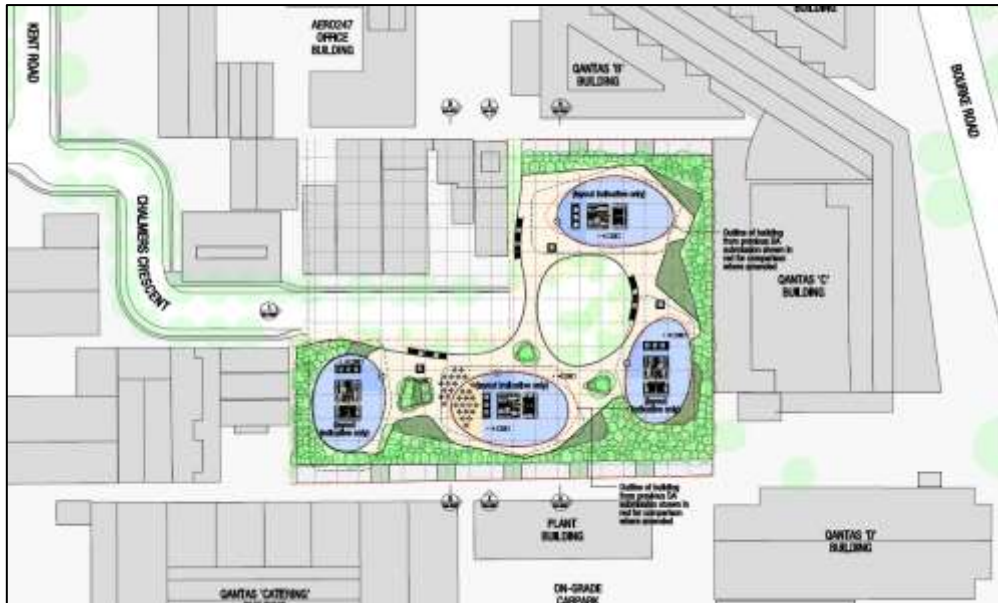


Figure 7. Proposed Site Plan



Figure 8. Concept plan of lower ground car park level

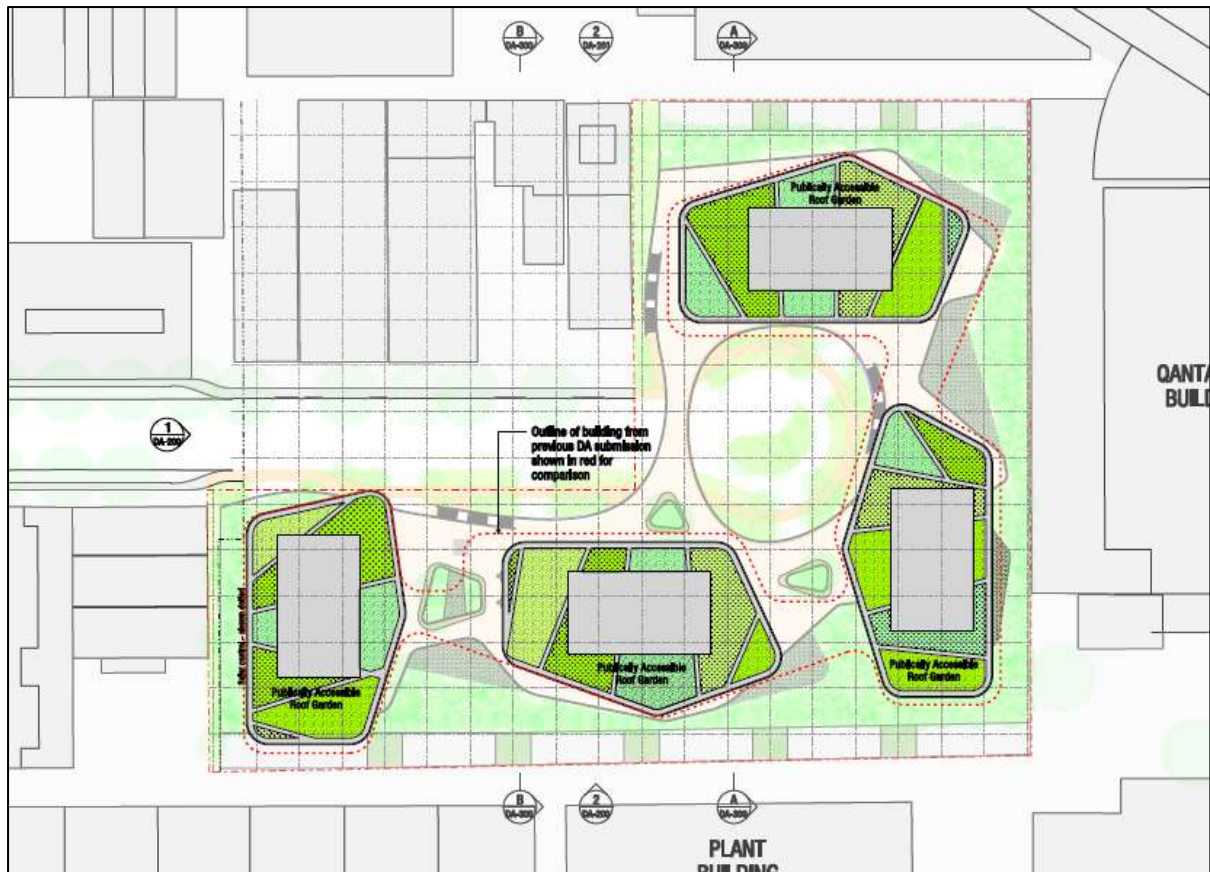


Figure 9. Concept plan of rooftop level

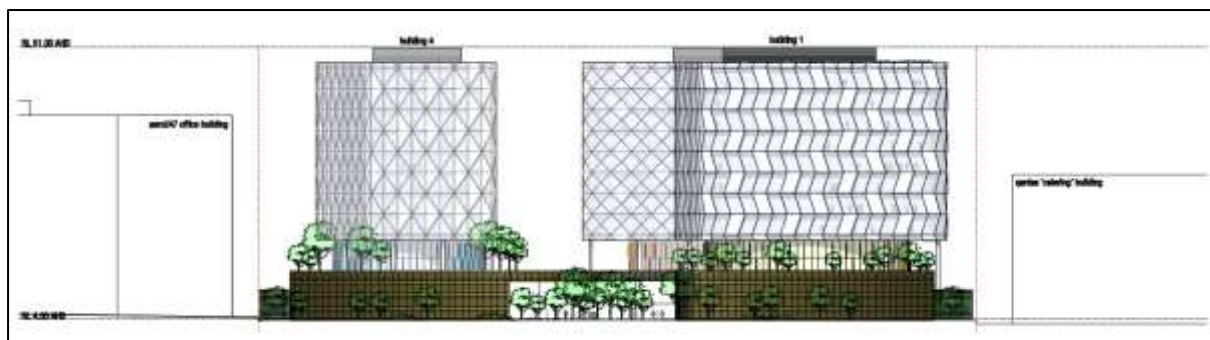


Figure 10. Proposed Western Elevation



Figure 11. Proposed Southern Elevation



Figure 12. Proposed Eastern Elevation

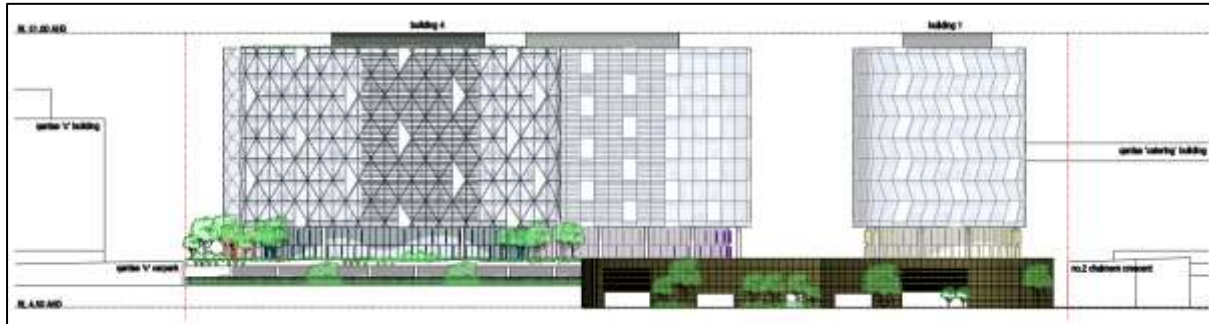


Figure 13. Proposed Northern Elevation



Figure 14. Conceptual view from the south-east



Figure 15. Conceptual view from the south-west



Figure 16. Conceptual view from the north-west



Figure 17. Conceptual view from the north-east

Summary of Key Development Controls:

LEP & DCP Controls	Required	Proposed	Complies
FSR	3:1 (34,452sqm)	Proposed GFA: 37,805sqm 3:1(based on 12,602sqm site area- road included) 3.3:1 (based on 11,484sqm site area- road excluded)	No – Refer to Note 1. No Clause 4.6 provided
Height	44 metres (max)	46.4 metres (top of lift overrun and plant cores) 44 metres (top of building and balustrade)	No- Clause 4.6 provided. See Note 2 below
Car Parking	1 per 40sqm (office premises)	490 car parking spaces (as provided by applicant dated	No – Refer to Note 3 below

	Total GFA: 37,805sqm Car Parking spaces required: 946 spaces	29.3.2016)	
Landscaping	30% of site area (greater than 5,000sqm)	8,605sqm (75%) (based on 11,484sqm)	Refer to Part 3L
Setbacks	Street: 9 metres from the street frontage with 3 metre landscaped area Side: 2 metres Rear: Nil to 3 metres	Building setback Street: 0-3 metres Side: 0 metres Rear: 0 metres	No – Refer to Note 4 below

The following is a breakdown of the floor areas sought for the Masterplan of the proposed development (based on a site area of 12,602sqm):

Gross Floor Area and FSR		
Combined Floor area of the four commercial buildings	Proposed GFA	Proposed NLFA
Ground and Level 1 car parking level	Nil	Nil
Level 2 (podium)	2,805sqm	2,355sqm
Typical level (8x storeys)	4,375sqm x 8 = 35,000sqm	3,930sqm x 8 = 31,440sqm
Total GFA	37,805sqm	33,795sqm
Proposed FSR	3:1	2.7:1

The applicant has calculated the site area with the inclusion of the road. With the exclusion of the road (1,118sqm), the following calculations apply to the proposed FSR (based on a site area of 11,484sqm). This is the true FSR:

Gross Floor Area and FSR		
Combined Floor area of the four commercial buildings	Proposed GFA	Proposed NLFA
Ground and Level 1 car parking level	Nil	Nil
Level 2 (podium)	2,805sqm	2,355sqm
Typical level (8x storeys)	4,375sqm x 8 = 35,000sqm	3,930sqm x 8 = 31,440sqm

Total GFA	37,805sqm	33,795sqm
Proposed FSR	3.3:1	2.94:1

The following is a breakdown of the height of buildings sought for the Masterplan of the proposed development:

Height of Buildings	
	Height (metres and RL)
Buildings 1-4	46.4 metres (RL 51.00AHD) (top of lift overrun/plant cores) 44 metres (RL 48.6 AHD) (top of building and balustrade)

The following is a breakdown of the car parking allocations sought for the Masterplan of the proposed development:

Car Parking	
	Car parking spaces
Ground Floor and Lower Ground Floor Plan	173
Level 1 and Upper Ground Floor Plan	190
Level 1a Floor Plan	127
Total car parking spaces	490

The following is a breakdown of the landscaped areas sought for the Masterplan of the proposed development (based on a site area of 12,602sqm and 11,484sqm):

Landscaped Area	
	Landscaped Area
Ground Floor and Lower Ground Floor Plan	2,185sqm
Level 2 (podium)	3,145sqm
Roof Level	3,275sqm
Total Landscaped Area	8,605sqm (68%)- with the road 8,605sqm (75%)- without the road

ASSESSMENT OF THE DEVELOPMENT

1. STRATEGIC CONTEXT

1.1. Metropolitan Plan for Sydney 2036 and Draft East Subregional Strategy

The *Metropolitan Plan for Sydney 2036* establishes a long-term planning framework to manage Sydney's growth in a sustainable manner and strengthen its economic development whilst enhancing the unique lifestyle, heritage and environment of Sydney.

The *Draft East Subregional Strategy* is an intermediate step in translating the Metropolitan Plan at a local level and acts as a broad framework for the long-term development of the area, guiding government investment and linking local and state planning issues.

The following actions are applicable to the development application:

- i) **Action B3.4** – Ensure sufficient commercial office sites in strategic centres;
- ii) **Action B5.1** – Establish a stronger corridors planning and development initiative.

The proposed masterplan would be consistent with the draft Strategy by providing commercial development in the Mascot Business Precinct and establishing a strong corridor between Mascot Station and Sydney Airport.

1.2. Botany Bay Planning Strategy 2031

The *Botany Bay Planning Strategy 2031* (the Strategy) establishes a framework for growth and development for the Botany Bay Local Government Area and addresses the draft East Subregional Strategy dwelling and employment targets. The Strategy also provides the foundation for the development of the Botany Bay Local Environmental Plan 2013.

The *Botany Bay Planning Strategy 2031* sets the following objectives that are applicable to the development application:

- i) **Direction 5** – Maintaining Sydney Airport as a Global Gateway:
 - a. **Objective 5.1** – Protect existing employment areas near the Airport for related activity;
 - b. **Objective 5.2** – Support the development of new offsite employment locations near the Airport to accommodate the growth in demand for Airport-related activity;
 - c. **Objective 5.4** – Develop O’Riordan Street precinct as a major City/Airport gateway.

The subject site is located within the Area 1: Mascot Station and Sydney Airport. Due to the proximity to the airport, the proposed masterplan presents an opportunity for additional airport related uses including office development to be located within the area. The subject site is also identified as a preferred location for commercial office development as demonstrated in the Strategy.

1.3. Mascot Town Centre Precinct Transport Management Accessibility Plan

Council engaged SMEC to review to what extent the Mascot Precinct's transport systems need to change to accommodate the expected population and employment growth in the area. The documents intended to provide a basis to meet future growth and in doing so, provided assessments on the following:

- projected traffic generation of the envisaged development;
- identified the existing road and traffic circumstances;
- undertook micro-simulation traffic modelling and detailed SIDRA intersection modelling; and
- provided a 'package of recommendations' in relation to:
 - road network upgrades
 - public transport initiatives
 - pedestrian and cyclist facilities
 - parking provision
 - travel demand measures.

TMAP recommended a minimum rate of on-site parking for commercial development to be set at 1/80sqm GFA within 800m of Mascot Station. The site is located within the catchment of Mascot Station with a travel distance of 730m-750m to the site therefore the parking rate is applicable in this case. The amount of car parking necessary for the site is 473 car parking spaces, with 490 car spaces provided.

2. STATUTORY CONTROLS

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

(a) **Provisions of any Environmental Planning Instrument (EPI), draft EPI and Development Control Plan (DCP)**

State Environmental Planning Policy (Infrastructure) 2007

The Policy enables effective implementation of infrastructure in NSW and includes development controls for public works and services.

Under Schedule 3 of the SEPP, commercial development with a proposed GFA in excess of 10,000sqm is categorised as "traffic generating development". The proposal has a total site area of 11,484sqm (not including road) and proposes a total GFA of 37,805sqm therefore is a traffic generating development and has been referred to the Roads and Maritime Services (RMS) for comment. The applicant submitted a Traffic and Parking Report prepared by Transport and Urban Planning Pty Ltd with the

masterplan application and this has been assessed and reviewed by both Council and an external consultant.

An outline of RMS's comments are below providing concurrence to the increase in parking restrictions and dual left turn on Kent Road north-bound; however not concurring to the removal of the dual right arrangement from Coward Street into Kent Road and phasing at the Coward Street/Kent Road intersection:

1. *“Roads and Maritime would not support the proposed removal of the dual right turn arrangement from Coward Street into Kent Road. The queue on this approach currently stretches back to Bourke Road under the dual right arrangement. If one of these right turns is to be removed, the queue will double in length which is unacceptable on a major freight corridor.*
Furthermore, the current shared left/through/right lane is primarily used by large articulated vehicles to turn right. Restricting these vehicles to the right lane would significantly increase traffic queues in Coward Street and create difficulties for these vehicles to turn right because of the greater turning path required.
2. *Roads and Maritime would not support the proposed changes to the phasing at the intersection due to the significant increase in queue lengths on the right turn Coward Street eastern approach and on the left turn Kent Road northern approach. The increase in queue lengths will cause the queue on both approaches to extend back to adjacent intersections.*
3. *Roads and Maritime would support the inclusion of a dual left turn on Kent Road north approach. The ultimate configuration at the intersection of Kent Road/Coward Street has not been agreed upon at this stage.*
4. *Roads and Maritime would support the increase in the parking restrictions.*

Furthermore, Roads and Maritime has the following advisory comment for Council's consideration in the determination of this application:

5. *The proponent should be advised that the subject property is within an area currently under investigation in relation to the proposed Westconnex Project. In this regards, Westconnex can be contacted for further information.*
6. *All works/regulatory signposting associated with the proposed development are to be at no cost to Roads and Maritime.”*

As outlined above, the development did not receive full concurrence from RMS. This information was forwarded onto the applicant for amendments and comments. The applicant submitted a revised traffic impact report on 2 June 2016. RMS was forwarded the revised traffic report and they noted that the updated modelling of the intersection of Coward Street/Kent Road addresses their previous comments on the proposed intersection improvement.

However, RMS did raise another issue relating to a proposed pedestrian crossing along Coward Street. Their comments are as follows:

‘It is noted that a pedestrian crossing has been proposed across the eastern approach of Coward Street as a new improvement option in the amended traffic report. RMS does not support the proposed crossing at this stage and agrees with the following statement from the report:

“the provision of a pedestrian crossing across the eastern leg of Coward Street based on the TMAP concept would reduce the capacity of the intersection, due to the need to provide extended red arrow protection for this crossing and therefore this crossing may not be adopted by RMS”.

It is advised that the ultimate layout of the intersection of Coward Street/Kent Road has not been confirmed yet however, a pedestrian crossing is being proposed across the eastern approach of Coward Street and is to be constructed when the intersection is upgraded.”

As the proposal has not received full concurrence from RMS, the mechanisms instilled within the report are not fully supported. However the removal of the crossing could be conditioned.

State Environmental Planning Policy No. 55 – Remediation

State Environmental Planning Policy No. 55 requires that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated or requires remediation for the proposed use.

As the applicant has failed to provide any evidence that the land is suitable for the use or could be made suitable for the use, Council cannot support the application.

Botany Bay Local Environmental Plan 2013

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

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
Land use Zone	Yes	The site is zoned B5 Business Development under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed masterplan development is categorised as ‘business premises’ and ‘office premises’ which are permissible uses with Council’s consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objective in the BBLEP 2013: <ul style="list-style-type: none"> • <i>To enable a mix of business and</i>

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
		<i>warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.</i>
Does Clause 2.5 and Schedule 1 – Additional Permitted Uses apply to the site?	N/A	Clause 2.5 does not apply to the subject site.
What is the height of the building?	No – Refer to Note 2 below	<p>A maximum height of 44 metres applies to the site.</p> <ul style="list-style-type: none"> ▪ Top of the roof/balustrade: 44 metres (RL 48.60 AHD); ▪ Lift overrun/plant core: 2.4 metres; ▪ Top of lift overrun and plant cores: 46.4 metres (RL 51.00 AHD)
What is the proposed FSR?	No – Refer to Note 1 below	<p>The maximum FSR allowed on the site is 3:1 (34,452sqm).</p> <p>The proposed FSR is 3.3:1 (37,805sqm GFA) which does not comply. A Clause 4.6 variation was not submitted with the development application.</p>
Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000sqm min and maximum height of 22 metres and maximum FSR of 1.5:1?	N/A	The subject site is not located within an R3 or R4 zone.
Is the site within land marked “Area 3” on the FSR Map	N/A	The subject site is not identified as being within “Area 3” on the FSR map.
Is the land affected by road widening?	Yes	The subject site is not affected by road widening.
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	Complies Yes/No	Comment
6.1 – Acid sulfate soils (ASS)	No	The site is identified as being affected by Class 2 ASS. Development overlying these soils requires development consent where the works are required below the natural ground and the water table is likely to be lowered. Due to the extent of excavation, a Preliminary Acid Sulfate Soils Management Plan would need to be submitted as part of this development application. Such a plan or assessment has not been submitted.
6.2- Earthworks	Yes	Details relating to any excavation involved with the development are separate to the masterplan application and would be dealt with at a later stage in future development applications.
6.3 - Stormwater management	Yes	The development application involves a combined underground on site detention/infiltration system and rainwater tanks for collection and reuse of rainwater for landscaping on site. The development is considered to be consistent with Clause 6.3 of BBLEP 2013.
6.8 - Airspace operations	Yes	The subject site is within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority. The application proposed buildings above this maximum height and was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration. SACL raised no objections to the proposed maximum height of 51 metres AHD, subject to conditions to be imposed on any consent. The development is considered to be consistent with Clause 6.8 of BBLEP 2013.
	Yes	The subject site lies within the 25-30 ANEF

Clause 4.6(2) and (3) of the BBLEP 2013 requires the following:

“(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.”

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.”

The applicant has not provided a Clause 4.6 variation to justify the contravening of the FSR development standard. Council cannot make a proper assessment on the impact of the additional gross floor area on the site and therefore cannot legally approve a development without the variation. The applicant has not addressed whether there is unreasonable or unnecessary reasons in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard. The proposed FSR of 3.3:1 is not supported.

Note 2 – Clause 4.6 Variation to Building Height

The applicant has provided a Clause 4.6 variation to the maximum permissible building height of 44 metres pursuant under Clause 4.3 of the BBLEP 2013. The proposal will adopt a maximum building height of 46.4 metres.

A breakdown of the heights proposed is as follows:

- Top of the roof/balustrade: 44 metres (RL 48.60 AHD)
- Lift overrun/plant core: 2.4 metres
- Top of lift overrun and plant cores: 46.4 metres (RL 51.00 AHD)

The non-compliance in height results in a variation of 5% from the development standard. The applicant has submitted a statement providing justification that the proposed development is fully contained within the permissible height plane to the top of the roof balustrade. However, the lift overrun/plant cores proposed to provide access to the rooftop protrudes above the height plane by 2.4 metres. The applicant has provided a Clause 4.6 variation to the development standard. Council has reviewed the variation and does not provide support as the variation has not demonstrated that there are any exceptional circumstances on the site to contravene in varying the standard. This is outlined below.

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 seeking to justify the contravention of the development standard pursuant to Clause 4.6(3) of BBLEP 2013, which is considered below. The matters for consideration pursuant to Clause 4.6(4) and (5) are also considered below. Clause 4.6 (6), (7) and (8) are not relevant to the current proposal.

In *Wehbe v Pittwater Council* [2007] NSW LEC 827 (Wehbe), the Land and Environment Court 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] NSW LEC 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 provided justification for the height exceedance considering that compliance with the height control is unreasonable and unnecessary and there are sufficient planning grounds to justify the proposed variation. These reasons are summarised below:

- *The proposal achieves the objectives of the standard, Council initiated strategic policies, the BBLEP 2013 and the EPA Act;*
- *Comprehensive analysis of the proposal has found no identifiable adverse amenity impact such as loss of privacy, overshadowing, or view loss. Moreover, land surrounding the proposal does not contain uses such as residential or public open space that might otherwise be more sensitive to the form of this proposal;*
- *Strict compliance with the standard will forfeit an opportunity to provide public access to extensive areas of rooftop garden. Due to its history of industrial uses, access to quality greenspace within the immediate locality is limited;*
- *Given the partial nature of the non-compliance and minor degree of flexibility required, strict adherence to the standard despite the opportunity cost would not be in the public interest.*

Officer's comment:

Having regard to Clause 4.6(3)(a), the variation request discusses whether compliance with the height control is unreasonable or unnecessary. In this case, there is a non-compliance with the FSR and the architectural plans demonstrate that some gross floor area is located on the rooftop in the form of bathrooms. The additional GFA across the site pushes the height of the development over the maximum height requirement. Compliance with the FSR control across the development would reduce the height of some or all the towers proposed to achieve compliance with the standard.

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

The applicant has not addressed this point within their Clause 4.6 variation therefore the variation does not stand. There is no sufficient environmental planning ground to justify the contravention of the development standard.

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?

Objectives of the Height of Building Standard:

The objectives of the standard under Clause 4.3 as stated in the BBLEP 2013 are:

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 the following statement addressing the underlying objectives of the development standard:

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

The subject land and surrounding sites were rezoned B5 Business Development under the BLEP 2013 and now subject to the higher maximum FSR of 3:1 and building height of 44 metres. The subject site lies at the interface of aging industrial stock to the west and newer airport-related development to the north, east and south. Given the substantial increase in development potential of these sites, it is inevitable and intended that both the industrial area to the west and newer office development be redeveloped in conformity with the increase envisaged by the controls.

This proposal, therefore, forms an important first step in the coordinated renewal process sought by the new LEP, which aims to trigger a cohesive intensification of built form in the Mascot area in accordance with the locality’s increasing strategic importance within Sydney’s Global Economic Arc.

- b) To ensure that taller buildings are appropriately located,*

The proposed development will rise above existing industrial development to the west and existing airport-related office development to its north, south and east. As noted above, the proposal anticipates the redevelopment of aging industrial stock in the short to medium term.

Although newer airport-related developments to the north, east and south are less likely to undergo substantial transformation in the short term, these will also be redeveloped in line with the new controls in the future. The proposal maintains appropriate visual relationship with these existing developments characterised by larger lots and building footprints, landscaped front setbacks, and heights of up to 10 storeys. As detailed in sections and elevations, the proposed development will be visible from Bourke and Coward Streets, with the uppermost storeys of the four towers rising above the existing airport-related developments. This stepped arrangement is appropriate for an industrial/commercial zone and will not negatively impact the streetscape of Bourke or Coward Streets. The location of the proposal is therefore considered appropriate.

- c) *To ensure that building height is consistent with the desired future character of an area,*

Proximity of the subject land to the Sydney Airport, its location within the Global Economic Corridor and its potential to support urban renewal within Mascot Town Centre are of strategic importance. In response to these development drivers, Council gazetted BBLEP 2013, which establishes a maximum height of 44 metres for the subject and surrounding land. Council also adopted BBDCP 2013, which outlines the desired future character of the Mascot Character Precinct (Chapter 8.7). The BBDCP 2013 requires the following in relation to desired future character:

....

Encourage new development or alterations and additions to existing development to complement the height and architectural style found in the immediate vicinity, particularly where there is an established character.

Maintain roof forms to reflect the characteristics of the prevailing designs within the street

...

Preserve and maintain open space areas within the precinct to cater for a variety of recreational needs.

Encourage landscaping to be incorporated within the development and site layout to soften the built form, promote pedestrian comfort and enhance the aesthetics of the neighbourhood.

As noted above, an office-park style development is not in keeping with the established character of the aging industrial stock to the west as this stock

approaches obsolescence. The proposal complements other existing airport-related office developments to the east and is in accordance with the subject land's evolving strategic role, emerging trends within the locality, and recently gazetted planning controls.

This proposal can only be enhanced by the inclusion of an accessible roof garden to soften the appearance and contribute an accessible open space for occupants as is encouraged by the DCP requirements listed above. This entails a non-compliance of 0-5% with the building height standard to provide a tower lift/plant core that will enable access while remaining invisible at street level. The accessible roof garden will improve the amenity of the office park as well as set a positive precedent for future development of remaining industrial sites to the west.

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

The subject land benefits from a location within an established industrial/commercial area away from sensitive land use areas. As a result the proposal will have no impact on views, privacy and solar access for existing development in areas zoned for residential and open space purposes.

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

The proposal will improve the existing streetscape along Chalmers Crescent through extensive street tree planting to Council specifications and the replacement of unattractive aging industrial stock with a modern office park style development. The proposal also includes extensive landscaped areas at the ground, roof and podium levels and green walls that provide a vegetated outlook to surrounding development and the street are also proposed. Overall these measures will significantly add to the amenity of adjoining properties as well as the public domain.

As noted above, the proposal anticipates future change across aging industrial development to the west setting an appropriate precedent for redevelopment in terms of streetscape, skyline and landscape."

Officer's comment:

Council's set height requirement of 44 metres has established the character of the area. In particular, with the site being so close to Sydney (Kingsford Smith) Airport, any exceedance in the height would need to be considered so that it does not impact with the activities from the airport. The height exceedance of 2.4 metres is partially attributed to the excess FSR proposed on the site. Therefore the development, as a whole has not been designed in a coordinated and cohesive manner and could be made compliant if one storey was lost on all towers. Buildings surrounding the subject site have a maximum of 7 to 8 storeys and fall well under the maximum height requirement. The proposal would result in the commercial towers being one of the

higher developments within the Mascot precinct. As outlined above, there is no justifiable reason to contravene the development standard and the main concern Council has is that the development will establish a built form that will be translated to other existing industrial stock within the street that are also zoned in the B5 zone. It is the excess FSR for which there is no justification for that leads to the excess height which is not warranted.

Objectives of the B5 – Business Development Zone:

The applicant has submitted the following statement addressing the underlying objectives of the zoning standard:

“The subject site is zoned Zone B5 Business Development under BBLEP 2013, the only objective of the B5 Business Development zone is following:

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

The proposed building envelope will enable the delivery of 33,795sqm of business floor space to support the Sydney Airport transport gateway and absorb spill-over in demand for commercial floor space from the CBD. This is an appropriate role for the site within the Global Economic Corridor and represents an important opportunity to contribute to jobs growth within City of Botany Bay. Similarly, it will complement the intensification of residential uses within Mascot Town Centre by providing jobs close to the homes of Botany residents. The proposal, therefore, satisfies the objective of the B5 zone.

As the objective of the B5 zone does not explicitly deal with the matter of building height, the aims of the BBLEP 2013 listed under clause 1.2(2) have also been considered:

- (b) to encourage sustainable economic growth and development,*

Provision of an office campus in close proximity to Sydney Airport and the extensive residential development of the new Mascot Town Centre will encourage sustainability by co-locating jobs and housing.

- (e) to protect and enhance the natural and cultural landscapes in Botany Bay,*

Open space is scarce west of O’Riordan Street, the immediate locality of the subject land, owing to the historic dominance of industrial uses in this area. The proposed roof gardens will contribute extensive landscaped open space to meet the needs of future workers within the office-park development. The proposal will provide a landscaped setting for business development as a model for the Mascot Town Centre.

- (f) to create a highly liveable urban place through the promotion of design excellence in all elements of the built environment and public domain,*

As noted above, the proposal makes use of every opportunity to provide added amenity to future workers and redress the current deficiency of green open space areas within the locality while achieving the highest sustainability outcomes and setting a positive precedent for future development. Design excellence of the proposal has already been acknowledged by Council's Design Review Panel."

Officer's Comments:

The proposal is not satisfactory in that it does not meet Objective (b) of Clause 1.2(2) of the BBLEP 2013 in encouraging sustainable economic growth and development in the area. The excess FSR which has not been justified, attributes to the variation in height. The exceedance in the height does not contribute to an orderly development and is not sustainable. The height of the proposal is not raised in the objective itself however due to its location to Mascot Train Station, orientation and the surrounding commercial developments, it is recommended that full compliance with the height requirement is necessary as Council has established a certain character for the area.

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.

The variation is 2.4m and is not acceptable as the height exceedance is attributed to the lift overrun/plant cores. Compliance with other numerical controls will allow for compliance in height and Council is of the opinion that there is no supportable justification in contravening the standard. Compliance with the standard is reasonable and necessary as it will dictate the height of the subject and future surrounding old industrial stock in the area. Any exceedance in the height is not what Council has envisaged for the locality in this particular zone.

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

Summary

It has been established that the proposed development is not appropriate and strict adherence to the development standard in this instance is reasonable and necessary. The excess height is attributed to the non-compliance in FSR which has not been justified as part of the development application. Additionally, the Applicant has not addressed Clause 4.6(3)(b) of the BBLEP 2013 in demonstrating whether there is sufficient environmental planning grounds in contravening the development standard. The public benefit of maintaining the development standard does not outweigh the benefit of the proposed development to the area and economic corridor.

It is considered that the applicants Clause 4.6 variation is not well founded and the departure in height is not acceptable. On this basis, it is recommended the development standard relating to the maximum building height for the masterplan

pursuant to Clause 4.3 of the BBLEP 2013 should be not varied in the circumstances as discussed above.

Botany Bay Development Control Plan 2013

The proposal has been assessed against the relevant controls contained within the Botany Bay Development Control Plan (BBDCP) 2013 Amendment No. 5 which came into effect on 5 April 2016. The applicable objectives and controls considered in the assessment are provided below:

Part 3A – Parking and Access

Control	Proposed	Complies
3A Parking and Access		
3A.2. Parking Provisions of Specific Uses <u>Commercial</u> 1 space / 40sqm GFA <u>Service Bays</u> For business /office premises with a total GFA of 37,805sqm, the following is required: <ul style="list-style-type: none"> ▪ 1 Courier van – 6 ▪ SRV – 2 ▪ MRV- 3 + 1/8000sqm GFA 	<u>Commercial</u> Based on a GFA of 37,805sqm, the development triggers 946 car spaces. The proposal provides 490 car spaces. <u>Service Bays</u> Service bays/loading bays: 4 loading bays have been provided. Both SRV, MRV and HRV's will service these areas.	No – Refer to Note 3 below
3A.3.1 Car Park Design Pedestrian entrances and exits shall be separated from vehicular access paths.	Pedestrian access easily identifiable. Pedestrian entrances and exits are separated from vehicular access paths.	Yes
C1 All off-street parking facilities shall be designed in accordance with the current Australian Standards AS2890.1 and AS2890.6. The design of the off-street commercial vehicles facilities shall be in accordance with AS2890.2	Details relating to this matter are to be demonstrated at future development application stages.	Subject to future DA
C2 Vehicle access points, loading/unloading area and the internal circulation of an off-street parking facility shall be designed in a manner that entry to and exit from the site is made in a forward direction.	Any commercial vehicles will reverse into the designated loading bays and will leave in a forward direction from the site.	No – Refer to Note 3
C40 The waste collection point	The garbage holding room (to be	Yes

Control	Proposed	Complies
<p>shall be designed to:</p> <p>(i) Allow waste loading operations to occur on a level surface away from parking areas, turning areas, aisles, internal roadways and ramps; and</p> <p>(ii) Provide sufficient side and vertical clearance to allow the lifting arc for automated bin lifters to remain clear of any walls or ceilings and all service ducts, pipes and the like.</p>	<p>served by the garbage truck) and garbage rooms are located within in the lower ground floor car park directly adjoining the loading bay.</p>	
<p>3A.3.2 Bicycle Parking C1-C5 To comply with AS2890.3 & AUSTRROADS and provide end of trip facilities and security.</p>	<p>The DCP requires 95 bicycle spaces to be provided. The plans indicate that 43 bicycle spaces are provided within the lower ground level car park. This does not comply with the 10% requirement however as the site adopts the recommendations and requirements of TMAP, the amount of bicycle parking meets the policy. The site provides end of trip facilities (i.e. showers and bicycle repair/sales). However as a result of the road exclusion, the trip facilities will need to be redesigned so that they are contained within the site boundary.</p>	<p>Acceptable</p>
<p>3A.3.4 On-site Loading & Unloading C1-C11 For business /office premises with a total GFA of 37,805sqm, the following is required:</p> <ul style="list-style-type: none"> ▪ Courier van – 6 ▪ SRV – 2 ▪ MRV- 3 + 1/8000sqm GFA (6) <p>For commercial developments, the loading and unloading of vehicles and collection of waste is to be separate to the public car park.</p>	<p>Service vehicles: 4 loading bays to accommodate 4 SRV/MRV/HRV vehicles and 5 courier vans.</p> <p>The applicant has stated that the development is not anticipated to require regular servicing by MRV/HRV. The loading bays are located separately to the public car park and are situated at the front of the site.</p> <p>Swept path diagrams have been provided with the application which demonstrates that the service vehicles will be reversing into the spaces therefore does not comply with control C10.</p>	<p>No – Refer to Note 3</p>

Note 3 – Car parking, traffic generation and loading/unloading

Control C2 of Part 3A of the BBDCP 2013 requires commercial/office premises to provide parking spaces based on a ratio of 1 space/40sqm. This generates a total number of 946 spaces required for the development. The application proposes a total of 490 car spaces. This is a shortfall of 456 car spaces. The applicant has relied on the Transport Management Accessibility Plan (TMAP) which calculates car parking for commercial developments at a rate of 1 space/80sqm. This will result in a total of 473 car spaces. The provision of 490 car spaces will satisfy this requirement.

TMAP was prepared by SMEC in association with the applicant (Neustein Planning) in April 2012, which is intended to provide a basis to meet future growth and in doing so, provided assessments on the following:

- projected traffic generation of the envisaged development;
- identified the existing road and traffic circumstances;
- undertook micro-simulation traffic modelling and detailed SIDRA intersection modelling; and
- provided a ‘package of recommendations’ in relation to:
 - road network upgrades
 - public transport initiatives
 - pedestrian and cyclist facilities
 - parking provision
 - travel demand measures.

All previous development applications have relied on the data and Sidra analysis provided within the TMAP, which provides more conservative data than the RMS rates. These developments have been assessed and approved based on this information.

The application was accompanied by a Traffic Impact Assessment Report prepared by Transport and Urban Planning Pty Ltd, dated 25 June 2015 and an addendum dated 7 March 2016. The addendum to the traffic report provides the following breakdown of the key issues relating to traffic generation:

“The estimated number of trips to Mascot Station in the AM peak hour based on the TMAP’s mode split target for 2031 will be 279 persons with an average of 35 persons per train (based on 8 trains per hour). These 35 persons would walk between Mascot Station to the development site at 7-8 minute intervals over the hour.

The traffic generation of the proposal would reduce to 338 vehicle trips per hour in the A and PM peak hours, which is a reduction of 125 vehicle trips in the peak hours, as compared to the earlier development proposal.

While there will be a reduction in the traffic generation of the proposed development from what was previously assessed, Transport and Urban Planning Pty Ltd considers that its original conclusions regarding the traffic impacts and future works are still appropriate. In this regard, the existing road network and intersections can accommodate the additional traffic

generated by amended Masterplan Stage 1 Development with minor changes to parking restrictions at the intersection of Kent Road/Coward Street. In the medium term improvements to Coward Street/Kent Road intersection is likely to be required to accommodate the full development (subject to the impacts of West Connex).

Improvement options for the Kent Road/Coward Street intersection include widening as recommended in the Mascot TMAP and or traffic signal phasing changes as documented in the June 2014 report. The traffic signal phasing changes could be considered to be an interim measure until the widening of Kent Road is completed. The widening option would also allow some of geometric constraints associated with heavy vehicles to be addressed."

On 18 March 2016, Council engaged Parking and Traffic Consultants (PTC) to peer review the traffic and parking report provided by the applicant. The peer review was provided to Council on 8 April 2016 for assessment. In relation to traffic, PTC agrees with the method and conclusions made by TUP. The traffic assessment relies on upgrades to the intersection of Coward Street and Kent Road. Therefore a program should be established to ensure that any approved intersection upgrades are appropriately scheduled.

PTC has acknowledged that the current proposal is a masterplan and comprehensive details relating to the car parking arrangements will be provided with future development applications. Some key issues that PTC has raised and that will need to be addressed prior to the determination of the subject application relate to the car parking circulation and loading bay access particularly as MRV and HRV reverse from the public road into the dedicated loading bays.

As the proposed development is considered to generate a large volume of traffic, or development which will produce traffic impacts which are significant in the local context, the proposed development was referred to Council's Traffic Advisory Committee (TAC) however the meeting was cancelled prior to the finalisation of this report.

The masterplan was referred to Council's engineer for comment. The engineer reviewed both traffic reports in addition to the peer review and agrees with PTC's recommendation. Furthermore, Council's engineer provides the following comments:

- This development triggers the upgrade of the Kent Road, Coward St signalised intersection. It is advised that such upgrade works should form part of any consideration of future development applications,
- Capacity of the Kent Road, Chalmers St intersection has not been investigated. It is advised that any future traffic study also incorporate and model this intersection due to the intensification and of the AM and PM traffic movements and the change in the traffic composition, and
- Capacity of Chalmers St should be modelled, especially due to its current plan geometry.

The amended traffic report dated 2 June 2016 incorporates the provisions made by Council and the external consultant. The report was referred to RMS for further

comments and these comments are provided within the State Environmental Planning Policy (Infrastructure) 2007 section of the report above.

The DCP requires that new commercial premises require six courier vans, 2 spaces for SRV's and 6 spaces for MRV's. The masterplan proposes 4 loading bays to accommodate 4 SRV/MRV/HRV, predominantly HRV, vehicles and 5 courier vans. Therefore there is a shortfall of 1 courier space and two MRV spaces. The SRV and MRV spaces will be shared on the site. Service vehicles reverse into the spaces and exit in a forward direction which is demonstrated in swept path diagrams provided to Council on 29 March 2016. On 2 June 2016, the applicant provided a justification for the shortfall in service bays:

"The proposal will provide service vehicle parking for 5 courier vans and 4 loading bays that can accommodate 4 HRV (ie. Heavy Rigid Trucks up to 12.5 long) ie. total of 9 spaces for vehicles.

It is acknowledged that this is less than the DCP requirement of 6 courier vans, 2 small rigid truck bays plus 6 medium rigid truck bays. However the DCP requirement is considered to be excessive and not representative of what the actual requirement will be for an office development of this size.

Table 5.1 of the RMS Guide to Traffic Generating Developments provides service vehicle requirements for different types of developments.

For office developments over 20,000m² of floor area the RMS Guide recommends service vehicle provision of 5 spaces, plus 1 space/8,000m² over 20,000m² of which 50% should be suitable for trucks.

Adopting the RMS Guidelines, the Masterplan development would require 7-8 spaces for service vehicles, 4 of which should be truck spaces.

The proposal provides a total of 9 spaces/bays for service vehicles including 4 bays for HRV trucks and therefore complies with the RMS recommended parking rates.

Transport and Urban Planning Pty Ltd considers that the RMS Guideline more accurately reflect the required service provision and based on this it is concluded that the service vehicle provision as proposed will be adequate for the development."

Considering the above figures outlined by the applicant and found within the RMS guidelines to traffic generation development, Council partially supports this justification.

In regards to the servicing arrangements of the service vehicles, Council is quite strict in compliance with the ingress and egress of service vehicles from within the site. Originally, by including the road purchase within the site boundaries, service vehicles proposed to reverse into their loading bays from these dedicated areas. There has been no change to this arrangement as a result of the exclusion of the road. Both Council and the external consultant in addition to RMS' guidelines require that all vehicles are

to enter and leave the site in a forward direction. This has not been demonstrated and is not supported. Amended plans should be provided to show that all servicing and access onto the site occurs within the site boundaries and in a forward direction.

Part 3G – Stormwater Management

The development application involves a combined underground onsite detention/infiltration system and rainwater tanks for collection and reuse of rainwater for landscaping on site. Council's Development Engineer has reviewed the proposed Stormwater Concept plans and has no objections to the proposal.

Part 3I – Crime Prevention, Safety and Security

The application was referred to the NSW Police who had no objections to the masterplan application. The Police have recommended conditions in relation to passive surveillance, territorial reinforcement, access control and space management. However, there are numerous issues that do not warrant the support of the application therefore these recommendations are void.

Part 3J – Aircraft Noise & OLS

The subject site lies within the 25-30 ANEF contour and is therefore categorised as 'conditional' development. The applicant has not provided an acoustic report as part of the masterplan application. An acoustic assessment prepared by an accredited acoustic consultant is to be submitted within any subsequent development application for the site.

The subject site is within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority. The application proposed buildings to a maximum height of 46.4 metres (RL 51.00 AHD) and was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration. SACL raised no objections to the proposed maximum height of 51 metres AHD, subject to conditions to be imposed on any consent.

Part 3K – Contamination

Details are provided under the SEPP No. 55 of the report above.

Part 3L – Landscaped Area and Tree Management

The application was accompanied by a concept landscape plan prepared by Taylor Brammer Landscape Architects Pty Ltd. The masterplan proposes 8,605sqm of landscaped area with 2,185sqm on the ground floor and lower ground floor, 3,145sqm on Level 2 (podium) and 3,275sqm on the roof level. Council's Landscape Architect has reviewed the proposal and has provided the following comments:

“Compliance in landscape area and deep soil should be made against BBDCP2013 however it appears that the deep soil provision is minimal, being

located in 2 narrow areas that are 2 metres in width on the western boundaries either side of Chalmers Crescent and a few small areas in the Chalmers Street south setback. Deep soil planted pockets are provided on the northern and southern boundaries.

A 2 metre width is inadequate to support large canopy tree planting, which is needed to screen the development and provide suitable areas for re-planting trees removed. There are no large trees proposed for this area. Tuckeroos (proposed) are a small to medium tree with a broad canopy that will be impacted by the proximity of the buildings resulting in an unnatural form to the tree and potentially poor structure and amenity.

Palms are proposed to the Chalmers Street south setback. It is not clear why the nominated canopy street tree has not been included as proposed for the northern street side. Palms offer little in the way of canopy amelioration of buildings and would be more suitable in strategic setback locations. The setbacks too are dominated by palms only and it is unclear how well these will scale with and ameliorate the building facades and provide landscape screening. The setback to Chalmers Crescent provides no canopy trees at all.

The deep soil pockets of 8 x 5m on the northern and southern boundaries have also been planted with small-medium trees (Tuckeroos), a missed opportunity for larger trees, ideally in larger pockets with larger soil volume. The canopies of the trees in the southern boundary pockets are also constrained by podium overhang. The green wall proposal is unclear and needs further detailing.

While the landscape area appears significant – 8600sqm, the majority is located on the podium and roof and is not visible at ground level and from the public domain. The proportion of landscaping at ground level is minor and is considered insufficient in proportion to the building massing and envelopes and therefore inadequate for enhancing the visual presence of the development in the public domain.

Even the landscaping within the turning area, which is intended to be visible through a void on the podium level, will achieve little impact as only a small Lillypilly is proposed.

The landscape section on Landscape Plan LA04 provides limited information on how landscaping will improve this site and satisfy the DCP. Additional elevations and sections of the site at a smaller scale are required as well as landscape photo montages.

The podium area provides quite generous landscape areas but most trees are small-medium sized varieties. Soil depths and volumes are unknown however they are required to be capable of supporting larger trees than is proposed, in strategic locations. More variety in tree and shrub species could also be provided using a range of shrubs with architectural type foliage and colour and trees with a variety of heights and canopy dimensions from 5-15 metres. The majority of trees are small in scale and the landscape at ground and podium should be punctuated with some taller canopy trees.

Further detailing demonstrating usage and amenity of the podium are is required such as seating and other furniture for workers – tables, shelters etc to utilise at lunch time and so on, are there private eating areas at this level – how do they impact open spaces, suitability for active recreation eg ping pong, green walls, artwork and/or water features and lighting.

The roof landscaping comprises only small shrubs/groundcovers. These areas appear to be inaccessible to building occupants. As these areas form a significant proportion of the landscaping they should be usable by occupants as open space and provide higher level planting.

A public domain proposal is required to demonstrate contribution to improving the public domain and streetscape through soft landscaping, paving and furniture.

These details relating to the landscaped area and public domain are to be provided in amended landscape plans and accompanying arborist report as part of any future development applications.

Tree issues

There are a number of trees proposed to be removed in Chalmers Crescent that are protected by Council's TPO. Of not is large 18m Tallowood Eucalyptus in Lot 18 near the road and behind that some 8 metre Lilly pillies.

An Arborist report detailing the condition of these trees, as well as the other trees in Chalmers Crescent, both Council street trees and private trees, has not been provided with the Application. Modification of the development to retain the large Eucalyptus would be significant and this is acknowledged, notwithstanding the amenity contribution that this tree and the Lillypillies behind provides."

An arborist report has not been prepared as part of this masterplan development application. The Applicant has indicated that consent for the removal of existing trees particularly along the southern portion of the site will be sought as part of any future development applications. The applicant has not provided any additional information to address Council's concerns relating to landscaping and tree preservation. As the applicant has not proposed a redesign of the development to contain all building envelopes and structures within the site, amendments to the proposed landscaped elements and existing vegetation is required. Therefore, some of the modifications to the landscaped area are not supported.

Part 3N – Waste Minimisation and Management

Control	Proposed	Complies
3N.2 Demolition and Construction		
C1 A Site Waste Minimisation and Management Plan in accordance with Part 1 – Model Site Waste Minimisation and Management Plan must be	Compliance is to be confirmed in Development Application for demolition and construction.	Subject to future DA

submitted		
3N.3 Ongoing Operation of Development		
C1 A Site Minimisation and Management Plan in accordance with Part 2 – Model Site Waste Minimisation and Management Plan must be submitted with the Development Application.	Compliance is to be confirmed in subsequent Development Applications.	Subject to future DA
C7 Waste and recycling rooms must be constructed in accordance with the DCP	Details are not provided at the Masterplan stage and should form part of any subsequent development application.	Subject to future DA
C9 Waste and recycling storage areas must be visually and physically integrated into the design of the development	The applicant has provided amended plans of the lower ground level demonstrating that the waste and recycling storage areas are physically integrated within the design and in close proximity to the loading zones. Further details relating to these areas should form part of any subsequent development application.	Yes
C10 Waste and recycling storage areas must be designed and located to avoid adverse impacts on the amenity of adjoining sites including noise and odour	Waste and recycling storage is located away from adjoining sites. Compliance is to be confirmed in subsequent Development Applications.	Subject to future DA

Part 6 – Employment Zones

The proposal is identified within the Mascot Business Development Precinct under Part 6.2.4 of the BBDCP 2013. The Desired Future Character for the area promotes the following objectives:

- O1** To encourage and provide for business development that has an affinity or locational need to be near to Sydney (Kingsford Smith) Airport;
- O2** To ensure that the scale, design, material of construction and nature of the development, in the opinion of the Council, contributes positively to the visual amenity and gateway function of the area;
- O3** To ensure that development supports an efficient and sustainable transport system with a high level of access to public transport;
- O4** To ensure the protection of the Sydenham- Botany Goods Railway Line;
- O5** To ensure the protection of the Airport Line Tunnel which is generally located under Bourke Road and O’Riordan Street.

The applicant has provided the following comments to justify that the proposed masterplan development meets the above objectives:

- *“The proposal will deliver 33,795sqm of net leasable floor space to accommodate airport-related uses;*

- *The proposal is for a contemporary office park-style development that will incorporate extensive landscaped areas and street planting. An above ground parking volume and rooftop are concealed beneath a green façade and green rooftop respectively. As noted in the DRP report dated July 2014, “the proposal could realise a development of high quality in a small commercial/industrial precinct which is presently very unattractive”;*
- *On-site parking provision has been reduced from 1 space/60sqm to 1 space/80sqm to encourage patronage of public transport. End of journey facilities for cyclists are proposed. Initiatives to improve pedestrian amenity, such as street beautification, are also proposed. Both a Workplace Travel Plan and Transport Access Guide will be submitted at the development application stage;*
- *The proposal is physically separated from the Gods Line by a distance of more than 130 metres and is not anticipated to impact the development; and*
- *The proposal is physically separated from Bourke Street by a distance of more than 90 metres.”*

The redevelopment of the site would contribute to a sustainable and economically viable redevelopment area and would contribute to a balanced land use precinct dedicated to commercial and airport-related uses. The proposal would add to a sustainable, economic, social, environmental and urban design setting that may be further considered in detailed future development applications. The masterplan proposal is considered to promote high quality urban design within the built form, landscaping and public domain. However, in order for this to be achieved, the proposal will need to comply with the maximum FSR of 3:1 so that it will not be viewed as an overdevelopment of the site and the development will need to be redesigned so that it is encompassed within the boundary of the site and not include the eastern portion of Chalmers Crescent.

The development application has been assessed against the numerical controls contained within Part 6. The following table compares the proposed development with the relevant provisions of this policy.

Part	Control	Proposed/Comment	Complies
6.1 Introduction			
6.1.1 Application	Land to which this Part Applies	The site is located in the Mascot Business Development precinct.	Yes
6.1.4 Design Quality Principles	P1 – the contribution of industrial and business land use activity at the Local, Regional and State levels. P2 – The improvement to the built form/urban form and public domain of the industrial business areas in the City	The proposed development will create employment opportunities within the area and facilitates for the provision of a variety of business activities. The proposed development replaces old stock of industrial warehouses with modern commercial office spaces. The proposed building provides a variety of textures and finishes which creates visual interest in the building form. The development has also been designed to consider	Yes

	<p>P4 – The efficient design, operation and function of industrial/business land uses</p> <p>P5 – The need for a compatible and workable relationship between industrial/business and non-industrial/business uses</p> <p>P6 – The promotion of developments that are sustainable and encourage the protection of the environment</p>	<p>the amenity of adjoining airport-related land uses.</p> <p>The development provides for all parking to be contained wholly within the building, all services for the development are also provided within the building structure including loading and unloading facilities. However, the applicant has not demonstrated that the building envelopes and structures are contained within the site boundaries.</p> <p>The development will not adversely impact upon non-industrial land uses by way of noise and air quality impacts. The areas surrounding the site are predominantly commercial and industrial related.</p> <p>The application has been accompanied by an Energy Efficiency Study prepared by Colin Shears and Associates which concludes that the proposed development complies with the specific ESD policies and targets contained within BBDCP 2013.</p>	
6.2 Precinct Controls			
6.2.4 Mascot Business Development Precinct	C1 Development is to encourage a higher public transport use and include strategies to encourage and promote car sharing and car pooling strategies	<p>The masterplan incorporates in their design pedestrian and bicycle amenities to be located in the car parking levels. This includes end of journey facilities such as showers and bicycle repair work areas. However, these should be contained within the site boundaries of the premise.</p> <p>Negotiations for a pedestrian site link were discussed between the applicant and Council. Council endorses the provision of a site link between Mascot Train Station and the site to encourage greater walkability from modes of public transport. However, the applicant cannot accommodate this request at this time due to the northern and eastern neighbouring properties not providing consent.</p> <p>A Workplace Travel Plan is to be submitted with any subsequent</p>	Acceptable/ can comply

		development application.	
	<p>C2 Developments, including alterations and additions shall:</p> <p>i) Improve the appearance of buildings, particularly along the roads which serve a gateway function to Sydney Airport and the Sydney CBD;</p> <p>ii) Comply with Sydney Airport's regulations in regard to safety, lighting and height of buildings.</p>	<p>i) The development is an improvement from the existing industrial buildings currently found in the area. The site has direct access to Chalmers Crescent only. The elevations along the street are to be designed with high quality finishes and provided appropriate articulation and street planting in accordance with the requirements raised by Council's Landscape Architect;</p> <p>ii) The masterplan application has been referred to SACL for comment. SACL has no objection to the proposal subject to appropriate conditions.</p>	Can comply
	C3 Development that seeks the maximum building height under the BBLEP 2013 and will penetrate the OLS will need to be assessed by CASA before an application is submitted to the Department of Infrastructure and Transport for determination	The height exceeds the maximum 44 metre requirement however does not exceed the OLS requirement of RL51.00 AHD. Therefore the development does not need to be referred to the Department of Infrastructure and Transport for determination.	N/A
	C4 Redevelopment of property must take into account any road widening affectation	The subject site is not identified within the Land Reservation Acquisition Map in the BBLEP 2013 and will not interfere with the planned widening of Bourke Road.	N/A
	C5 Development must not adversely affect the operation of the Sydenham- Botany Railway Line.	The proposed development is not considered to impact the Sydenham-Botany Goods Rail Line.	N/A
	C6 Development within 25 metres of either side of the centre line of the Airport Line Tunnel is to be referred to Railcorp.	The subject site does not fall within 25 metres of the Airport Line Tunnel.	N/A
	C7 Development shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion- Building siting and Construction). Note: Details to be included in the	The site falls within the 25-30 ANEF. The proposal is classified as commercial buildings and is categorised as conditional development. Details of the elements and acoustic measures can only be determined once they have been	Can comply

	Development Application.	submitted to Council with subsequent development applications.	
	C8 The introduction of noise abatement measure to achieve compliance with current AS 2021 must be done in a manner that does not compromise the architectural design of a building or impact on the character of an existing streetscape.	See Control 7 above which addresses this control.	Can comply- To be submitted with subsequent development applications
	C9 All development that is in or adjacent to the rail corridor or busy road must be designed in accordance with NSW Department of Planning 'Development near rail corridors and busy roads- Interim guidelines, December 2008'	The subject site is not located in or adjacent to a rail corridor or busy road.	N/A
	C10 Development higher than 4 storeys and adjacent to a school is to consider overshadowing impacts	The subject site is not located adjacent to a school.	N/A
	C11 Any new development proposal located on O'Riordan Street or Robey Street are to be referred to RMS at the pre-lodgement stage.	The subject site is not located on O'Riordan Street or Robey Street.	N/A
6.3 General Provisions			
6.3.2 Building and Site Layout	C1 A site analysis plan is to be submitted with the application	A site analysis plan was provided with the masterplan application.	Yes
	C2 New buildings must address the street, avoid long blank walls facing the street, provide regular modulation of the façade or division of massing.	Due to the exclusion of the road from within the proposal, all structures that make up the proposal will need to be contained within the site boundaries. The four towers over a podium address Chalmers Crescent with the main entry points to the car parking areas and to the buildings off the podium facing the street. The concept plans demonstrate the four commercial towers will not be designed with long solid blank walls. Further detail is to be provided with future development applications.	Yes (Issue with road purchase discussed in executive summary and background above)
	C8 New buildings within	The subject site is not located in	Yes

	close proximity to residential areas are to be designed to minimise overshadowing, overlooking, lighting, dust or fumes.	close proximity to residential development. Properties to the south comprise of predominantly industrial or airport-related uses. The closest residential development to the site is located north of Coward Street therefore will not be impacted by overshadowing, overlooking or dust fumes.	
	C9 Waste removal facilities are to be provided on site	The site will have a dedicated waste and recycling area within the lower ground car parking level. All waste facilities should be contained within the site boundaries.	Yes
6.3.3 Floor Space	C1 The development is to comply with the maximum permitted FSR under BBLEP 2013	The proposed FSR has been discussed within the BBLEP 2013 table above.	No – Refer to Note 1
6.3.4 Building Design and Appearance	C1 Building height is to comply with the maximum permitted height under BBLEP 2013	The proposed height of the buildings has been discussed within the BBLEP 2013 table and Note 2 above.	No – Refer to Note 2 above
	C3 Compliance with CASA requirements	SACL has provided concurrence for the maximum building height of 46.4 metres (RL 51.00 AHD).	Yes
	C4 The maximum height of development must be compatible with the height of other buildings in the immediate vicinity unless proper planning reasons are presented for the discrepancy.	<p>The sites in the vicinity of the development match the proposed height of the proposal. Residential developments at 7.9 Kent Road (47.4m) and 1-5 Kent Road (47.2m) exceed the 44 metre height limit.</p> <p>Commercial towers directly adjacent to the site have a maximum height of seven to eight storeys. The development preserves surrounding development in terms of visual privacy, overshadowing, and view loss. Therefore the proposal is compatible with existing development in the area.</p> <p>The proposed development is in accordance with the Council's desired future character of the area and has been referred to the relevant state agencies who have no objection to the masterplan.</p>	Acceptable
	C6 All rooftop structures are to be suitably screened	The rooftop structures i.e. plant rooms and lift overruns are suitably screened and are setback	Acceptable

		away from the edges of the towers. The structures will not be visible due to their location.	
	C7 Schedule of Finishes and colour scheme to be provided.	A Schedule of colours and finishes and materials should be provided with any subsequent development application however this proposal is not supported.	Can comply
	C10 Walls of new developments must make use of non-reflective colours and materials to avoid glare.	Details of this element can only be determined once the applicant has submitted subsequent development applications for the site. However this proposal is not supported.	Can comply
	C14 Building height, mass and scale should complement and be in keeping with the character of surrounding and adjacent development	The proposal will respond to the existing commercial developments to the east and north of the site, which are characterised by large building footprints and minimal setbacks. The area is undergoing redevelopment from small scale industrial buildings to airport-related commercial towers/hotels. It is expected that the properties to the west and north-west of the site will be redeveloped in a similar manner. However, the proposal will need to be redesigned so that it is contained within the site boundaries.	Yes (however not contained within the site boundaries)
	C22 For new development all loading and unloading facilities and car parking are to be located at the rear or side of any buildings	All loading/unloading and carparking areas are located within the lower ground, upper ground and level 1 car parking levels. A redesign of the proposal will require that all parking, loading/unloading facilities and end of trip amenities are to be contained within the site area and within the building footprint.	Proposal is not contained within the site boundaries
	C25 Entry to basement parking areas should be through security access via the main building	The site does not propose basement parking, only lower and upper ground car parking levels. The masterplan demonstrates that there are four entrances to the car parking levels. Details relating to secure access are to be provided with subsequent development applications.	Can comply
	C26 Internal spaces area to be designed to satisfy the operational requirements of the particular land use whilst	Details of this element can only be determined once the applicant has submitted subsequent development applications for the	Can comply

	providing a safe and convenient work environment.	site however this proposal is not supported.	
	C27 Floor space is to be distributed on the site to ensure the scale of the building reinforces the role of the street and buildings are arranged and aligned to create a pleasant working environment	The development exceeds the maximum FSR required of 3:1. The applicant has not provided Council with amended plans to demonstrate a reduction in the amount of gross floor area of reconfigured the buildings so that they are encompassed within the site boundaries.	Addressed in report above
	C28 New development must make provision for connection to future underground distribution mains.	The accompanying reports prepared by Michael Frost and Associates discuss this in detail. Appropriate conditions could be imposed in any future consent.	Can comply
	C34 Service areas including waste, recycling areas and external storage areas are to be located away from principal street frontages and screened from view	The waste, recycling and storage areas are located away from the street frontages and will be located on the lower car parking level.	Yes
6.3.5 Setbacks	<p>C1 Setbacks are to be in accordance with Table 1.</p> <p><u>Building Setback:</u></p> <p>Front – 9 metres to a non-classified road</p> <p>Side – 2 metres to non-residential zone</p> <p>Rear – Nil to 3 metres</p> <p><u>Landscaping setback:</u></p> <p>Front – 3 metres to a non-classified road</p> <p>Side – 2 metres to non-residential zone</p> <p>Rear – Nil to 3 metres</p>	<p>The masterplan proposes the following:</p> <p><u>Building setback</u></p> <p>Front: 0-5 metres</p> <p>Side: 0-2 metres</p> <p>Rear: 0</p> <p><u>Landscape setback:</u></p> <p>Front: 0-2 metres</p> <p>Side: 0-2 metres</p> <p>Rear: 0-10 metres</p>	No – Refer to Note 4
	C4 Setbacks are to be deep soil zones	The development will be built to the northern, southern and eastern boundaries of the site. However, the applicant has made provisions for deep soil planting on the site. The site provides for 2,185sqm landscaped area along the lower ground level. These landscaped areas will be located in between parking bays along the southern, eastern and northern side of the site.	Acceptable
6.3.6 Parking and	C1 All vehicles (including deliveries) are to enter and	Swept path diagrams demonstrate that MRVs and HRVs will be	No – Refer to Part 3A above

Vehicular Access	leave the site in a forward direction with no vehicles permitted to reverse from or onto public road. A Swept Path Analysis may be required for the largest vehicle accessing the site.	reversing from Chalmers Crescent into the dedicated loading areas/bays.	
	C2 A Traffic and Parking Assessment Report shall be prepared.	An amended traffic and parking assessment report prepared by Transport and Urban Planning Pty Ltd and dated 2 June 2016 has been submitted with the masterplan application.	Yes
	C4 Parking provision should be in accordance with Part 3A.	Parking and access has been discussed in greater detail within Part 3A of the report above.	Refer to Part 3A above
	C6 Separation of service areas (loading/unloading) and parking areas is required.	There are four loading bays on site which are located at the front of the site within the building footprint. The loading docks will be separated from the main public car park area.	Yes
	C7 All loading and unloading operations shall be carried out wholly within the dedicated service bays at all times.	Details relating to the loading and unloading operations are to be provided as part of any subsequent development applications however the current proposal is not supported.	To comply
	C8 All loading/unloading facilities and service bays are to be provided in accordance with the current RMS 'Guide to Traffic Generating Development'	This has been discussed in Part 3A above.	Refer to Part 3A of the report above
	C10 Access driveways/vehicular crossings are to be designed to accommodate turning circle of the largest vehicle expected to use the service area.	Details relating to turning circles would have been demonstrated as part of the development application stage however the proposal is not supported in its current form.	To comply
	C11 All servicing, including garbage collection is to be carried out within the site	Details of garbage collection are to be demonstrated as part of the development application stage.	To comply
	C17 Where significant amounts of traffic generation will affect the traffic flow and safety of the local and arterial road network, the proponent is required to provide a package of mitigative measures to support the development.	This issue is addressed in greater detail under Part 3A above.	Addressed in Part 3A
	C19 Provision must be made for all loading and unloading of goods and manoeuvring of	Service bays are provided with adjacent loading/unloading areas as demonstrated in the plans. The	Refer to Part 3A of the report above

	vehicles to take place in an internal dock areas and adjoining goods handling area.	shortfall of loading bays is discussed in Part 3A above.	
6.3.7 Signage	C1 Signage is to comply with Part 3D – Signage	There is no signage proposed as part of the masterplan application.	N/A
6.3.8 Site Facilities	C1 Mailboxes and electricity sub-stations are to be designed and sited so that they enhance the development	Details of this element could only be determined once the applicant has submitted a subsequent development applications for the site.	Can comply
	C5 The name and address of the premises shall be displayed in a clearly visible position	Details of this element could only be determined once the applicant has submitted subsequent development applications for the site.	Can comply
	C11 Owners are to provide their own waste management services.	Details of this element could only be determined once the applicant has submitted subsequent development applications for the site.	Can comply
	C15 Fire booster assemblies shall be housed within the external face of the building structure where possible.	Details of this element could only be determined once the applicant has submitted subsequent development applications for the site.	Can comply
6.3.9 Landscape	C1 Landscaping is to comply with Part 3L.	Refer to Part 3L addressed above.	Acceptable
	C2 Existing trees are to be retained and adequate provision allowed for their protection as required within Part 3F of the BBDCP 2013.	Refer to the Tree Management section in Part 3L above.	Refer to Part 3L above
6.3.13 Waste	C1 Development must comply with Part 3N – Waste Management and Minimisation	A Waste Minimisation and Management Plan (WMMP) has not been provided with the masterplan application. The WMMP would need to be provided with any subsequent development applications however the current application is not supported.	To comply
6.3.21 Business Premises and Office premises in the B5 Business Development zone	C1 Building expression through façade modulation, roof silhouette and use of contemporary materials and finishes is required to achieve buildings that are of architectural merit.	A schedule of colours and finishes and a schedule of materials are to be submitted with future development applications.	To comply
	C2 Buildings are to have a clearly delineated entranceway to address its main frontage.	The site has four entrances/exits into the car parking levels. The podium has been designed so that the building entrances will be	Amendments to the building footprint are required

		visible across the site. Further detail relating to design elements should be provided with subsequent development applications. Amended plans are required to encompass the development within the boundaries of the site.	
	C4 Vehicle manoeuvring, circulation, access and parking shall be arranged on site to maximise the area available for landscaping.	Swept path diagrams have been provided with the masterplan application to demonstrate that manoeuvring and circulation of the service vehicles will be carried out within the front of the site and will utilise a portion of the road. This is discussed in greater detail above in Part 6.3.6 and Part 3A.	Discussed in Part 6.3.6 and Part 3A above
	C7 There should be a balance between the building footprint, parking/circulation and landscaping/open space. The majority of landscaping should front the street.	<p>The four commercial towers are located over a podium which expands across the entire site and will be two storeys in height. There are three levels of car parking with two levels contained above ground and the lower ground level partial underground. The building footprint and landscaped area is considered acceptable when assessing the relationship between building and open space. However, the buildings and structures will need to be recast so that they are contained within the site boundaries.</p> <p>The majority of the landscaped area is located on the rooftop terrace in addition to the southern, northern and eastern portion of the podium. Patches of deep soil is proposed along the side boundaries of the site.</p>	Acceptable
	C15 Not less than 10% of the site area shall be landscaped. New commercial development shall allocate landscaping for sites greater than 5000sqm = 30%	The site has a total area of 11,484sqm therefore the proposal is required to meet a minimum landscaped area of 30%. The masterplan proposes 8,605sqm which equals 75% of the site. Further details relating to landscaped area are provided within Part 3L of the BBDCP 2013 above.	Yes

Note 4 – Setbacks

The proposal provides 0-5 metre building front setback, 0-2 metre side setback and 0 metre rear setback. This is due to the orientation and location of the podium and above ground car parking levels. The eastern side setback of the podium will meet the adjoining podium to the east of the site. Planting is proposed between the pockets found along the eastern western and southern sides of the site. While the setbacks are not met, the setbacks are compatible with the surrounding development in the area and will not cause any adverse impacts to sunlight and bulk and scale. Due to the exclusion of the road from within the proposal, the development will need to recast its building footprints and the location of some of the buildings. This may result in a change in the setbacks proposed. Council has requested this information to be demonstrated by the Applicant, however no amended plans have been provided. Therefore, due to the uncertainty in the building envelopes, it is difficult to make an assessment of the proposed setbacks from the boundary lines.

Part 8 – Mascot Character Precinct

The desired future character for the Mascot Business Development Precinct has been discussed in detail within Part 6 of the BBDCP 2013 above.

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

Natural and Built Environment Impact

The masterplan will replace the existing industrial stock with new commercial development that will renew and upgrade the area. The proposal is designed to be compatible with surrounding commercial developments in the area and will not create any adverse impacts on visual privacy, overlooking or bulk and scale.

The proposed redevelopment of the site would provide an integrated and functional development that will service the area and provide greater job opportunities and high quality airport-related development. However, the Applicant has not provided detailed design of the changes on the proposal as a result of the exclusion of the road and has not provided justification in contravening the FSR development standard, therefore the proposal is not supported.

Traffic Generation and Car Parking

The site has frontage to Chalmers Crescent which is a cul-de-sac and extends south-east from the intersection of Coward Street and Kent Road. The intersection of Coward Street and Kent Road is controlled by traffic lights.

RMS has provided concurrence to the increase in parking restrictions and dual left turn on Kent Road north-bound however not concurring to the removal of the dual right arrangement from Coward Street into Kent Road and phasing at the Coward Street/Kent Road intersection. Discussions relating to the traffic generation, car parking provisions and loading/unloading facilities are addressed in greater detail in

Note 3 above. Further amendments to the traffic report and traffic flow movements as raised by Council, RMS and the external consultant are to be met prior to the submission of subsequent development applications.

In accordance with Council's BBDCP 2013, the parking rate for commercial developments is calculated based on a 1/40sqm GFA ratio. The projected car parking rates for a site area of 12,605sqm and GFA of 37,805sqm is 946 spaces. The masterplan proposes 490 car spaces which is a shortfall of 456 car spaces. Council's TMAP allows car parking rates to be calculated based on the proximity of the development to Mascot Train Station. The rates allow parking rates to be calculated as 1 space/80sqm therefore the requirement under TMAP equals 473 spaces. The proposed amount of car spaces meets the TMAP's requirement.

The lower ground and upper ground car parking levels accommodates 490 car parking spaces. The proposed car parking provision is considered adequate for the proposed development particularly as the site is located in close proximity to Mascot Train Station. The car parking rates provided in the TMAP and RMS's Guide to Traffic Generating Development are appropriate and are supported by Council.

The final car parking provision would be detailed in future development application.

Future development applications relating to the demolition and site clearing of existing structures will require a Construction Traffic Management Plan to be conditioned within individual consents.

The proposal is considered acceptable in respect to traffic generation and car parking subject to greater detail and improvements to the Coward Street/Kent Road intersection. The proposal is not considerate of forward ingress and egress from the site and it is considered that there will be significant safety issues with the servicing arrangements carried out from the site. Therefore, this issue is to be addressed before Council can support the proposal.

Economic Impacts

The proposal would have positive impact on the local economy in the construction of the development and will provide greater job opportunities for the area.

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

The site is located within a 25-30 ANEF Contour which permits commercial development as 'conditional' development. An acoustic report was not provided with the masterplan application and will need to be provided with any future construction of the site.

The applicant has not addressed site contamination or Acid Sulfate Soils as part of this application. The site currently comprises a number of industrial warehouses and it is likely that some contamination will be found. There are currently no reports to detail the extent of contamination or acid sulfate soils on the site. Pursuant to Clause 7 of the SEPP and Clause 6.1 of the BBLEP 2013, Council guarantee and cannot support the suitability of the proposal.

The subject site is of sufficient size to accommodate the building form and achieve an acceptable level of internal amenity in terms of building orientation and relationship with the surrounding area. However, the Applicant has not demonstrated that the proposal is contained within the site boundaries and has not received consent from Council for the provision of a pedestrian overpass to be built over Council road linking the two sides of the development together.

The site is considered unsuitable to accommodate the proposed development unless it has addressed the key concerns raised above and throughout the report.

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

In accordance with Part 2 of Botany Bay DCP 2013 – Notification and Advertising the development application was notified to surrounding property owners for a thirty (30) day period from 4 November to 4 December 2015. No submissions were received.

(e) The public interest.

It is considered that granting approval to the proposed development will have significant adverse impact on the public interest. Firstly the development is not contained within its site boundaries and has not received consent by Council to be built over part of the road. And secondly, the development has not addressed the impacts the additional floor space would contribute to the surrounding development and whether there is any exceptional reasons for contravening the standard. Therefore, for these reasons in addition to numerous others, the proposal is not supportable.

OTHER MATTERS

External Referrals

Sydney Water Corporation

The Masterplan Development Application was referred to Sydney Water for comment as the development of the site would affect the provision of water and sewerage disposal by Sydney Water infrastructure. On 5 February 2016, Sydney Water provided comments having no objection to the proposed development subject to the recommendation of appropriate conditions of consent.

Sydney Airport Corporation Limited (SACL)

The Masterplan Development Application was referred to SACL for comment. On 29 January 2016, Sydney Airport raised no objection to the proposed development and advised that approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct. SACL has provided concurrence for a maximum established height of RL 51.00 AHD. Any exceedance into the airspace will need to be referred to CASA.

Ausgrid

The Masterplan Development Application was referred to Ausgrid for comment. On 11 November 2015, Ausgrid provided comments stating that they had no objection to the proposal subject to appropriate conditions recommended in the consent.

NSW Police

The Masterplan Development Application was referred to NSW Police for comment. On 29 January 2016, NSW Police provided comments raising no objection to the proposal subject to appropriate conditions recommended in the consent.

Road and Maritime Services (RMS)

The Masterplan Development Application was referred to RMS for comment in accordance with the State Environmental Planning Policy (Infrastructure) 2007. On 25 February 2016, RMS provided Council with comments relating to the proposal. Further comments were received by RMS on 30 June 2016. This has been addressed in detail under the Infrastructure SEPP 2007 above.

Design Review Panel

This has been addressed in the background section of the report. Overall, the Panel is in support of the latest amendments to the masterplan. Any subsequent development applications including further details will need to be referred to the Panel for further commentary in this regard.

Internal Referrals

The masterplan development application was referred to Council's Development Engineer, Traffic Engineer, Strategic Planning Officer, Landscape Architect, Environmental Health Officer and Environmental Scientist for comments. Appropriate conditions and comments have been provided to be imposed within the development consent and/or incorporated within any subsequent development applications to Council. However the current proposal is not supported.

Section 94 Contributions

Section 94 Contributions will be enforced on any subsequent development application for the site and will be in accordance with the indexed rates under the City of Botany Bay Section 94 Contributions Plan 2005-2010. However, the current proposal is not supported.

CONCLUSION

Development Application No. 15/191 seeks consent for a Stage 1 Masterplan for the consolidation of 16 Lots (Lots 11-26 DP 29697) and part of the road reserve to create the subject site with a combined area of 12,602sqm to accommodate four x eight (8) storey commercial towers with a total GFA of 37,805sqm; three (3) levels of car parking (two levels above ground and one level partially below ground) for 490 vehicles, 43 bicycles and 4

loading bays under a landscaped podium; extensive landscaping of 8,605sqm including ground level setbacks, green façade, podium level landscaped area and green roof; and a pedestrian overpass linking the podium level on either side of the cul-de-sac at the end of Chalmers Crescent at 7-9, 14-18 and 19-21 Chalmers Crescent, Mascot.

The proposal seeks a 2.4 metres height variation to the 44m maximum building height which is comprised of the lift overrun/plant cores. A Clause 4.6 variation has been provided by the applicant. Council is not satisfied with the Clause 4.6 variation to address the height variation, as the height relates to excess FSR for which there is no Clause 4.6 variation lodged.

Due to the exclusion of the road from the design of the development, the proposal exceeds the maximum FSR of 3:1. The proposed FSR of 3.3:1 has not been considered as the applicant has not provided a Clause 4.6 Variation to justify contravening the FSR development standard and legally, Council cannot approve a development proposal without this variation.

Pursuant to Clause 7 of SEPP 55, the Council is not satisfied that the land is suitable for the proposed development, as the applicant has failed to provide any evidence that the land is suitable for the use or could be made suitable for the use. Additionally, the Applicant has failed to provide an Acid Sulfate Soils Management Plan to demonstrate that the site is suitable for the use.

Additionally, there are issues with the proposal that could be resolved through amended plans. Council's request for amended plans has not been met. The development is not encompassed within the site boundaries nor has it received consent by Council to build over the road. Additionally, there is a departure in the number of service bays and the service arrangements that are not supported by Council. Due to the uncertainty of the building footprints, Council cannot comment on the final orientation of the building setbacks and any changes to the landscaped area. The Applicant has not addressed the landscaping issues as outlined by Council's Landscape Architect which can be accommodated through any amended proposal.

The Masterplan development does not comply with the form, scale and FSR controls within the BBLEP 2013 and BBDCP 2013. The Masterplan is therefore recommended for refusal subject to the reasons of refusal in the attached Schedule.

SCHEDULE OF REASONS FOR REFUSAL

It is recommended that the Joint Regional Planning Panel (JRPP) for the Sydney East Region, as the Consent Authority, resolve to **refuse** Development Application No. 15/191 for the following reasons:

1. The applicant has failed to provide the land owners written consent to lodgement of the development application for the use of part of the Chalmers Crescent road reserve and the area above the road.
- 2.

- a) Pursuant to Clause 7 of SEPP 55 the Council is not satisfied that the land is suitable for the proposed development, as the applicant has failed to provide any evidence that the land is suitable for the use or could be made suitable for the use. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
- b) Pursuant to Clause 6.1(3) of the BBLEP 2013, the Council is not satisfied that the land is suitable for the proposed development, as the applicant has not provided evidence in the form of an Acid Sulfate Soils Manual or Management Plan to demonstrate that the land is suitable for the use. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).

3.

- a) The proposed development exceeds the maximum FSR of buildings for the site as provided by Clause 4.4(2) of the Botany Bay LEP 2013 and is inconsistent with the objectives of the clause. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
 - b) The development application has not provided a Cl. 4.6 variation therefore the proposed development fails to adequately justify the contravention of the FSR development standard in Clause 4.4 of Botany Bay LEP 2013 and has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and there are insufficient environmental planning grounds to justify contravening the development standard. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
4. The proposed development exceeds the maximum Height of buildings for the site as provided by Clause 4.3(2) of the Botany Bay LEP 2013 and is inconsistent with the objectives of the clause. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
5. The contravention of the FSR and height development standard will not be in the public interest as it is not consistent with the objectives of the standard for the zone. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
6. The proposal does not comply with Control C2 of Part 3A.3.1 and Control C10 of Part 3A.3.4 of the Botany Bay DCP 2013 in that service vehicles do not enter the premises in a forward direction and all movements are not carried from the site boundaries. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(iii)*).
7. The proposal does not comply with Control C1 of Part 6.3.5 of the Botany Bay DCP 2013 in that the development is not contained within the site boundaries therefore there is uncertainty in the amount of setbacks provided to the development. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(iii)*).
8. The proposal has not adequately addressed the likely impacts of the development, being additional gross floor area, potential contamination and acid sulfate soils (*Environmental Planning and Assessment Act 1979 s79C(1)(b)*).

9. The proposal has not demonstrated the suitability of the site for the development (*Environmental Planning and Assessment Act 1979 s79C(1)(c)*).
10. The proposed development is not in the public interest as the proposed design in its current form results in adverse impacts on the amenity of the locality as a result of non-compliance with FSR, height, setbacks and off street car parking, which are inconsistent with the built form envisaged for the subject site. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(e)*).