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Our ref: PP_2014_BOTAN_001_00 (14/01467)
Your ref: S13/147 & S13/155

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 Council's letter dated 20 December 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 delete Clauses 4.3(2A) and 4.4B of the Botany Bay Local Environmental Plan (LEP) 2013 relating to bonus height and floor space ratio (FSR) provisions for sites over 2000m² on land zoned R3 Medium Density Residential and R4 High Density Residential.

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

It is acknowledged that Council has received numerous development applications which seek to take advantage of the bonus height and FSR provisions for sites zoned R3 Medium Density Residential and R4 High Density Residential under the Botany Bay LEP 2013. However, the intent of the incentives to encourage site amalgamation, the redevelopment of larger sites that are highly constrained, and increased floor to ceiling heights for ground floor commercial and retail uses has not been realised with development trending towards seven storey residential flat buildings with no commercial or retail at ground level.

It is understood that amenity impacts have resulted from new development, resulting in poor interface with adjoining R2 Low Density Residential areas and adverse impacts on streetscape and solar access. Removing the bonus height and FSR clauses will not necessarily resolve these problems, and would limit the capacity to deliver additional residential development in the local government area.

As discussed with Council officers, the preferred approach is to retain Clauses 4.3(2A) and 4.4B, and include an urban form/design clause to address the transition between low density and medium-high density residential areas and to minimise impacts on surrounding low density residential land. Council is to liaise with Planning and Infrastructure's regional office on the content of local design provisions and amend the planning proposal accordingly to reflect the preferred approach. Council should ensure that the planning proposal clearly articulates in plain English the intent of the clause for the purposes of community consultation.

Further, Council should consider potential alternative mechanisms to the removal of Clauses 4.3(2A) and 4.4B that may achieve the objectives of the planning proposal to control building height and scale and reduce amenity impacts resulting from new developments not being in context with existing urban environments. Council should liaise with the Planning and Infrastructure regional office on possible provisions to address these impacts.

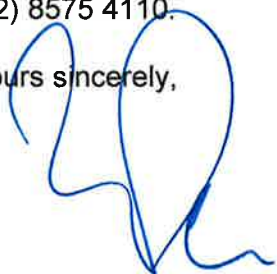
The Minister delegated his plan making powers to councils in October 2012. It is noted that Council has now accepted this delegation. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan subject to collaboration with Planning and Infrastructure regional office on the content of a suitable design clause.

The amending LEP is to be finalised within 12 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 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 Ms Charlene Nelson of Planning and Infrastructure's regional office to assist you. Ms Nelson can be contacted on (02) 8575 4110.

Yours sincerely,



18/3/14

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_2014_BOTAN_001_00): to delete Clauses 4.3(2A) and 4.4B of the Botany Bay LEP 2013.

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 2013 to delete Clauses 4.3(2A) and 4.4B relating to bonus height and floor space ratio (FSR) provisions for sites over 2000m² on land zoned R3 Medium Density Residential and R4 High Density Residential should proceed subject to the following conditions:

1. Prior to public exhibition the planning proposal should be amended to retain Clauses 4.3(2A) and 4.4B and to include an urban form/design clause to address the transition between low density and medium to high density residential areas.
2. Council should consider alternative mechanisms to achieve the objectives of the planning proposal and control building height and scale while retaining clauses 4.3(2A) and 4.4B. Council should liaise with Planning and Infrastructure on potential provisions and amend the planning proposal to reflect an agreed approach.
3. 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 must be made publicly available for a minimum of **28 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)*.
4. 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).
5. The timeframe for completing the LEP is to be **12 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 and Infrastructure

Delegate of the Minister for Planning and
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_2014_BOTAN_001_00	Planning proposal to delete Clauses 4.3(2A) and 4.4B relating to bonus height and floor space ratio (FSR) provisions for sites over 2000m ² on land zoned R3 Medium Density Residential and R4 High Density Residential.

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 and 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_2014_BOTAN_001_00
Date Sent to P&I under s56	23/12/2013
Date considered at LEP Review Panel	30/1/2014
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: