



Ms Lara Kirchner
General Manager
City of Botany Bay Council
PO Box 331
Mascot NSW 1460

15/08753

Dear Ms Kirchner *Lara*

Planning Proposal to amend Botany Bay Local Environmental Plan 2013

I refer to Council's letter requesting a Gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) in respect of the planning proposal seeking to delete the bonus provision clauses 4.3(2A) and 4.4B from *Botany Bay Local Environmental Plan 2013*.

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

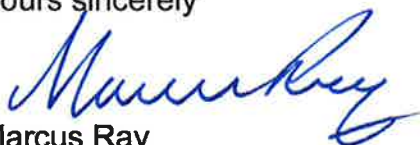
The planning proposal is inconsistent with S117 Direction 3.1 Residential Zones in that it seeks to reduce the potential density of residential development. Council should update the planning proposal to address the inconsistency with the Local Planning Direction prior to exhibition.

It is noted that there are a number of Development Applications being progressed or currently before the Land and Environment Court, which rely on the bonus provisions. Council should amend the planning proposal to provide savings provisions relating to applications that may not have been determined before the commencement of the subject amending LEP.

The amending Local Environmental Plan is to be exhibited for a minimum 28 days and 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 for the Department of Planning and Environment to draft and finalise the Local Environmental Plan should be made at least 8 weeks prior to the projected publication date.

If you have any further enquiries about this matter, please contact Mr Lee Mulvey, Director, Metropolitan (CBD), of the Department on (02) 9228 6512.

Yours sincerely



Marcus Ray
Deputy Secretary
Planning Services

07/09/2015
Encl. – Gateway determination

Gateway Determination

Planning proposal (Department Ref: PP_2015_BOTAN_001_00): to amend the Botany Bay Local Environmental Plan 2013 to delete clauses 4.3(2A) and 4.4B bonus provisions.

I, the Deputy Secretary, Planning Services at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the *Botany Bay Local Environmental Plan 2013* to delete bonus provisions under clauses 4.3(2A) and 4.4B, should proceed subject to the following conditions:

1. Prior to exhibition, the planning proposal is to be updated to:
 - address the inconsistencies of the planning proposal with S117 Direction 3.1 Residential Zones;
 - consider the implications of removing the bonus height provision under Clause 4.3(2A) but retaining the bonus FSR provision of 1.5:1 under Clause 4.4(2A) on the subsequent built form for sites over 2,000 sqm;
 - include an estimation of the potential number of dwellings theoretically foregone with the removal of the bonus clauses; and
 - insert a savings provision relating to lodged development applications relying on the bonus provisions, that may not have been determined before the commencement of the amending LEP.
2. Council's additional site analysis information is to be included for the purposes of public exhibition, to give the community an opportunity to consider the implications of the planning proposal to the affected sites.
3. Community consultation is required under sections 56(2)(c) and 57 of the 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 (Department of Planning & Environment 2013)*.
4. Council is to consult in writing with all land owners potentially affected by the deletion of the bonus provisions – i.e. all owners of R3 and R4 zoned land. Council is to amend the planning proposal to respond to any submissions from landowners, having particular regard to submissions that may have sought to utilise the bonus provisions to achieve potential future higher density residential development on the affected land.
5. Consultation is required with the following public agencies **prior to exhibition**, in accordance with section 56(2)(d) of the Act:
 - Department of Family and Community Services - Housing NSW;
 - Transport for NSW - Roads and Maritime Services;
 - NSW Ports; and
 - Environment Protection Authority.

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, or to indicate that they will require additional time to comment.

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 **12 months** from the week following the date of the Gateway determination.

Dated 7th day of September 2015



Marcus Ray
Deputy Secretary
Planning Services

Delegate of the Minister for Planning