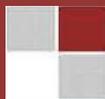


SEPP 1 OBJECTION TO COMPLIANCE WITH
FSR CONTROL

103-105 O'RIORDAN STREET,
MASCOT

Updated 29 March 2012 (based on amended DA
drawings submitted prior to amended sketch
plans)

Prepared by:



LJB Urban Planning Pty Limited

1.0 INTRODUCTION

- 1.1 This amended State Environmental Planning Policy No.1 - Development Standards (SEPP 1) objection has been prepared by LJB Urban Planning Pty Ltd on behalf of Glupane Glupi Pty Ltd.
- 1.2 It is submitted to City of Botany Bay in support of amended plans for a Development Application for the demolition of existing building, erection of a twelve storey residential building containing 55 apartments.
- 1.3 This submission provides justification to the proposed variation to Clause 12A of Botany Bay LEP 1995 which provides for a maximum floor space ratio of 2:1 for the subject site.
- 1.4 This SEPP 1 Objection should be read in conjunction with the Statement of Environmental Effects prepared by LJB Urban Planning Pty Ltd dated July 2011 accompanying the DA.



2.0 IS THE PLANNING CONTROL A DEVELOPMENT STANDARD ?

2.1 The planning control is a development standard under Botany Local Environmental Plan 1995.

2.2 This submission objects to the following standard:

12A Floor Space Ratio – Mascot Station Precinct

- 1) The Council may consent to the erection of a building on land in the Mascot Station Precinct only if the floor space ratio of the proposed building does not exceed the ratio specified for the land concerned on Sheet B of the map marked “Botany Local Environmental Plan 1995 (Amendment No 28)” which sheet is also titled “Mascot Station Precinct Floor Space Ratios – Map 1 for clause 12A”

2.3 This allows a maximum floor space ratio of 2:1.

2.4 For the purposes of Clause 12A, gross floor area is defined in Schedule 1 of the LEP as follows:

gross floor area means the sum of the areas of each floor of a building where the area of each floor is taken to be the area within the outer face of the external enclosing walls as measured at a height of 1,400 millimetres above each floor level excluding the following:

- (a) columns, fin walls, sun control devices and any other elements, projections or works outside the general line of the outer face of the external walls,
- (b) lift towers, cooling towers, machinery and plant rooms and ancillary storage space and vertical air-conditioning ducts,
- (c) car parking at basement and at grade (ground level) and 50% of the car parking area provided at first floor level (and any internal access to that car parking), being car parking that is needed to meet any requirements of the Council,
- (d) space for the loading and unloading of goods,
- (e) designated storage spaces (if any) designated for personal items associated with multi unit housing, residential flat buildings and mixed development.



3.0 WHAT IS THE UNDERLYING PURPOSE OF THE STANDARD

3.1 There is no stated objective in relation to the floor space ratio control in the LEP; however the Mascot Station Precinct DCP provides objectives relating to floor space ratios as follows:

1. To ensure that the floor space ratios allocated to each sub-precinct provide sufficient incentive to encourage redevelopment within the MSP, within a reasonable time frame.
2. To allocate floor space ratios to each sub-precinct which are commensurate with the permitted building heights within the MSP.
3. To ensure equity amongst potential redevelopment sites within the MSP by allowing those property owners, that are affected by the public facility dedication provisions within this development control plan, to utilise their original site area for the purposes of determining their maximum permitted floor space ratios.
4. To provide sufficient development incentives to compensate for the dedication of land for public facilities on identified development sites.

4.0 PROPOSED VARIATION TO THE STANDARD

4.1 It is requested that City of Botany Bay vary clause 12A of Botany Bay LEP 1995 to allow a floor space ratio of 3.5:1 under the current LEP.



5.0 IS COMPLIANCE WITH THE STANDARD UNREASONABLE AND UNNECESSARY IN THE CIRCUMSTANCES?

5.1 In the circumstances of this development application, strict compliance with Clause 12 of Botany Bay LEP 1995 is unreasonable and unnecessary for the following reasons:

a) The objectives of the standard are achieved notwithstanding noncompliance with the standard;

5.2 The LEP does not include objectives for the FSR control; however the Mascot Station Precinct DCP provides objectives relating to floor space ratios.

5.3 These objectives are addressed in detail below:

1. To ensure that the floor space ratios allocated to each sub-precinct provide sufficient incentive to encourage redevelopment within the MSP, within a reasonable time frame.

5.4 The site is located within Sub-precinct 1 of the Mascot Station Precinct.

5.5 This sub-precinct is expected to contain in part new residential buildings and therefore will have compatibility with the existing residential area east of O’Riordan Street. This sub-precinct is generally intended to be a scale transition zone between development on the eastern side of O’Riordan Street and other mixed residential and commercial development within the precinct.

5.6 The built form is to maintain a strong connection with O’Riordan Street while establishing a practical relationship with the open space linear spine, located immediately to the west. In this regard the built form is to be designed, in part, to buffer road traffic noise emanating from O’Riordan Street.

5.7 The site enjoys the benefit of being the eastern gateway into the Mascot Station Precinct. Its location near the junction of O’Riordan and Gardeners Road makes this site highly visible and represents a unique opportunity to provide a strong design and architectural statement as you enter the changing and emerging precinct.

5.8 However, the site is significantly constrained by its triangular shape that tapers significantly to the north. Given the site constraints and the importance of this site the current floor space ratio controls do not provide sufficient incentive to encourage redevelopment of this site.

5.9 In order to achieve the desired future character the floor space ratio of the proposed building is considered appropriate.

2. To allocate floor space ratios to each sub-precinct which are commensurate with the permitted building heights within the MSP.

- 5.10 The current height controls in the DCP permit a building of 6 storeys on this site. The current height control does not correlate with the objectives of the precinct and the importance of this site as the eastern most entry into the Precinct.
- 5.11 The inappropriateness of the current height control has led to Council resolving in its Draft LEP to increase the floor space ratio and building height controls in the Precinct. The Draft LEP proposes to increase the building height on this site to 44 metres. The current proposal before Council is below the max height envisaged in the draft LEP. As the draft LEP has not been exhibited by Council at the time of writing this report, it is not a matter for consideration under the Act. However the basis by which the draft LEP was prepared as part of Council’s Strategic Planning is of relevance.
- 5.12 The proposed heights and floor space ratio in the draft LEP were based on a study undertaken by Neustein Urban, David Lock Associates and Taylor Brammer Landscape Architects in February 2010.
- 5.13 Neustein Urban found that there are significant opportunities for redevelopment and intensification in the Mascot Station Precinct. The Precinct is situated at the gateway to Sydney’s Global Economic Corridor and is well served by public transport, providing significant opportunities for Transit Oriented Development (TOD). The principles of TOD encourage the intensification of residential and employment uses around public transport interchanges in order to increase public transport use.
- 5.14 In recent years development around the Mascot Station has been of a high quality, high density residential/mixed use character. The Neustein Urban Study has indicated that there is further potential for redevelopment particularly given the larger lot sizes, and the large areas of common ownership that can support higher levels of consolidation.
- 5.15 Given that the 2029 ANEF Contour Map has increased the area of land suitable for residential development within Precinct, subject to the S117 direction requiring compliance with AS 2021, Neustein Urban has recommended aligning the zoning with the ANEF 25 contour to maximise the residential use.
- 5.16 The current floor space does not achieve the future character and opportunities within the precinct as identified by the study. Accordingly the allocated floor space is insufficient to support this.
- 5.17 The building height which results in additional floor space beyond the standard is considered appropriate for this site as it marks the eastern most entry into the Mascot Station Precinct. It is a transition site between the industrial areas to the north and low density residential areas to the east.

- 5.18 The site is clearly a defining location between the older industrial and residential areas of Mascot and the move towards high density residential living which is the future character of the Precinct.
- 5.19 The site represents an opportunity to provide a landmark building that frames the future Linear Park. The DCP contemplated the electricity substation on the Gardeners Road frontage as a corner site to be addressed by an accentuated building form. The substation was not consolidated with the adjacent site as contemplated in the DCP and as such, it is unlikely that this site will be developed.
- 5.20 The subject site represents an opportunity to provide an accentuated building form that addresses the corner and importantly the gateway into the Mascot Station Precinct.
- 5.21 Due to the triangular shape of the site, the footprint of the building tapers towards the north resulting in a narrow building form. The building has a strong base podium that steps into a tower element. It is the overall height of the building that enables this transition in building form resulting in a strong base that combined with the dense landscape provides a human scale. The middle of the building then sets back from the podium. The top of the building further sets back providing two levels of penthouse units that lighten the top of the building providing an appropriate overall balance.
- 5.22 The buildings configuration and overall form is appropriate given its height, and this achieves the intent of a gateway and prominent building as you enter the precinct.
- 5.23 The overall height will have no adverse impact on adjoining buildings or those in the surrounding area for the following reasons:
- The height maintains approximately 2 hours of solar access to the building to the south when measured between 9am to 3pm mid winter. This is with the exception of unit 6 which will achieve approximately 1hr 50min which as a result of this development will achieve higher levels of solar access than it currently enjoys.
 - The height maintains solar access to the dwellings on the eastern side of O’Riordan Street. Overshadowing is limited to the late afternoon sun.
 - The height will have no impact on views from surrounding buildings in the area. Due to the narrow width of the site and the subsequent building footprint iconic views to the city for all buildings within Church Ave will be maintained.
- 5.24 For the reasons and justification stated above, it is concluded that the additional floor space is appropriate to achieve the desired character of the area
- 5.25 Furthermore, the Minutes of the Urban Design Review Panel confirm that the building as proposed is 12 storeys in height, which in visual terms would not be unreasonable in relation to potential

future development on the west side of the future park, and with other development in the general area.

5.26 The development referred to by the Panel adjacent to the site included buildings to a height of 13 storeys which was recommended for approval by Council and approved by the JRPP on 3.8.11.

3. To ensure equity amongst potential redevelopment sites within the MSP by allowing those property owners, that are affected by the public facility dedication provisions within this development control plan, to utilise their original site area for the purposes of determining their maximum permitted floor space ratios.

5.27 This is not applicable to the subject site.

4. To provide sufficient development incentives to compensate for the dedication of land for public facilities on identified development sites.

5.28 This is not applicable to the subject site.

b) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

5.29 The underlying objectives and purposes of the FSR control remain relevant to the proposed development. The proposed development is consistent with the objectives of the FSR control in the Mascot Station Precinct DCP as detailed above.

c) The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

5.30 The proposed development is consistent with the aims and objectives of SEPP 1 to the extent that compliance with the FSR control would hinder compliance with the objects of the Act.

5.31 The objects of the act provide for the proper management and development of land to promote the social and economic welfare of the community. It promotes the orderly and economic use and development of land as compliance with the standard would make the development unviable.

5.32 In addition to the standard construction costs, development of sites in the Mascot Station Precinct is burdened with additional constraints. Due to the high cost of land in the precinct and the upgrade works required, compliance with the floor space ratio would not make the development of this site economically viable.

5.33 Specifically, increased cost for development on this site includes:

- Remediation – The land is contaminated due to the former industrial uses. The site needs to be made suitable for residential uses.

- Water Table – Due to the height the water table in the Mascot area, dewatering is required and a tanked basement. The alternative to dewatering would be above ground carparking which would not be appropriate given the prominence and high visibility of this site.
 - Acid Sulphate soils – Evidence of ASS has been found on the site. Excavated materials will need to be managed on site prior to disposal or reuse in a controlled manner.
 - Sydney Water Easement – the close proximity of the site to the Sydney Water Main provides additional restrictions during construction with limits on the vibration levels due to the fragile structure.
 - Proximity to substation – the location of the Energy Australia Substation places additional constraints on the construction methodology.
 - Limited Access – Due to the location of the site, proximity of the site to Gardeners Road and the nature of O’Riordan Street site access will be difficult and restricted.
 - Ground Anchors – Ground anchors will be required and consent negotiated with both the RTA and Sydney Water.
 - Services – upgrading of the water main which is required as a result of this development, and will benefit the surrounding area.
 - Undergrounding power cables – required as part of the development
- 5.34 A letter from the owner providing further information regarding the increased costs associated with the development of this site has been submitted to Council verifying the above.
- 5.35 In the circumstances of this development, the underlying objectives would be thwarted if compliance was required.
- d) The development standard has been virtually abandoned or destroyed by the Council’s own actions
- 5.36 The development standard has not been abandoned or destroyed. However, it is noted that Council, in its draft LEP which is yet to be placed on public exhibition and is therefore not a matter for consideration, proposes to increase the FSR permitted on this site. This proposed increase is in recognition that higher FSR are appropriate on land within the Mascot Station Precinct.
- 5.37 Notwithstanding the status of the draft LEP, the strategic planning studies undertaken by Council are relevant considerations. Council engaged SMEC Consultants to prepare a Transport Management Accessibility Plan (TMAP) for the Mascot Area. The aim of the TMAP was to determine how and to what extent the Mascot Precincts transport and road systems need to be managed to meet the intended population and employment targets and to determine the extent of land use changes to be tempered to cater for transport constraints.
- 5.38 A Draft TMAP has now been completed and submitted to Council. The TMAP recognises that the FSR for the subject site could be increased to 3.5:1, a further increase to the draft controls. As a result of the recommendation in the Draft TMAP the proposed development would be fully compliant.

6.0 IS THE OBJECTION WELL FOUNDED

- 6.1 The SEPP 1 objection is considered well founded as it addresses the key requirements of the SEPP 1 policy and the objectives of the floor space ratio control.

7.0 IS THE GRANTING OF CONSENT CONSISTENT WITH THE AIMS OF THE SEPP 1 POLICY:

- 7.1 The aims and objectives of SEPP 1 are:

"This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act."

- 7.2 The objects of the act provide for the proper management and development of land to promote the social and economic welfare of the community. It promotes the orderly and economic use and development of land as compliance with the standard would make the development unviable.
- 7.3 The aims of the MSP DCP are to establish controls that encourage good quality urban design, high residential amenity and environmental sustainability. The subject application represents a high quality orderly and economic use and development of the site, achieving an appropriate building form consistent the changing nature of the precinct.
- 7.4 As discussed in detail above, compliance with the development standard would be unreasonable and unnecessary in the circumstances.

8.0 WHETHER OR NOT NON-COMPLIANCE WITH THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING

- 8.1 The proposed variation to the development standard does not raise any matters of significance for state or regional planning. The variation is also not contrary to any state policy of ministerial directive.



9.0 THE PUBLIC BENEFIT OF MAINTAINING THE PLANNING CONTROLS ADOPTED BY THE EPI

9.1 The public interest would not be served by requiring compliance with the Floor space ratio controls for the following reasons:

- The proposed development results in the removal of an existing factory/warehouse building which is not compatible with the changing nature of the locality or the adjacent residential use. Its removal will assist in achieving the primary objective of the zone by providing compatible land uses which is in the public interest;
- The site is a strategically important site as the eastern most entry into the Mascot Station Precinct. The site is clearly a defining location between the older industrial and residential areas of Mascot. The site represents an opportunity to provide a landmark building that frames the future Linear Park. The DCP contemplated the electricity substation on the Gardeners Road frontage as a corner site to be addressed by an accentuated building form. The substation was not consolidated with the adjacent site as contemplated in the DCP and as such, it is unlikely that this site will be developed and achieve the intent of the DCP.
- The proposed development will result in the undergrounding of the adjacent power lines which will enhance the pedestrian environment resulting in a significant visual enhancement of the streetscape which is in the public interest;
- The proposed development will encourage the use of existing infrastructure, and provide appropriate incentives to stimulate the redevelopment of surrounding land;
- The locality surrounding the site is in a state of transition, and the proposed development promotes the desired future character of the immediate surrounds as a residential area.
- The proposed development achieves an excellent level of internal amenity in terms of room sizes/dimensions/shapes, sunlight access, natural ventilation, visual and acoustic privacy, storage, indoor/outdoor space, efficient layouts/service areas, outlook and access;
- The proposed development will not impose any significant or adverse impacts on the amenity of surrounding land in terms of overshadowing, loss of privacy or loss of views.

10.0 CONCLUSION

10.1 It is concluded that the non-compliance with the floor space ratio control contained in Clause 12 of Botany Bay LEP 1995 is acceptable in the circumstances of this case for the following reasons:

- The non-compliance enables compliance with the objects and purpose of the Environmental Planning & Assessment Act 1979
- Design responds to the site constraints and Council’s Strategic Planning studies that identify the opportunity for increased FSR in the Mascot Station Precinct.
- Achieves high levels of residential amenity for the proposed development and maintains compliant levels of solar access to adjoining buildings.
- Design achieves generous unit areas in accordance with Council’s high requirements which contribute to a higher Floor Space Ratio.
- Compliance with objectives of the FSR controls for the MSP.
- The non-compliance is not contrary to any matter of state or regional planning significance.
- Compliance with the standard is considered unreasonable and unnecessary in the circumstances of this application.
- The variation to the development standard is in the public interest as the site is a strategically important site; the development responds to the site constraints, provides an exceptional design response and maintains a high level of residential amenity.

