



19 April 2017

Our Ref: 13-013N

The General Manager
Bayside Council
Mascot Customer Service Centre
PO Box 331
MASCOT NSW 1460

Attention: Town Planning Department

Dear Sir/Madam,

re: Section 96AA(1) Application to modify the Consent to Development Application No. 13/135 for a mixed use residential and commercial development at 659, 661-663 and 665-669 Gardeners Road, Mascot

1. INTRODUCTION

We write on behalf of Mascot Circle Pty Ltd ("the Applicant") to request a modification of the consent to DA No. 13/135 ("the original consent") which was approved by the Land and Environment Court on 21 August 2014 for a mixed use residential and commercial development at 659, 661-663 and 665-669 Gardeners Road, Mascot ("the site").

The original consent has been modified three times, as detailed below:-

- Section 96 Application (DA-13(135).02) approved by the Sydney East Joint Regional Planning Panel on 17 November 2015, corrected an error with the calculation of the Section 94 Contribution; and
- Section 96 Application (DA-13(135).03) approved by the Sydney East Joint Regional Planning Panel on 24 November 2015, amended the wording of various conditions to allow the approved development to be constructed in stages, with separate Construction Certificates to be issued for each of the following stages:-
 - Site Establishment / Shoring / Excavation;
 - Footings / In-ground Services / Structure;
 - Façade / Services / Finishes; and
 - External Works.
- Section 96 Application (DA-13(135).04) approved by the Sydney East Joint Regional Planning Panel on 5 October 2016, amended the consent to include the following:-
 - increase the size of the southern commercial units thereby increasing the total GFA by 238m² and shift the construction of the commercial tenancies from Stage 2 to Stage 1 of the construction works;

- amend the construction staging so that the car parking spaces in Stage 1 were reduced by 24 spaces. However the total number of car spaces at the end of Stage 2 remain unchanged;
- various design amendments including revisions to the northern lobby and adjacent commercial tenancies, changes to the amenities area of the northern and southern commercial tenancies, reduction and modification of 3 balconies to accommodate requirements for a substation and changes to the fire egress of the southern building;
- amend the Level 2 podium landscaping as a result of the design changes and changes to the fire egress; and
- amend condition No. 34 relating to stormwater management, to reflect the details in the amended stormwater plans.

A fourth Section 96 Application (DA-13(135).05) was lodged with Council on 16 November 2016, seeking approval to make design amendments to the approved development including:-

- the addition of horizontal spandrels on the eastern, western and southern sides of the corridors in both the northern and southern buildings, with fixed glass louvres above the spandrels;
- the deletion of planters within corridors on the eastern, western and southern facades and replace with spandrels as a result of the provision of louvres for wind amelioration as required by conditions of consent. This will result in a reduction of 180m² in landscaped area;
- changes to the articulation of the southern facade of the northern building and the northern façade of southern building, on either side of the lift core through changes to the balconies of various apartments in both buildings, increasing the size of the balconies and improving the articulation of the internal facing facade;
- amending the unit type 2.7, located on Level 5. The changes relate to units S5.01 to S5.08 and S5.17 to S5.24 (16 units) – the amendment involves the removal of the entry indent to the unit to improve the unit layout. This results in an increase of 32m² of Gross Floor Area (GFA). The GFA of the stage 2 retail area on the ground floor has been reduced by 32m² GFA. As such there is no change to the overall GFA of the approved development;
- minor amendments to the elevations to ensure they correspond with the approved unit layouts;
- amendments to the location of various columns in the building to create more efficient apartment layouts, due to the variety of units being developed and the structural engineering requirements;
- Deletion of solar panels on the roof; and
- Deletion of the requirement to paint the car park ceiling white.

Section 96 Application (DA-13(135).05) has yet to be determined.

This Section 96 Application seeks to make further design changes to the approved development, including:

- changes to the lift on the southern building to provide access to the rooftop terrace resulting in an increase in the height of the southern building to RL 52.2 metres AHD,

but only in relation to the lift overrun. This results in a penetration of the 51.00 AHD inner horizontal Obstacle Limitation Surface applying to the area and will require referral to Sydney Airports Corporation Limited (SACL).

- deletion of the perimeter landscaping, outside the balustrade, on the rooftop terrace due to the difficulties associated with maintaining this landscaping. This change does not result in a loss of landscaping to those submitted in DA-13(135).05 as the deleted area outside of the perimeter roof balustrading is replaced with additional landscape area inside the perimeter roof balustrade;
- Changes to the glass roof shape (lowered) to both the North and South Tower to comply with the requirements of the fire engineering report.
- Changes to the approved Reference Document Qualitative Wind Impact Assessment prepared by SLR dated 29 July 2013. The wind report has been updated in accordance with proposed architectural plans included in this Section 96 application (DA.25 Rev J and DA.26 Rev I North and South building roof terraces).

2. THIS APPLICATION

BBC Consulting Planners has been requested by the Applicant, to prepare the supporting information for this Section 96AA(1) Application.

A copy of the consent, as already modified (DA-13(135).04), is provided in **Attachment 1**.

Also, accompanying this correspondence are:-

- a completed Section 96 application form which includes the consent of the owner;
- a cheque to cover the application fee associated with the Section 96AA(1) application;
- the relevant approved architectural plans (i.e. only those plans which this Section 96 Application is seeking to amend) are provided in **Attachment 2**;
- the relevant approved landscape plans (i.e. only those plans which this Section 96 Application is seeking to amend) are provided in **Attachment 3**;
- the relevant proposed architectural plans (i.e. only those plans which this Section 96 Application is seeking to amend) are provided in **Attachment 4**;
- the relevant proposed landscape plans (i.e. only those plans which this Section 96 Application is seeking to amend) are provided in **Attachment 5**;
- statement prepared by 360 regarding the changes to the approved landscape plans (see **Attachment 6**); and
- a design verification statement, as required under Clause 115 of the Environmental Planning and Assessment Regulation 2000 (see **Attachment 7**).
- A Qualitative Wind Impact Assessment Report No. 610.138.63-R05 dated 21 March 2017 prepared by SLR amended to take into account the revised roof form and amendments to the North and South roof terraces as shown on the proposed architectural DA.25 Rev J and DA.26 Rev I which are included in this Section 96 application 06 (see **Attachment 8**).

3. PROPOSED MODIFICATIONS

Approval is sought to modify Condition No. 1 of the consent to refer to the plans provided in **Attachments 4 and 5** and Reference Document in **Attachment 8**

4. PRESCRIBED FORM

The prescribed requirements for a Section 96 application are set out in Clause 115 of the Environmental Planning and Assessment Regulation 2000. Bayside Council has integrated these requirements into a form for its own administrative purposes. A completed copy of this form accompanies this letter.

5. RELEVANT PROVISIONS OF SECTION 96AA

Section 96AA(1) of the *Environmental Planning and Assessment Act, 1979* ("EP&A Act") states as follows:-

"(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, and

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and

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

In relation to **Section 96AA(1)(a)**, the Council can be satisfied that the development as originally approved will still be substantially the same development when modified in accordance with this application. The application seeks to make detailed development design changes, which is typical for projects of this scale, complexity and refinement. These modifications do not change the nature of the approved development.

In relation to **Section 96AA(1)(b)**, Council may choose to notify the application and invite submissions.

In relation to **Section 96AA(1)(c)**, if Council choose to notify the application they will need to address this provision.

In relation to **Section 96AA(1)(d)**, should Council choose to notify the application and invite submissions, any relevant submissions made will need to be considered by Council / the Sydney central planning panel.

Section 96AA(1A) states as follows:-

"(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the

matters referred to in section 79C (1) as are of relevance to the development the subject of the application.”

The modifications to the consent for which approval is now sought do not alter the findings made in relation to DA 13/135, resulting in its approval, regarding the reasonableness and appropriateness of the original (approved) proposal when considered in the light of the matters listed in Section 79C(1) of the Environmental Planning and Assessment Act, 1979. The relevant provisions are addressed below and overleaf.

6. STATE ENVIRONMENTAL PLANNING POLICY NO 65—DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

6.1 Determination of applications for development consent modifications (Clause 29)

Clause 29 of SEPP 65 states:-

“(1) This clause applies if a consent authority is required by clause 115 (3A) of the Environmental Planning and Assessment Regulation 2000 to refer an application for the modification of development consent (other than in relation to State significant development) to a relevant design review panel (if any) for advice as to whether the modifications diminish or detract from the design quality, or compromise the design intent, of the development for which the consent was granted.

(2) In determining an application to which this clause applies, the consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and*
- (b) the design quality of the development (as modified) when evaluated in accordance with the design quality principles, and*
- (c) the Apartment Design Guide.*

(3) However, if the relevant design review panel fails to inform the consent authority of its advice within 14 days after its first meeting to deal with the application concerned, the consent authority may determine the application without considering any such advice and a modification of consent so granted is not voidable on that ground.

(4) The 14-day period referred to in subclause (3) does not increase or otherwise affect the period within which an application for the modification of development consent is required to be determined by a consent authority.”

Clause 115(3A) of the Environmental Planning and Assessment Regulation 2000 is not relevant. However, Clause 115(3B) of the Environmental Planning and Assessment Regulation 2000 states:-

“(3B) If the qualified designer who gives the design verification under subclause (3) for an application for the modification of development consent (other than in relation to State significant development) does not verify that he or she also designed, or directed the design of, the development for which the consent was granted, the consent authority must refer the application to the relevant design review panel (if any) for advice as to whether the modifications diminish or detract from the design quality, or compromise the design intent, of the development for which the consent was granted.”

Therefore, the application is to be referred to Council's Design Review Panel for advice.

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

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

The site is shown within ‘Area V2’ on the Floor Space Ratio Map in BBLEP. Within ‘Area V2’, the maximum permissible floor space ratio is 3.2:1.

“Gross floor area” (“GFA”) is defined under BBLEP 2013 to mean:-

“the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*

but excludes:

- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement:*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.”*

Measured on this basis, the approved development has a GFA of 29,458m² and a floor space ratio of 3.364:1 (rounded to 3.36:1).

No changes are proposed to the approved GFA of 29,458m².

7.5 Airspace Operations (Clause 6.8)

Clause 6.8 of the LEP applies to airspace operations and states:

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

(a) to provide for the effective and ongoing operation of the Sydney (Kingsford Smith) Airport by ensuring that such operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport,

(b) to protect the community from undue risk from that operation.

(2) If a development application is received and the consent authority is satisfied that the proposed development will penetrate the Limitation or Operations Surface, the consent authority must not grant development consent unless it has consulted with the relevant Commonwealth body about the application.

(3) The consent authority may grant development consent for the development if the relevant Commonwealth body advises that:

(a) the development will penetrate the Limitation or Operations Surface but it has no objection to its construction, or

(b) the development will not penetrate the Limitation or Operations Surface.

(4) The consent authority must not grant development consent for the development if the relevant Commonwealth body advises that the development will penetrate the Limitation or Operations Surface and should not be constructed.

(5) In this clause:

Limitation or Operations Surface means the Obstacle Limitation Surface or the Procedures for Air Navigation Services Operations Surface as shown on the Obstacle Limitation Surface Map or the Procedures for Air Navigation Services Operations Surface Map for the Sydney (Kingsford Smith) Airport.

relevant Commonwealth body means the body, under Commonwealth legislation, that is responsible for development approvals for development that penetrates the Limitation or Operations Surface for the Sydney (Kingsford Smith) Airport.

The modification will require referral to CASA via SACL.

The Limitation or Operations Surface for Sydney Airport, as shown on the Obstacle Limitation Surface Map, is at RL 51.0 metres AHD on this site. The changes to the lift on the southern building to provide access to the rooftop terrace results in an increase in the height of the southern building to RL 52.2 metres AHD, but only in relation to the lift overrun. This results in a penetration of the 51.00 AHD inner horizontal Obstacle Limitation Surface applying to the area.

All requirements of CASA would be complied with in terms of recommendations relating to the construction of the building and lighting required to be installed following completion.

The resulting height of the lift overrun is less than that previously approved by CASA in Mascot Town Centre (approved at RL52.50).

8. BOTANY BAY DEVELOPMENT CONTROL PLAN 2013

8.1 Part 9A – Mascot

8.1.1 Land to which Part 9A applies

The site forms part of the Mascot Station Town Centre Precinct to which Part 9A of the BBDCP specifically applies. Clause 9A 1.2 provides that:-

“Note: Development within the Precinct must comply with all other applicable Parts of the DCP, if there is a discrepancy between Part 9A and other Parts the Desired Future Character and Controls of Part 9A will always prevail.”

It also states:-

“This Part has also been prepared in accordance with State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and has been formulated to respond to the design quality principles of SEPP 65 and the publication NSW Apartment Design Guide 2015 (ADG). The principles and controls contained in the ADG are to apply to design issues not specifically covered within the DCP.”

The following note appears on page 5 of Part 9A in Clause 9A 1.2:-

“Council will consider alternative development schemes subject to the Vision in Part 9A.2 - Vision Statement and the Desired Future Character principles in Part 9A.3 – Urban Block Character Statements being met.”

8.1.2 General Objectives

Part 9A.1.3 of the BBDCP outlines the general objectives for the Mascot Station Town Centre Precinct. The objectives are as follows:-

- “O1 To cast the vision and define urban development outcomes to help guide the long term redevelopment of the Mascot Town Centre Precinct;*
- O2 To outline a design framework for the provision of a greater quantum of public space, and upgraded existing streets, to create a high quality public domain for the town centre;*
- O3 To provide for a range of building types that will improve housing choice, diversity of employment opportunities, access to retail and commercial services and other activities that contribute to a sustainable vibrant community;*
- O4 To ensure that all new buildings have a good relationship with neighbouring developments and the public domain and are of a high quality architectural design;*
- O5 To adopt principles of ecologically sustainable development in the design of new buildings and landscapes, including water sensitive urban design, energy efficiency and selection of building materials;*

- O6 *To ensure new buildings achieve a high level of residential amenity in terms of daylight access, acoustics, privacy, ventilation, security, outdoor living and indoor amenity;*
- O7 *To ensure that buildings and the public domain environment are designed for all age groups and degrees of mobility;*
- O8 *To implement traffic control measures and outcomes that manage and improve local traffic impacts and promote pedestrian safety; and*
- O9 *To encourage increased use of public transport, walking and cycling and reduce reliance on cars."*

The proposed modifications are consistent with these objectives.

8.1.3 Vision Statement

Clause 9A.2 contains the Vision Statement of the BBDCP. It identifies the Mascot Station Town Centre Precinct as a future "vibrant and diverse town centre, where a spacious, high quality public domain is the setting for thriving activities and cohesive built form", a place of "activity, with a range of transport modes, interconnectivity, permeability and accessibility" in which growth potential "is to be guided by an urban framework that emphasises an extensive and revitalised public domain, excellence in its urban and architectural design, an integrated transport network and sustainable development in the public and private domains".

The proposed modifications are consistent with this vision.

8.1.4 Urban Blocks

The Mascot Station Town Centre Precinct comprises several "Urban Blocks". The site is located within "Urban Block 1". Urban Block 1 is bounded by Gardeners Road, Bourke Street, Coward Street and Kent Road, and is the westernmost of the urban blocks in the BBDCP.

8.1.5 Desired Future Character

The desired future character for Urban Block 1 is relevantly set out below (the non-italicised text in parentheses at the end of each requirement is ours):-

"Land Uses

- *Gardeners Road and Kent Road buildings are to have a continuous commercial ground floor, with residential or commercial uses above reflecting the commercial character of these major roads; (achieved)*

Street Character

- *New local streets within the Urban Block are to provide vehicular, pedestrian and cycle access to high rise residential and mixed use buildings. These streets are to be addressed by major building facades, with predominantly continuous low level street frontages and set back tower buildings; (achieved)*
- *Building facades are to align with new streets and the interface between the public and private domain at ground level is to be visually open, with multiple building and dwelling entries and no continuous blank facades or high front garden walls; (achieved)*

Built Form

- *Street frontages at the lower levels of buildings are to be generally continuous, enhancing pedestrian interest and amenity and providing safety and security by ensuring passive surveillance of the public domain. Small breaks in these perimeter block forms may provide pedestrian access to the centres of blocks; (achieved)*
- *Residential floors above ground level commercial are to be designed using environmental design strategies such as site specific apartment types, screening and the like to maintain good residential amenity; (achieved)*
- *The upper levels of buildings are to facilitate daylight access to streets and avoid street canyons by being set back from the building alignment; (achieved)*

Public Domain

- *Urban Block 1 will undergo substantial change, from having large lots with little public domain, to being a part of a thriving town centre with overlapping uses and an actively used public domain. This transformation will be achieved with new publicly dedicated streets and parks on existing lots, to provide access and recreation for higher density mixed uses; (achieved)*
- *The density and requirements for car parking in this block reduce the potential for deep soil and planting of large scale trees within the block footprint. The new parks, however, should take up this shortfall with provision for deep soil and large trees; (achieved – extensive landscaping and planting nevertheless provided)*
- *Public domain improvements are to be made in streets adjoining development sites (achieved)*

Road Widening

- *New Streets and pedestrian links as illustrated in Figure 7 are required within Urban Block 1. (achieved)”*

The modifications which are proposed either have no effect on the “desired future character” or are entirely consistent with it.

8.1.6 Compliance with General Controls

There is a note on page 30 in Section 9A4.1 of the BBDCP which states as follows:-

“Council will consider alternative development proposals relating to the future layout and built form controls (Part 9A.4.3) if the alternative development proposal meets the future vision in Part 9A.2 for the Mascot Station Town Centre Precinct and the Desired Future Character principles in Part 9A.3. Alternative development proposals are to meet the provisions of the Botany Bay LEP 2013 and SEPP No. 65 and the Apartment Design Guide.”

The following table sets out the compliance of the proposed modifications with the relevant general controls in the BBDCP.

Control	Proposed	Complies/Comment
9A.4.3.2 Floor Space Ratio		
<p>C1: The maximum FSR of buildings must be in accordance with the Floor Space Ratio Map and Clause 4.4 and 4.4B of the Botany Bay Local Environmental Plan 2013.</p> <p>Maximum FSR: 3.2:1</p>	No change proposed.	No change proposed.
<p>C3: Development must comply with the future layout and built form controls for Urban Block 1 in Figure 11 (see our Figure 5C). This requirement may result in the FSR not being achieved.</p>	No change proposed.	No change proposed.
9A.4.4.1 Design Excellence		
<p>C1: The development application must identify through a SEPP 65 Design Statement and/or annotated drawings how design excellence will be achieved in the proposed development.</p>	No change proposed to the SEPP 65 statement provided with the original DA.	No change proposed.
<p>C2: Development must comply with Part 4 - Residential Development.</p>	See Section 8.2 below.	See Section 8.2 below.
<p>C3: The proposed building design and form must identify and justify:</p> <ul style="list-style-type: none"> How it will define the public domain and contribute to the character of the streetscape; and How it will meet the SEPP 65 Apartment Design Guide recommendations 	<ul style="list-style-type: none"> No change proposed No change proposed 	<ul style="list-style-type: none"> No change proposed. No change proposed.
<p>C4: Drawings and examples must be provided regarding the building features, textures, materials, finishes and colours suitable to the site, building type and context.</p>	No changes are proposed.	<ul style="list-style-type: none"> No change proposed
<p>C5: Prior to its lodgement as a Development Application, the proposed development must be</p>	N/A – Section 96AA	N/A – Section 96AA

Control	Proposed	Complies/Comment
presented to the City of Botany Bay Design Review Panel.		
9A.4.4.2 Streetscape & Building Form		
C1: A 'sense of place' and contemporary character for the precinct is to be maintained via a high quality built form and energy efficient architectural design.	The changes do not affect the 'sense of place' provided by the approved development.	Yes.
9A.4.4.3 Public Domain Interface at Ground Level		
C1: Development must be designed so that it has a clearly definable entry and addresses the street	No change proposed.	No change proposed.
C6: The visual connection between the building frontage and the public domain must be considered carefully in all development. This may require the floorplate of development to step up/down with the topography to ensure that the floor level of the building frontage is generally at footpath level.	No change proposed.	No change proposed.
9A.4.4.4 Active Street Frontages and Awnings		
C1: All development within Urban Blocks 1, 3 and 4 must provide retail or commercial street frontages where shown in Figures 49, 50, 51 and 52.	No changes proposed.	No changes proposed.
C2: All development within Urban Blocks 1, 3 and 4 must provide awnings where shown in Figures 53, 54, 55 and 56. Awning widths must accommodate street tree planting to Council specifications.	No changes are proposed.	No changes proposed.
9A.4.4.5 Residential and Non Residential Interface		
C1: Clear boundaries between the public and private domain must be created to enhance security, privacy and safety.	Achieved.	Yes
C2: Shadow diagrams must be provided for all development proposals for the summer and winter solstices.	No changes proposed.	N/A

Control	Proposed	Complies/Comment
Shadow diagrams must show shadow impacts at 9am, 12 noon and 3pm for both solstices. Additional building setbacks may be required where internal site shadow impacts or impacts on adjoining properties are considered by Council to be unreasonable.		
C3: The design and positioning of all mechanical plant and equipment (i.e. air conditioning units, mechanical ventilation, duct work and exhausts) must be taken into account early on in the design process. The non-residential use must not have a negative influence on residential uses concerning noise or odour.	No changes proposed.	No changes proposed.
9A.4.4.7 Crime Prevention, Safety and Security		
	The proposed changes will not affect the CPTED measures incorporated in the approved development.	N/A
9A.4.4.8 Loading and Unloading		
	No changes proposed.	No changes proposed.
9A.4.5.1 Acoustic Privacy		
	No changes are proposed	Yes

8.2 Part 4C - Apartment Buildings

The following table sets out the amended proposal's compliance with the relevant controls in Part 4C of the BBDCP:-

Control	Proposed	Complies/Comment
4C.2.2 Streetscape Presentation		
	The roof form amendment to the north and south towers deletes the approved glass atrium roof which is amended to a lower solid roof with skylights. Reduced bulk and scale will improve streetscape	Considered satisfactory.

Control	Proposed	Complies/Comment
	presentation of the approved buildings.	
4C.2.4 Landscaped Area and Deep Soil Planting		
C1 A residential flat development must have a minimum landscaped area of 35% and a maximum hard landscaped area of 20%.	Perimeter landscaping to the North and South Building roofs has been deleted. The deleted landscape area has been added to the landscaped roof area inside the perimeter balustrade Total landscape area 3.098m ² is the same as the current Section 96.05 landscape proposal. See the landscape statement provided in Appendix 5 and 6 .	Considered satisfactory.
C2 Development Applications must include a plan clearly identifying how hard and landscaped areas have been calculated (refer to the Part 3L - Landscaping and Tree Management and Council's Development Application Guide and above definitions	Landscape calculation plan provided in Attachment 4 .	Yes.
C3 Landscaped areas must be effectively distributed on the site to minimise the dominance of buildings, structures and paving when viewed from the street, public places and surrounding properties.	Only minor changes are proposed to the approved landscape plans.	Yes.
C4 Green roofs and walls are not counted in the landscaped area calculations for the site. Refer to Part 3L – Landscaping and Tree Management.	N/A to the Section 96 Application	N/A
4C.4.1 Dwelling Mix and Layout		
	No changes proposed to the dwelling mix.	No changes proposed
4C.4.9 Car and Bicycle Parking and Vehicle Access		
	No changes proposed.	Yes
Bicycle Parking		

Control	Proposed	Complies/Comment
	No changes proposed.	Yes.
4C.5.2 Access		
	The proposed changes will comply with the BCA and provide disabled access to the roof south building common open space.	Yes

Landscaped Area

The statement prepared by 360 (see Attachment 6) explains the changes proposed as part of this Section 96AA Application:-

We believe that the amendments made to the proposed Landscape design for common roof top areas at Avantra, Mascot will provide a more maintainable and robust landscape and improves the passive common landscape areas.

The reference to the DA conditions, included above, relates to Condition No. 47 of the current consent, which states:-

- a) Prior to the issue of the relevant Construction Certificate, the measures required in the Qualitative Wind Impact Assessment, prepared by SLR Consulting Pty Ltd, dated 29 July 2013 shall be detailed on the Construction Certificate plans. These shall include additional wind mitigation treatments to exposed*
- b) Prior to the issue of the relevant Construction Certificate, a compliance report from a suitably qualified consultant shall be submitted to Council indicating any required wind mitigation measures to the approved building, as recommended in the Qualitative Wind Impact Assessment, dated 29 July 2013, (DA13/135/03)*

The qualitative wind impact assessment, prepared by SLR Consulting Pty Ltd, stipulates that 1.80m high perimeter windbreaks and awnings, canopies, pergolas are provided over sitting areas to the North and South Building Roof Garden Terrace and Outdoor Pool Area.

The Applicant has amended the roof garden terraces and pool area so that a glazed balustrade 1.80m high surrounds the entire common open space. A review of surrounding building heights (figure 2 of SLR report 21 March 2017) has omitted the requirement for awnings, canopies, pergolas over sitting areas.

SLR have provided a revised report 610.13863-R05.

9. STATUTORY PLANNING CONSIDERATIONS

Section 79C(1)(a) of the Environmental Planning and Assessment Act, 1979 requires Council to take into consideration the provisions of:-

- “(i) any environmental planning instrument, and*

- (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) *any development control plan, and*
- (iiia) *any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*
- (v) *any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),”*

In relation to **Section 79C(1)(a)(i)**, the relevant matters are addressed in Sections 6 and 7 above.

In relation to **Section 79C(1)(a)(ii)**, no proposed instruments, of relevance to the site, have been the subject of public consultation.

In relation to **Section 79C(1)(a)(iii)**, relevant matters are addressed in Section 8 above.

In relation to **Section 79C(1)(a)(iiia)**, does not apply to the proposed development.

In relation to **Section 79C(1)(a)(iv)**, there are no matters arising out of the proposed development which raise compliance issues with relevant regulations.

Section 79C(1)(a)(v) does not apply to the site.

9.1 Impacts of the Development

Section 79C(1)(b) requires the consent authority to consider:-

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

The relevant matters are addressed below.

9.1.1 Impacts on the Natural Environment

The proposal will have no adverse impacts on the natural environment.

9.1.2 Impacts on the Built Environment

9.1.2.1 Amenity

No significant impacts will arise from the proposal in relation to issues such as overshadowing or overlooking, obstruction of light or air, obstruction of views or any other such impacts on nearby properties.

9.1.2.2 Bulk and scale impacts

The proposal will have minimal impact on the bulk and scale of the approved development. The lift overrun is towards the centre of the building and set well back from the building facades. The glass balustrading to provide wind protection as required by the consent would also be setback from the edge of the building.

9.1.2.3 Privacy impacts

No privacy impacts arise from the proposal.

9.1.2.4 View impacts

No view impacts on adjoining sites will arise as a result of the proposal.

9.1.2.5 Impacts on neighbours

No adverse impacts arise on neighbouring development as a result of the modifications which are proposed.

9.1.2.6 Noise impacts

No noise impacts arise as a result of the modifications which are proposed. If anything the louvres will have a positive impact on noise.

9.1.2.7 Reflectivity impacts

No reflectivity impacts arise from the design modifications which are now proposed.

9.1.2.8 Wind impacts

The 1.80m perimeter windbreak element to the North Building and South Building roof garden terraces and pool area are required under Condition 47 of the current consent.

Traffic and Parking Impacts

The proposal will have no impact on traffic and parking.

9.1.3 Construction Impacts

No additional construction impacts, over and above those identified in the original DA, are caused by the design modifications which are proposed.

9.1.4 Social and Economic Impacts

The social and economic impacts of the proposal will be positive, in that the proposal will ensure the delivery of the project can be made as efficient as possible.

9.2 Suitability of the Site

Section 79C(1)(c) requires the consent authority to consider:

“(c) the suitability of the site for the development.”

The proposal does not alter the sites suitability for the approved development.

9.3 Submissions

Section 79C(1)(d) requires the consent authority to consider:-

“(d) any submissions made in accordance with this Act or the regulations”.

Any relevant representations will need to be considered by the consent authority in the determination of the Section 96AA(1) application.

9.4 Public Interest

Section 79C(1)(e) requires the consent authority to consider:-

“(e) the public interest”.



ATTACHMENT 1

Consent to DA-13(135).04



ATTACHMENT 2

Copies of the approved architectural plans (only those plans which this Application is seeking to amend)



ATTACHMENT 3

Copies of the approved landscape plans (only those plans which this Section 96 Application is seeking to amend)



ATTACHMENT 4

Copies of the proposed architectural plans (only those plans which this Application is seeking to amend)



ATTACHMENT 5

Copies of the proposed landscape plans (only those plans which this Section 96 Application is seeking to amend)



ATTACHMENT 6

Landscape Statement prepared by 360°



ATTACHMENT 7

Design Verification Statement



ATTACHMENT 8

Qualitative Wind Impact Assessment Report