

7 CORRESPONDENCE

On the motion of Councillor Glinatsis, seconded Councillor Mitchell

122/13 THAT: All items of correspondence be received and noted.

8 REFERRAL FROM THE DEVELOPMENT COMMITTEE HELD ON 4 DECEMBER 2013**8.1 BOTANY BAY LOCAL ENVIRONMENTAL PLAN 2013 - AMENDMENTS TO CLAUSE 4.3(2A) AND 4.4B**

File No: S13/147

On the motion of Councillor Kondilios, seconded Councillor Troy

123/13 THAT:

1. The contents of the report be noted;
2. Council prepare a Planning Proposal in accordance with the Environmental Planning & Assessment Act 1979 and its Regulation to amend the Botany Bay Local Environmental Plan 2013 as follows:
 - a) Delete Sub-clause (2A) relating to a 22 metre height for sites zoned R3 and R4 in Clause 4.3 – Height of Buildings; and
 - b) Delete Clause 4.4B as it relates to exceptions to FSR in Zone R3 and R4:
3. The Planning Proposal be referred to the Department of Planning & Infrastructure for Gateway Determination; and
4. The results of the Gateway Determination be reported to Council.
5. All land hosting educational facilities, no matter what the zoning, should be zoned “Educational Special Uses”.

8.1 BOTANY BAY LOCAL ENVIRONMENTAL PLAN 2013 - AMENDMENTS TO CLAUSE 4.3(2A) AND 4.4B

File No: S13/147

Responsible Officer: Rodger Dowsett - Director of Planning and Development

Date of Preparation: 12 November 2013

RECOMMENDATION TO COUNCIL**THAT:**

- 1. The contents of the report be noted;**
 - 2. Council prepare a Planning Proposal in accordance with the Environmental Planning & Assessment Act 1979 and its Regulation to amend the Botany Bay Local Environmental Plan 2013 as follows:**
 - a) Delete Sub-clause (2A) relating to a 22 metre height for sites zoned R3 and R4 in Clause 4.3 – Height of Buildings; and**
 - b) Delete Clause 4.4B as it relates to exceptions to FSR in Zone R3 and R4:**
 - 3. The Planning Proposal be referred to the Department of Planning & Infrastructure for Gateway Determination; and**
 - 4. The results of the Gateway Determination be reported to Council.**
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RECOMMENDATION TO COMMITTEE:**THAT:**

- 1. The contents of the report be noted;**
 - 2. Council prepare a Planning Proposal in accordance with the Environmental Planning & Assessment Act 1979 and its Regulation to amend the Botany Bay Local Environmental Plan 2013 as follows:**
 - a) Delete Sub-clause (2A) relating to a 22 metre height for sites zoned R3 and R4 in Clause 4.3 – Height of Buildings; and**
 - b) Delete Clause 4.4B as it relates to exceptions to FSR in Zone R3 and R4:**
 - 3. The Planning Proposal be referred to the Department of Planning & Infrastructure for Gateway Determination; and**
 - 4. The results of the Gateway Determination be reported to Council.**
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EXECUTIVE SUMMARY

Council at its Development Committee Meeting held 6 November 2013 considered a report dated 1 November 2013 by Council Officers on the provisions of Clause 4.3(2A) and 4.4B of the Botany Bay LEP 2013.

The Council at this meeting resolved as follows:

1. *Council note the appointment of GM Urban Design & Architecture to undertake an urban design analysis for 2,000sqm sites but not proceed with that appointment;*
2. *That a report be prepared by Council's staff for the consideration by Council at its December Development Committee Meeting. The report is to discuss the following provisions of the Botany Bay LEP 2013 that apply to the R3 and R4 Zones, the provisions are:-*
 - a. *Floor Space Ratio;*
 - b. *Height Controls;*
 - c. *The Control that applies to sites that have an area of 2000m²; and*
 - d. *Controls specific to the 10% Floor Space ratio increase over that of the base control.*

This report deals with the above resolution.

Background

A preliminary draft of the BBLEP 2012, including both the written instrument and maps, was made publicly available on the Council's website in August 2011, following Council's resolution in July 2011 to adopt the draft plan. This preliminary draft included the bonus clauses relating to the 2000m² sites - ie in Clause 4.3(2A) a maximum height of 22m and in Clause 4.4(2A) a maximum FSR of 1.5:1 were permitted for sites zoned R3 or R4 with a site area over 2000m².

The draft BBLEP 2012, supporting studies, maps and other documents were formally placed on public exhibition in May and June 2012.

Council was required to submit the Draft Botany Bay Local Environmental Plan 2012 to the Department of Planning & Infrastructure for gazettal under Section 68 of the EP&A Act 1979 by the end of December 2012.

Council at its Meeting held on 28 November 2012 resolved to adopt the Draft Botany Bay Local Environmental Plan 2012 (with amendments as a result of consideration of the submissions received to the public exhibition of the Draft Plan) and forward it to the Department of Planning and Infrastructure under Section 68(4) of the EP&A Act 1979 (unamended) with a request for referral to the Minister for Planning and Infrastructure to make the Plan, and to seek the Governor's approval of the Plan.

Following review of the Council's planning instrument by Parliamentary Counsel the Botany Bay Local Environmental Plan 2013 (BBLEP 2013) was gazetted on 21 June 2013 and commenced on 26 June 2013.

Provisions that apply to the R3 – Medium Residential Density and R4 High Residential Density Zones

The relevant clauses which apply to **R3 and R4 Zones** are outlined in **Table 1** as follows:

Table 1 – FSR & height Provisions relating to R3 and R4 Zones

Clause in Botany Bay LEP 2013	Summary of Provisions	Source of provision
4.3 – Height of Buildings	(2) - The height of a building on any land is not to exceed the maximum shown for land on the Height of Buildings Map (HOB Map).	Heights are generally a maximum of 10 to 14 metres depending on the locality of the site. Heights in the HOB Map were based on surveys carried out by Council Officers of existing heights of development in the R3 and R4 Zones. In the HOB Map the following maximum heights apply to land zoned R3 and R4: • Mascot – 11 to 12 metres; • Botany – around Daphne and Street, Myrtle/Jasmine Streets; Wilson/Pemberton Street & Edgehill Avenue – 10 metres; • Eastlakes – 14 metres; and • Hillsdale – 12 metres.
	(2A) - Notwithstanding the HOB Map land in R3 or R4 Zone which exceeds 2000m² in area the height can exceed that on the height of HOB Map but must not exceed 22m.	Justification for this bonus provision was developed from the 2010 Neustein Urban Study. This subclause applies to sites with an area over 2000m² in the R3 and R4 Zones provided for a building height of 6 storeys (22 metres). The Department of Planning & Infrastructure supported the provision.
	(2C) – applies to 12 and 14 Daniel Street & 41 Daphne Street, Botany – allows a maximum height of 12 metres.	The HOB Map permits a maximum height of 10 metres. Council received a request for additional height on 23/09/2011 for an amalgamated site of 1900m² in area consisting of Nos. 12 and 14 Daniel Street & 41 Daphne Street. The submission was considered by the Council's Policies & Priorities Committee on 25/01/2012. Council at that meeting agreed to an

Clause in Botany Bay LEP 2013	Summary of Provisions	Source of provision
		additional 2 metre increase in height (ie maximum of 12m) for an amalgamated site of 1900m2 in area. However should the land be developed as three individual parcels a height limit of only 10 metres will apply to each parcel.
4.4 – Floor Space Ratio	• (2) - The maximum FSR for a building on any land is not to exceed the FSR shown for the land on the FSR Map.	FSR are generally a maximum of 0.85:1 depending on the locality of the site.
	• (2A) - Notwithstanding the FSR Map land in R3 or R4 Zone which exceeds 2000m2 in area the FSR can exceed that on the FSR Map but must not exceed 1.5:1m.	Justification for this bonus provision was developed from the 2010 Neustein Urban Study. The provision was supported by the Department of Planning & Infrastructure.
	• (2C) – applies to 12 and 14 Daniel Street & 41 Daphne Street, Botany – allows a maximum FSR of 1.5:1.	The FSR Map permits a maximum FSR of 0.85:1. Council received a request for additional FSR on 23/09/2011 for an amalgamated site of 1900m2 – 12 and 14 Daniel Street & 41 Daphne Street. The submission was considered by the Council's Policies & Priorities Committee on 25/01/2012. Council at that meeting agreed to an additional 0.65:1 increase in FSR (ie maximum FSR of 1.5:1) for an amalgamated site of 1900m2 in area. However should the land be developed as three individual parcels a FSR 0.85 metres for each parcel will apply.
4.4B – Exceptions to FSR in Zone R3 and R4	• Despite clause 4.4, a FSR for the purposes of multi dwelling housing and residential flat buildings on land to which this clause applies that results in a floor space ratio that does not exceed 1.65:1 if: ○ the site area is equal to or greater than 2,000 square metres, and	Council at its Development Meeting held 1 August 2012 resolved to include the provision in the exhibited draft Botany Bay Local Environmental Plan 2012. The provision provides additional bonus FSR for sites over 2000m2 of 10% above the exhibited FSR development standard of 1.5:1 – a FSR of 1.65:1 if the site is affected

Clause in Botany Bay LEP 2013	Summary of Provisions	Source of provision
	○ the site area is land identified on the <u>Acid Sulfate Soils Map</u>, and ○ the consent authority considers that the development is, or is likely to be, adversely affected by any of the following: contamination, noise (including aircraft, rail or road noise). Council has to be satisfied that: ● the development will be compatible with the desired future character in terms of building bulk and scale, and ● the development will contribute to the amenity of the surrounding locality, and ● any consolidation of lots for the purposes of this clause is not likely to result in adjoining lots that cannot be developed in accordance with this Plan.	by three or more of the following constraints: ● <i>Site contamination;</i> ● <i>Aircraft Noise;</i> ● <i>Rail Noise;</i> ● <i>Road noise;</i> ● <i>Demolition;</i> ● <i>Groundwater;</i> ● <i>Acid Sulphate Soils.</i> Council was advised that in the determination of Development Applications in recent times for multi unit housing (including residential flat buildings) it had become apparent that to achieve the long term outcomes of the Council and utilise land previously used for an industrial purpose for a reuse, it generally comes with a legacy of contamination, high groundwater levels and industrial building stock that contains elements in their construction of hazardous materials (asbestos). It has also been found that in addition to the above matters the sites are affected by transport noise (road/aircraft) that collectively give rise to development constraints. This all adds to the costs of development. Therefore, an incentive of up to 10% above the exhibited FSR development standard of 1.5:1 for larger sites of over 2000m2 was proposed.

The bonus provisions above do not apply to the BATA site as the BATA site has its own maximum permitted FSRs and heights.

Summary of the Bonus Provisions and associated issues

Bonus Provision No. 1: FSR of 1.5 and 22m height for sites with an area of 2000m2 zoned R3 and R4

As indicated above in **Table 1** the bonus provisions (Clauses 4.3(2A) & 4.4(2A)) for additional height and FSR for sites zoned R3 or R4 which have an amalgamated area of 2000m2 was developed from the 2010 Neustein Urban Study. The bonus provision was supported by the Department of Planning & Infrastructure in its issue of the Section 65 Certificate to permit public exhibition of the Draft LEP in May and June 2012.

With respect to the **height** the intent outlined within the 2010 Neustein Urban Study was that increased floor to ceiling heights would be required on the ground floor and first floor to accommodate commercial/retail development with residential above. This would provide for an overall building height of 22 metres within 6 storeys. However developments within the R3 and R4 Residential zones are not required to present commercial/retail development (though it is permitted) on the ground and first floor, the consequence of which gave rise to a 7 storey building height where the development is pure residential.

This was not the intent of the 2010 Neustein Urban Study and the height has raised issues within the community. Not only has this development standard resulted in additional building height it has also presented as potential amenity impacts resulting from new developments not being in context with existing urban environments particularly adjoining low density R2 Residential zones. The bonus provision allows no transition between the sites zoned R2 Low Density Residential and land zoned R3 and R4. It has been noted that a number pre-approval discussions in the R3 Residential zone are immediately adjoining R2 low density residential zones and the increased building height presents adverse impacts to the prevailing streetscape and resulted in overshadowing and overlooking impacts.

Bonus Provision No. 2: Increase FSR to 1.65:1 on sites with an area of 2000m² zoned R3 and R4

This provision was originally placed before Council at its Development Committee Meeting held 1 August 2012. The Committee adopted the recommendation to include the FSR bonus of 1.65:1 into the Draft Botany Bay LEP 2012.

The Council at its Meeting held 21 November 2012 again considered a number of amendments regarding the draft BBLEP 2012 which included additional floor space for sites greater than 2,000sqm - the additional bonus FSR for sites over 2000m² of 10% above the exhibited FSR development standard of 1.5:1.

The provision identified below was recommended to the Department of Planning and Infrastructure under Section 68(4) of the EP&A Act 1979.

Additional subclause (2AA) added to Clauses 4.4 which states:

“(2AA) (i) Despite sub clause (2A), consent may be granted to development on land to which 2(A) applies that results in a floor space ratio of up to 1.65:1, if the consent authority is satisfied that the development is affected by three or more of the following constraints:

- *Site contamination;*
- *Aircraft Noise;*
- *Rail Noise;*
- *Road noise;*
- *Demolition;*
- *Groundwater;*
- *Acid Sulphate Soils.*

A development is only eligible for the additional floor space specified in sub clause (i) if:

- *The site is greater than 2000 sq m;*
- *The consent authority is satisfied that the development will be compatible with the desired future character in terms of building bulk and scale;*
- *The consent authority is satisfied that the development will not adversely affect the amenity of the surrounding area;*
- *The consent authority is satisfied that any consolidation of lots for the purposes of this clause is not likely to result in adjoining lots that cannot be developed in accordance with this plan; and*
- *The consent authority is satisfied that the development exhibits design excellence."*

The justification for the additional FSR for sites greater than 2,000sqm was based upon the determination of Development Applications in recent times for multi unit housing (including residential flat buildings) where it has become apparent that to achieve the long term outcomes of the Council and utilise land previously used for an industrial purpose for a reuse, it generally comes with a legacy of contamination, high groundwater levels and industrial building stock that contains elements in their construction of hazardous materials (asbestos). It was also found that in addition to the above matters the sites are affected by transport noise (road/aircraft) that collectively give rise to development constraints. This all adds to the costs of development.

Therefore, Council provided an incentive of up to 10% above the exhibited FSR development standard of 1.5:1 for larger sites of over 2000m² to be redeveloped for multi unit housing if the Council is satisfied that the development site is affected by the following constraints:

- Site contamination;
- Aircraft Noise;
- Rail Noise/ Road noise (Transport related noise which is considered as one constraint);
- Groundwater; and
- Acid Sulphate Soils.

A redevelopment site in the R3 and R4 zones would only be eligible for the additional floor space to a FSR of 1.65:1 if:

- The site is greater than 2000 sq m;
- The Council is satisfied that the development will be compatible with the desired future character in terms of building bulk and scale;
- The Council is satisfied that the development will not adversely affect the amenity of the surrounding area;
- The Council is satisfied that any consolidation of lots for the purposes of this clause is not likely to result in adjoining lots that cannot be developed in accordance with this plan; and

The Council is satisfied that the development exhibits design excellence.

Following Parliamentary Counsel review of the additional floor space ratio for sites greater than 2,000sqm recommended by Council the gazetted planning instrument included the following clause.

- (1) The objective of this clause is to encourage the development of larger sites (former industrial sites) to facilitate better built form and urban design.*
- (2) This clause applies to land in Zone R3 Medium Density Residential and Zone R4 High Density Residential.*
- (3) Despite clause 4.4, development consent may be granted to development for the purposes of multi dwelling housing and residential flat buildings on land to which this clause applies that results in a floor space ratio that does not exceed 1.65:1 if:*
 - (a) the site area is equal to or greater than 2,000 square metres, and*
 - (b) the site area is land identified on the Acid Sulfate Soils Map, and*
 - (c) the consent authority considers that the development is, or is likely to be, adversely affected by any of the following:*
 - (i) contamination,*
 - (ii) noise (including aircraft, rail or road noise), and*
 - (d) the consent authority is satisfied that:*
 - (i) the development will be compatible with the desired future character in terms of building bulk and scale, and*
 - (ii) the development will contribute to the amenity of the surrounding locality, and*
 - (iii) any consolidation of lots for the purposes of this clause is not likely to result in adjoining lots that cannot be developed in accordance with this Plan.*

It can be noted from the gazetted clause that the intent of the clause has been lost in that sites only have to achieve an area of 2,000sqm, be affected by acid sulphate soils and potentially be affected by any of the following issues which may constraint its future development potential being site contamination, aircraft noise; rail and road noise.

The impact of groundwater has been removed from the clause along with the requirement that a site must be affected by three or more of the constraints identified by Council in order to qualify for the additional FSR of 1:65:1.

The intent of the additional FSR was to overcome considerable development costs associated with site affected by an industrial legacy and other environmental factors. The clause contained with the gazetted BBLEP 2013 no longer requires sites to present with an industrial legacy rather, site only need to be subject to acid sulphate soils and noise impacts to qualify for additional floor space to 1.65:1.

Proposed Amendment to the Botany Bay LEP 2013

Clause	Solution	Comments
Clause 4.3 – Height of Buildings	Delete the bonus Sub-Clause (2A) of 22m for 2000m2 sites	This means that development will be restricted to 10 to 14 metres depending on locality. The equivalent number of storeys is 3 to 4.
Clause 4.4 - FSR	Maintain the FSR bonus of 1.5:1 for 2000m2 sites.	This means that an amalgamated site of 2000m2 will have a maximum permitted FSR of 1.5:1; however the height remains at 10 to 14 metres depending on locality. If a height is sought over that height on the Height of Buildings LEP Map an exception to the development standard will be required under Clause 4.6 of the Botany Bay LEP 2013. This will allow Council to consider a merit based objection to the height standard.
Clause 4.4B – Exceptions to FRS in Zone R3 and R4	Amend the existing bonus clause to allow a FSR of 1.65:1 (for the 2000m2 sites) to reinsert the constraints deleted by Parliamentary Counsel prior to the gazettal of Botany Bay LEP 2013.	Given that the additional floor space was intended to address the industrial legacy of sites greater than 2,000sqm to support their redevelopment it is recommended that Council resolve to prepare a planning proposal reiterating the justification for the additional floor space in the manner that was intended being that sites greater than 2,000sqm must be affected by <u>three or more</u> of the following constraints in order to qualify for the additional floor space being: • Site contamination; • Aircraft Noise; • Rail Noise/Road noise (Transport related noise which is considered as one constraint); • Groundwater; and • Acid Sulphate Soils. The amendment to the clause will require Council to resolve to prepare a planning proposal to amend the Botany Bay LEP 2013 and to prepare an amendment to the Botany Bay DCP 2013.

Conclusion

The Council resolve to prepare a Planning Proposal in accordance with the Environmental Planning & Assessment Act 1979 and its Regulation to:

1. Delete Sub-clause (2A) relating to a 22 metre height for sites zoned R3 and R3 in Clause 4.3 of the Botany Bay Local Environmental Plan 2013; and
2. To amend Clause 4.4B – Exceptions to FSR in Zone R3 and Zone R4 so that sites greater than 2,000sqm must be affected by three or more of the following constraints in order to qualify for the additional floor space being:
 - Site contamination;
 - Aircraft Noise;
 - Rail Noise/Road noise (Transport related noise which is considered as one constraint);
 - Groundwater; and
 - Acid Sulphate Soils.

**8.2 PLANNING REFORM FUNDING ROUND 8 - MASCOT LOCAL CENTRE
URBAN DESIGN STRATEGY****File No:** S13/141**Responsible Officer:** Rodger Dowsett - Director of Planning and Development**Date of Preparation:** 11 November 2013

RECOMMENDATION TO COUNCIL**THAT:**

- 1. The contents of the report be noted; and**
 - 2. Council accept the Grant of \$98,000.00 towards the Mascot Local Centre Urban Design Strategy; and**
 - 3. The General Manager be authorised to sign the agreement with the Department of Planning & Infrastructure;**
 - 4. The General Manager be authorised to approve the brief for the Study;**
 - 5. The Brief be placed on tender in accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2005; and**
 - 6. The Council nominate a member or members of the elected Councillors to be a member or members of the Steering Committee.**
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RECOMMENDATION TO COMMITTEE:**THAT:**

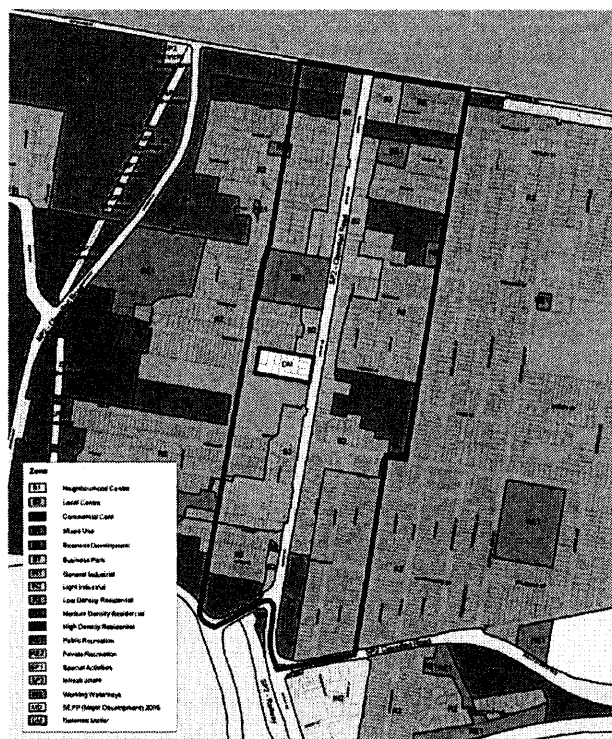
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 - 6. The Council nominate a member or members of the elected Councillors to be a member or members of the Steering Committee.**
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EXECUTIVE SUMMARY

This report advises Council that it has received advice dated 29 October 2013 from the Department of Planning & Infrastructure that it has approved Council's application for project funding under Round 8 of the Planning Reform Fund (PRF) grant program for the following:

\$98,000.00 towards the Mascot Local Centre Urban

The Study area is defined by the heavy blue line in the **Figure below**.



This report recommends that Council accept the grant.

Background

Council at its Meeting held 28 November 2012 resolved to adopt the Botany Bay LEP 2012 as amended and to forward the Draft Plan to the Department of Planning & Infrastructure under Section 68(4) of the Environmental Planning & Assessment Act 1979 (unamended) with a request for referral to the Minister for Planning and Infrastructure to make the Plan.

One of the recommendations adopted by Council at its Meeting held 28 November 2012 was that further strategic work be carried out on the Mascot Main Street. The report to the Council Meeting held 28 November 2012 contained the following information:

Non-Government Submissions Issue	Response	Recommended Course of Action
Mascot Main Street, shops along Botany Road, Mascot Submission Nos. 22, 41, 50 & 55 to the LEP exhibition	The proposed zoning of the total area along Botany Road Mascot is B2 Local Centre, with a height of 14m and a FSR of 2:1. The Draft BBLEP 2012 increases the FSR from 1:1 to 2:1 with a maximum height of 14m proposed. The site and the surrounding Mascot Shopping Centre is affected by high aircraft house, small lot under fragmented ownership and heavy vehicle transport which all added up to limited redevelopment opportunities under the existing situation. The strategic intent for the Mascot Main Street Area is to remain as a 'Village' (Local Centre). There is currently insufficient strategic information in the studies carried out to date to justify any changes to the height and FSR proposed for the centre in the Draft BBLEP 2012. A detailed strategic study is therefore recommended to investigate the appropriate zoning, mix of uses, FSR, Height and the required retail/commercial gross floor area to ensure the area is maintained as a 'Village' (Local Centre) to provide retail/commercial services to the residents in the immediate vicinity and to ensure its continued viability. This would result in a separate planning proposal being prepared recommending changes in zoning, FSR and heights within the shopping centre.	That there is no change to the exhibited draft LEP in respect of the Mascot Shopping area along Botany Road, Mascot. That further strategic work be carried out on the Mascot Main Street, including investigation of: ▪ appropriate zoning within and adjoining the centre; ▪ mix of uses; ▪ FSR; ▪ Height; and ▪ the required quantity of retail/commercial gross floor area to the centre's continued viability.

Council adopted the recommendations of the report which included that that further strategic work be carried out on the Mascot Main Street, including investigation of:

- *Appropriate zoning within and adjoining the centre;*
- *Mix of uses;*
- *FSR;*
- *Height; and*
- *The required quantity of retail/commercial gross floor area to the centre's continued viability.*

Council in late December 2012 was advised by the Department of Planning & Infrastructure that it was calling for applications for Planning Reform Fund grant funding Round 8. The Department advised that Round 8 of the NSW Government's Planning Reform Fund Program would focus on the delivery of evidence based strategic planning projects that support the implementation of State policies including metropolitan and regional plans and strategies, along with projects that improve service delivery and performance across the planning system. Applications were required to be submitted no later than close of business Friday 22 February 2013.

Given the Council's resolution and the submission received in response to the exhibition of the Botany Bay LEP in 2012 an application was forwarded to the Department for funding for the Mascot Local Centre Urban Design Strategy. A copy of the Application is on file for the Committee's information.

Details of the Project

Council Officers supplied the following details for the Project in the Application Form:

Project Outline	Details
Project Aims	• To identify development densities (FSR, height, zones) which support the availability and revitalisation of the centre; • To identify opportunities for car parking to service the Centre without creating additional impact to the surrounding local streets; • To identify opportunities for adaptive reuse of Heritage Items; and • To investigate incentives for car parking, density, height and linkages.
Project Objectives	• To review the floor space ratio and building heights standards within the Draft BBLEP 2012 and development incentives; • To provide input into the Comprehensive Botany Bay DCP (BBDCP) 2013 to guide development in the public domain;