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Our ref: PP_2013_BOTAN_001_00 (13/18202)
Your ref: 11/123

Ms Lara Kirchner
General Manager
The Council of the City of Botany Bay
PO Box 331
MASCOT NSW 1460

Dear Ms Kirchner,

Planning proposal to amend Botany Bay Local Environmental Plan 2013

I am writing in response to your Council's letter dated 24 October 2013 requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to:

- Remove land at Erith Street and Byrnes Street, Botany from the State Environmental Planning Policy (Port Botany & Port Kembla) 2013 (Ports SEPP) & rezone the subject land from IN1 General Industrial to B7 Business Park under the Botany Bay LEP 2013
- Rezone land at Bay Street and McFall Street, Botany from IN1 General Industrial to B7 Business Park under the Botany Bay LEP 2013
- Apply a Floor Space Ratio of 1.5:1 and maximum building height of 12m to all land subject to this planning proposal under the Botany Bay LEP 2013
- Incorporate an existing heritage item at 23 Byrnes Street, Botany under the Ports SEPP as an item of environmental heritage under Schedule 5 of the Botany Bay LEP 2013.

As delegate of the Minister for Planning and Infrastructure, I have now determined the planning proposal should proceed subject to variations as outlined in the conditions in the attached Gateway determination.

It is noted that council seeks to rezone the subject land to B7 Business Park, as it is envisaged the proposed zone will result in a better planning outcome that reduces land use conflict, avoids fragmentation of land uses and provides additional local employment opportunities. However, the planning proposal is inconsistent with the Ports SEPP which seeks to secure port and related industrial land for port uses for the on-going benefit of the port. Removal of this land has not been adequately justified.

It is acknowledged that land use conflict between residual residential development and port and airport related land use is present in the area. It is also noted that Council has just received a Traffic Study identifying concerns with heavy vehicular movement in the area and immediate and neighbouring amenity. The preferred mechanism to restrict new container storage uses occurring in this area is to replicate in the Botany LGA the mechanism to control the location of 'container depots' under the Ports SEPP, which currently exists within the Randwick LGA.

Therefore, Council is to remove the rezoning of the Ports SEPP land from the planning proposal and amend the planning proposal accordingly.

I have agreed the planning proposal's inconsistency with S117 Direction 1.1 Business and Industrial Zones in relation to 1 Bay Street and 2-10 McFall Street, Botany is of minor significance. No further approval is required in relation to this Direction.

The Minister delegated his plan making powers to councils in October 2012. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan (LEP) is to be finalised within 9 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the Planning & Infrastructure for administrative purposes.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, I have arranged for Charlene Nelson of Planning & Infrastructure's regional office to assist you. Ms Nelson can be contacted on (02) 8575 4110.

Yours sincerely

A handwritten signature in blue ink, followed by the date 18/3/14 written in blue ink.

Richard Pearson
Deputy Director General
Growth Planning & Delivery

Encl:
Gateway Determination
Written Authorisation to Exercise Delegation
Attachment 5 – Delegated Plan Making Reporting Template

Gateway Determination

Planning proposal (Agency Ref: PP_2013_BOTAN_001_00): to rezone land and amend floor space ratio & building height controls for land within Botany Bay LGA.

I, the Deputy Director General, Growth Planning and Delivery at Planning and Infrastructure as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to the Botany Bay Local Environmental Plan (LEP) 2013 to:

- Remove land at Erith Street and Byrnes Street, Botany from the State Environmental Planning Policy (Port Botany & Port Kembla) 2013 & rezone the subject land from IN1 General Industrial to B7 Business Park under the Botany Bay LEP 2013
- Rezone land at Bay Street and McFall Street, Botany from IN1 General Industrial to B7 Business Park under the Botany Bay LEP 2013
- Apply a Floor Space Ratio of 1.5:1 and maximum building height of 12m to all land subject to this planning proposal under the Botany Bay LEP 2013
- Incorporate an existing heritage item at 23 Byrnes Street, Botany under the State Environmental Planning Policy (Port Botany & Port Kembla) 2013 as an item of environmental heritage under Schedule 5 of the Botany Bay LEP 2013.

should proceed subject to variations outlined in the following conditions:

1. Prior to public exhibition, Council is to remove the component of the planning proposal that seeks to rezone land and apply development controls at 9-15 Erith Street and 5-9, 13-15, 21-23 Byrnes Street, Botany under SEPP (Port Botany and Port Kembla) 2013 to B7 Business Park under the Port Botany LEP 2013, including the heritage item at 23 Byrnes Street, Botany. This is to be replaced with a similar mechanism to that utilised to control the location of 'container depots' under the Ports SEPP within the Randwick LGA. Council is to consult with Planning and Infrastructure on the method to achieve the desired outcome and amend the planning proposal to explain the intent of the preferred approach prior to public exhibition.
2. The planning proposal is to proceed for the rezoning of land currently zoned IN1 General Industrial under the Botany Bay LEP 2013 at 1 Bay Street and 2-10 McFall Street.
3. The Traffic study recently received by Council is to form part of the public exhibition material.
4. Prior to public exhibition, consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
 - Roads and Maritime Services
 - NSW Ports
 - Sydney Airport Corporation
 - Department of the Commonwealth and the lessee of the Sydney Airport

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

Once the above information has been obtained and consultation with public authorities has been undertaken, Council is to update the planning proposal to reflect the outcomes of the work and consultation undertaken.

5. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal is classified as low impact as described in *A Guide to Preparing LEPs (Planning & Infrastructure 2013)* and must be made publicly available for a minimum of **14 days**; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs (Planning & Infrastructure 2013)*.
6. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
7. The timeframe for completing the LEP is to be **9 months** from the week following the date of the Gateway determination.

Dated

18

day of

March

2014.



Richard Pearson
Deputy Director General
Growth Planning & Delivery
Planning & Infrastructure

Delegate of the Minister for Planning & Infrastructure



WRITTEN AUTHORISATION TO EXERCISE DELEGATION

The City of Botany Bay is authorised to exercise the functions of the Minister for Planning and Infrastructure under section 59 of the *Environmental Planning and Assessment Act 1979* that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2013_BOTAN_001_00	Planning proposal to: • Rezone land at 1 Bay Street & 2-10 McFall Street, Botany from IN1 General Industrial to B7 Business Park under the Botany Bay LEP 2013 and apply a Floor Space Ratio of 1.5:1 and maximum building height of 12m.

In exercising the Minister's functions under section 59, the Council must comply with Planning & Infrastructure's "A guide to preparing local environmental plans" and "A guide to preparing planning proposals".

Dated 18 March 2014

Richard Pearson
Deputy Director General
Growth Planning & Delivery
Planning and Infrastructure

Attachment 5 – Delegated plan making reporting template

Reporting template for delegated LEP amendments

Notes:

- Planning proposal number will be provided by Planning & Infrastructure following receipt of the planning proposal
- Planning & Infrastructure will fill in the details of Tables 1 and 3
- RPA is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the RPA should add additional rows to **Table 2** to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to Planning & Infrastructure with the RPA's request to have the LEP notified

Table 1 – To be completed by Planning & Infrastructure

Stage	Date/Details
Planning Proposal Number	PP_2013_BOTAN_001_00
Date Sent to P&I under s56	29/10/2013
Date considered at LEP Review Panel	28/11/2013
Gateway determination date	18/03/2014

Table 2 – To be completed by the RPA

Stage	Date/Details	Notified Reg Off
Dates draft LEP exhibited		
Date of public hearing (if held)		
Date sent to PCO seeking Opinion		
Date Opinion received		
Date Council Resolved to Adopt LEP		
Date LEP made by GM (or other) under delegation		
Date sent to P&I requesting notification		

Table 3 – To be completed by Planning & Infrastructure

Stage	Date/Details
Notification Date and details	

Additional relevant information: