

Sydney East Joint Regional Planning Panel

210 O'Riordan Street & 133-137 Baxter Road, Mascot

**Supplementary report to satisfy the requirements of a record of
deferral issued by Sydney East Joint Regional Planning Panel on 24
September 2014 in relation to hotel DA 12/230**

Report prepared for
Isak Investments Pty Ltd

October 2014

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1 Introduction

This supplementary report has been prepared on behalf of Isak Investments Pty Ltd, the applicant, in response to the requirements of the deferral issued by the Sydney East Joint Regional Planning Panel (the Panel) on September 24, 2014. The deferral has been issued in relation to a development application (DA12/230) for the construction of a 12 storey hotel at 210 O'Riordan Street and 133-137 Baxter Road, Mascot, lodged with Botany Bay City Council in December 2012.

The Panel, in its decision, requires the applicant to prepare an amended set of drawings in accordance with the requirements of the criterion and procedures set out in items 1, 2 and 4 of the deferral. Items 1, 2 and 4 of the deferral state:

- 1. The Panel has considered the planning assessment report and concluded that the SEPP 1 Objection to justify the variation of Floor Space Ratio (FSR) for 1.5:1 to 6.6:1 is not well founded, notwithstanding the fact that there exists a valid 2009 consent on the subject site for a commercial building with an FSR of 7.28:1.*
- 2. The Panel notes that the Gross Floor Area (GFA) of the approved application includes car parking. On the basis that the existing approval is a circumstance of the case that should be taken into account, the Panel would accept a variation of the FSR standard, such that the GFA not devoted to parking in the current application is similar to the GFA not devoted to parking in the application approved in 2009.*
- 4. The Panel notes that the site adjoining the subject site to the east, 131 Baxter Road, as well as 125 Baxter Road, both qualify as isolated sites. The Panel also notes that the Land and Environment Court of NSW has established a planning principle on how to deal with isolated sites in assessing development applications.*

This supplementary report provides a further response to the issues raised in the preliminary decision of the Panel including a further assessment of the SEPP 1 objection and the issue of the allegedly isolated site.

2 Development application history

The following relevant development applications have been lodged with Botany Bay City Council for the subject site. Interim uses have also been approved for the site but these are not relevant to DA 12/230.

- **DA 08/132** granted conditional consent for the demolition of existing residences and construction of a new multi-level commercial office building comprising 12 storeys including car parking, landscaping and open plaza area. The DA was approved by Council on 18 March 2009.
- A Section 96 application was submitted to the Council in December 2012 seeking modification to **DA 08/132** to replace the approved levels of above ground car parking with expanded commercial space and the relocation of the car parking to four new underground levels. This application is currently undetermined.
- The subject DA for a hotel was submitted to Council in December 2012.

Item 2 of the JRPP deferral requires the proposed GFA for the hotel development to be similar to the GFA approved for the abovementioned DA 08/132 for office development in response to Item 1 of the Panel Record of Deferral.

3 Site and surrounds

The site subject of the hotel DA (Site A) is located at 210 O’Riordan Street and 133-137 Baxter Road, Mascot, and is comprised of seven attached lots with a total area of 2094m². The site is legally described as Lots 3, 4 & 5/DP262141, Lot 67/DP979354, Lot 133/DP1030495, Lot 4/DP653471 and Lot 1/DP135997.

The sites subject to the feasibility assessment are located along Baxter Road to the east of Site A and have street addresses of 131, 127 and 125 Baxter Road.

The location of Site A and the sites subject to the feasibility assessment are indicated in the aerial image overleaf:



Figure 1- Site subject to the Hotel DA and the adjoining sites at 131- 125 Baxter Road, image courtesy of Nearmap.

4 Permissible floor space ratio for hotel

Amended plans have not been lodged for the hotel as requested by the Sydney East JRPP because the loss of GFA jeopardises the proposal. A reassessment of the GFA/FSR follows.

The gross floor area of non-parking uses approved under DA 08/132 is:

Project	"Non-parking" GFA	Parking GFA	Typical floor GFA
Office	10,815	4401	1156
Hotel	13,810	nil	1025

Implementation of the directive of Item 2 of the Record of Deferral would see the hotel reduced by three floors approximately totaling 2,995 sqm. Such a result would jeopardise the status of the hotel by reducing room numbers from 238 to 181. Hotels in the band 3.5 to 4.5

stars, which is the basis for the design, generally require at least 200 rooms to support conference facilities. In turn, the conference facilities provide substantial permanent and casual employment, which is expected to be locally sourced.

We believe that the Panel can be satisfied, under the provisions of SEPP 1, in coming to a different conclusion from that expressed in Items 1 and 2 of the Record of Deferral, for the following reasons:

- At the time of lodgement of the hotel DA, pre-LEP strategic studies prepared for the Council already recommended an FSR of 3.0:1 to 3.5:1 for the subject site under the new Standard Instrument GFA definition. This would be equivalent to an FSR of about 3.3:1 to 3.8:1 under the Model Provisions definition. The degree of non-compliance is not of such a high order as was considered by the Panel.
- Council has approved a number of residential (and thus comparable) projects at FSRs up to 4.2:1 in the near vicinity of the subject site (Mascot Town Centre) within a zone which permits 3.0:1. Again this goes to the issue that the degree of non-compliance is less than the figures considered by the Panel suggest.
- The envelope of the hotel is smaller than that approved for the office building. This is shown in graphical form in Appendix 1. On a typical floor basis, the hotel has a GFA of 1025 sqm versus the 1156 sqm of the approved office building.
- The project, at its application size, meets the relevant general objectives of clause 5 of the Botany Bay LEP 1995:

(3) The objectives of this plan in relation to retailing and commerce are:

- (a) to enhance the convenience, viability and general amenity of all commercial centres and encourage a greater diversity in the range of goods and services offered to cater for the retail, commercial, entertainment, welfare and recreational needs of residents, the workforce and visitors,*
- (b) to encourage developments which will contribute to the economic growth and employment opportunities within the commercial and neighbourhood centres so that they remain commercially attractive and viable*

(7) The objectives of this plan in relation to tourism, and recreational and community services and facilities, are:

- (a) to provide opportunities for tourism and recreational development in appropriate locations,*
- (b) to develop tourism as an industry for the purpose of gaining employment and for economic, cultural, social and recreational benefits for the community,*

Reduction of the size of the hotel will result in a proportional drop in the extent to which the proposal can meet the objectives set out above. The locality of the subject site is being transformed from a largely industrial zone to a major town centre. This has been recognised by the State Government's declaration of Mascot Town Centre as an "Urban Activity Centre" into which additional resources will be channelled to improve the high density urban environment. A major hotel adjoining the town centre with its rail station and the entry to Sydney Airport must be considered an important component of the economic vitality of the area.

- The BBLEP 1995 objectives are direct elaborations of s5 of the EPA Act which states, among other objectives, that the Act encourages:
 - (i) *the proper management, development and conservation of natural and artificial resources*
 - (ii) *the promotion and co-ordination of the orderly and economic use and development of land*

There has been no suggestion that the proposal is in any way contrary to the orderly development of the site. Reduction of GFA will jeopardise elements of the services provided by the hotel and could lead to a non-economic outcome where the site is not developed to its full potential to provide economic expenditure in the LGA and increased employment.

- There is no suggestion from the professional officers of the Council, in their assessment, that environmental harm or damage to the planning regime of the LGA will result from the approval of the hotel in the form in which it has been submitted as a DA. The subject site is unique in its location at the airport gateway and an approval at an FSR greater than surrounding buildings will be distinguishable from any other application that may seek a similar concession.
- Council's assessment of the project has a strategic component which has been exercised by the decision to recommend approval of the project which is larger than the planning controls previously envisaged for the site. The recognition of the site as an important gateway, to the city for visitors arriving or to the airport for residents departing, is a strategic urban design policy. That strategic view of the site was taken in approving the office development and there is no evidence that Council shrinks from the approval of 2009.
- Reduction of the height of the hotel as suggested by the JRPP would reduce its height to either that of the adjoining Quest building or one storey above that. Whichever result eventuated, the proposal would not form the gateway function originally requested by Council because it would not have sufficient height to obtain visual prominence. Such a result would also increase the visual prominence of the Quest building whose poor design quality needs to be hidden rather than featured at the gateway to the City.

- Removal of three floors will change the building's proportions resulting in a squat development of poor quality and lacking in the height needed to form a gateway relationship with the building opposite in O'Riordan Street. The proposal's architecture will be compromised by this squashing of the design.

5 Feasibility assessment of development potential for lots 131 – 125 Baxter Road

An assessment of the development potential of the three remaining sites along Baxter Road, east of the site subject of the hotel DA at 210 O'Riordan Street, against the applicable planning controls is provided below. Approval of the hotel on its site will render No. 127 Baxter Road superfluous to the hotel proposal and it will potentially be in play as a part of the three site development described below – refer to Isak Superannuation Fund letter at Appendix 2.

- 131, 127 and 125 Baxter Road as one amalgamated site with area 1100m².

The following compliance tables provide an assessment against the relevant planning controls.

5.1 Botany Bay Local Environmental Plan 2013

Control	Standard	Comments
Land use, Zoning	<p>Zone B5 <i>Business Development</i></p> <p>Permitted with consent Bulky goods premises; Child care centres; Food and drink premises; Garden centres; Hardware and building supplies; High technology industries; Landscaping material supplies; Neighbourhood shops; Passenger transport facilities; Respite day care centres; Roads; Vehicle sales or hire premises; Warehouse or distribution centres; Any other development that is not prohibited</p> <p>Prohibited Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities;</p>	The sites can be developed for a variety of uses including hotels, serviced apartments and offices.

Control	Standard	Comments
	Heavy industrial storage establishments; Helipads; Highway service centres; Home-based child care; Home businesses; Home occupations; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Port facilities; Recreation facilities (major); Recreation facilities (outdoor); Research stations; Residential accommodation; Resource recovery facilities; Restricted premises; Retail premises; Rural industries; Sewage treatment plants; Sex services premises; Storage premises; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Waste disposal facilities; Water recreation structures; Water recycling facilities; Water supply systems; Wharf or boating facilities; Wholesale supplies	
Clause 4.1 Minimum subdivision lot size	Minimum subdivision lot size is not adopted by the BBLEP 2013.	There is no requirement for site amalgamation
Clause 4.3 Height of buildings	The maximum permissible height for development on each of the subject sites is 44m	This equates to 13 levels of hotel space or 12 levels of commercial space.
Clause 4.4 Floor Space Ratio	Maximum permissible Floor Space Ratio for the subject sites is 3.0:1	Council has approved projects up to 4.2:1 in the Mascot Town Centre.
Clause 5.10 Heritage conservation	None of the sites subject to this investigation are classified as heritage significant sites.	Potential development on the subject sites is not limited by heritage controls.
Clause 6.1 Acid Sulfate Soils	For sites located on Class 4 ASS, any excavation work with more than 2m below the natural ground surface requires development consent.	This requirement does not impose any significant burden on the potential development of the sites.
Clause 6.8 Airspace operations	This clause requires DAs for any sites that penetrate the Obstacle Limitation Surface to be referred to the responsible body being Sydney Airport.	Height of building limited by OLS to max 12-13 storeys.
Clause 6.9 Development in areas subject to aircraft noise	For sites located on ANEF contours of 20 or greater, the DA should be assessed against the requirements of Table 2.1 in AS 2021- 2000.	Sound attenuating construction required.

5.2 Other matters of compliance

The amalgamated sites are not subject to other specific development standards in the BBLEP 2013 that are applicable to the sites located on or having the following attributes:

- Terrestrial biodiversity land
- Wetlands
- Foreshore areas

5.3 Botany Bay Development Control Plan 2013

The main building envelope controls set by the DCP are for setbacks. However, these may be varied to relate to adjoining development.

Control	Standard	Comments
6.3.5 Setbacks	<p>C1. Setbacks are to be in accordance with the following:</p> <p>Fronting a classified road: Landscaping Building 4 metres 9metres Designated roads: 4 metres</p> <p>Side adjoining a non-residential use Landscaping Building 2 metres 2 metres</p> <p>Rear Landscaping Building Nil to 3m Nil to 3m</p>	The required setbacks are considered in the proposed building envelope However, proposed hotel is built to boundary for first four floors.

6 Potential development on 125, 127 and 131 Baxter Road

The amalgamated site will have an area of 1100m². The proposed building envelope for the site is shown in Appendix 3 of this report and has the following specifications:

Site area	FSR	GFA	Height in storeys*
1100m ²	3.0:1	3300	6

7 "Isolated site" and the adoption of the "Cornerstone" planning principle

The history of the attempt of the applicant, Isak Developments, to buy the site at 131 Baxter Road is listed below. However, we reiterate that the allegedly isolated site at 131 Baxter Road is not isolated by virtue of its suitability as part of the three allotment project site described above.

Date	Event/action	Reference
21 November 2007	DA 08/132 for an office building on the site known as 210 O'Riordan Street lodged at Council.	RJ Dowsett/bp/DA.08 132
15 October 2008	Report to Council meeting re undetermined DA 08/132 recommended an independent valuation of the site.	RJ Dowsett/bp/DA.08 132
29 October 2008	Council wrote to Isak Developments (and the Boyd family) with a copy of the brief for an independent valuation.	RJ Dowsett/bp/DA.08 132
18 March 2009	Council approved DA 08/132 for an office building on the site known as 210 O'Riordan Street.	RJ Dowsett/bp/DA.08 132
18 March 2009	Discussion between Isak Developments and Boyd family, mediated by M Neustein, re purchase of 131 Baxter Road at a price based on an independent valuation commissioned by Council. Memorandum of Understanding drawn up at meeting by M Neustein and signed by both parties. Objection by Boyd family withdrawn.	Nil
?	Payment made to Council by Isak Developments for 50% share of cost of preparing Deed of Agreement and independent valuation of site at 131 Baxter Road.	Receipt
15 April 2009	Council requested a quote for the valuation of 131 Baxter Road from Preston Rowe Paterson (valuers).	RJ Dowsett/jh/PPTY/15-131
9 June 2009	Council sent draft Deed of Agreement, prepared pursuant to Memorandum of Understanding, to Isak Developments for comment.	RJ Dowsett/sr/PPTY/15-131
16 June 2009	Isak Developments sent Council comments on the draft Deed of Agreement.	
9 November 2009	Restricted assessment of \$500,000 for 131 Baxter Road provided to Isak Developments by Theo Stamoulis & Associates.	Valuation Ref M1209573/MV.MW/2009
2009-2010	Greg Golfin, then of Laing & Simmons, instructed by Isak Developments to make offers for 131 Baxter. Golfin	Email from Greg Golfin to Isak Developments,

	opinion of site value at time was \$550,000. Progressively made offers of \$550,000 followed by \$600,000, \$700,000, \$800,000 and finally \$850,000. Instructed by Ron Boyd to make offers verbally and not in writing and not by email .	13 October 2014
1 February 2010	Letter to Isak Developments from Council's lawyers advising that the Mrs Boyd, owner of 131 Baxter Road, has not responded to a "number of reminder letters" and that Council "does not propose to take any further part in the matter".	AH: AS: B5124
1 February 2010	Letter to Council from Isak Developments re lack of progress with sale of 131 Baxter Road. Letter noted refusal of Boyds or their property adviser to set price.	
2 February 2010	Isak Developments letter to Council's lawyers reminding changes required to Deed of Agreement sent 1 April 2009.	
4 March 2010	Meeting at Council of Isak Developments, property adviser to the Boyd family and Council's Director of Planning.	Isak Developments letter of 1 April 2010
5 March 2010	Letter to Council from Isak Developments requesting an addition to the draft Deed of Agreement.	
1 April 2010	Email to Council requesting change to draft Deed of Agreement.	
4 August 2010	Email from Isak Developments to Boyd's property adviser offering \$790,000 as purchase price.	

Appendix 4 has the relevant documents listed in the table above.

The "Cornerstone" Planning Principle adopted by the Land and Environment Court requires:

1. Negotiations with adjacent owners to acquire property should commence at an early stage
2. Where the negotiations are unsuccessful, details of the offers are to be described in DA documentation and should include one independent valuation.
3. Assessment needs to be made of the reasonableness of the offers and the negotiations.

Negotiations with the owners of the adjoining property were commenced in October 2008, some four years before the subject DA was lodged. Those negotiations resulted in a Memorandum of Understanding signed on 18 March 2009 providing for a process, including Council commissioned valuation, as a basis for the acquisition of the site by Isak Investments.

Following failure of the process agreed to by the owners of 131 Baxter Road, an independent valuation for \$500,000 was obtained by the applicant on 9 November 2009. In parallel, an agent was commissioned to make offers to the owners of No.131 at arms length from Isak Developments. This agent valued the site at \$550,000 but, on instructions from the applicant, made offers up to \$850,000 without success. Much of this information was known by Council due to its involvement in the process from October 2008 to February 2010.

The price last offered, \$850,000, was \$300,000 above the higher of two valuations of the property from separate and independent valuers. The final offer represented a premium of 55%.

There being no need for the allotment owned by the Isak Superannuation Fund (No.127) to be part of the site for the proposed hotel, it may now be disposed of to any party seeking to amalgamate the three sites on Baxter Road for a complying DA. The same applies to the property at No.131.

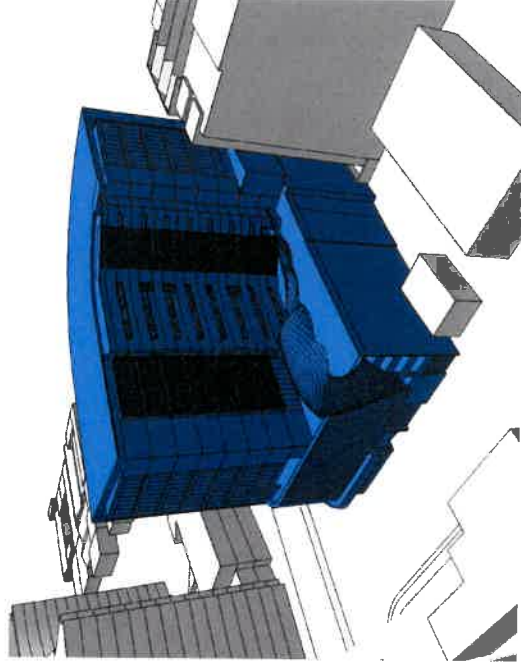
8 Appendix 1 – Building envelope of the proposed hotel development



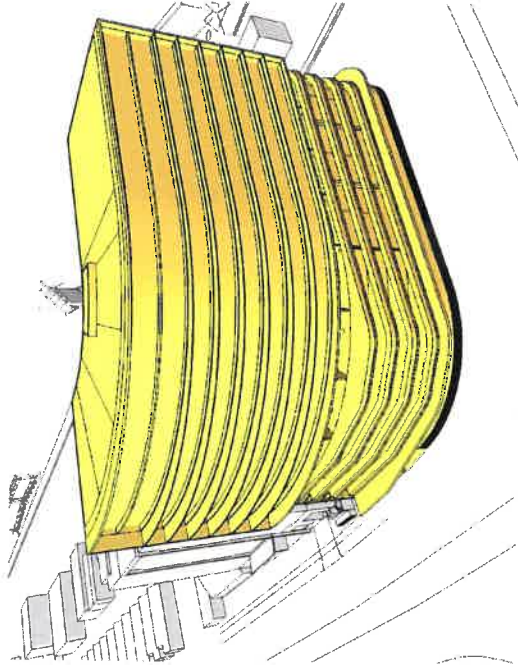
Hotel Scheme from South East



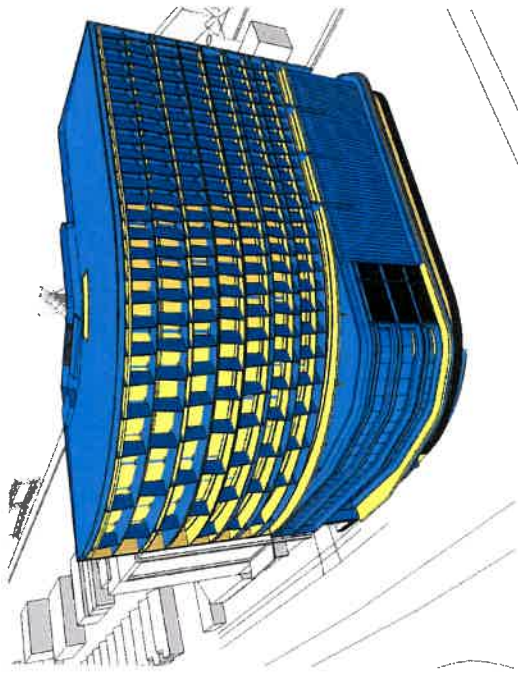
Hotel Scheme and Commercial Scheme from South East



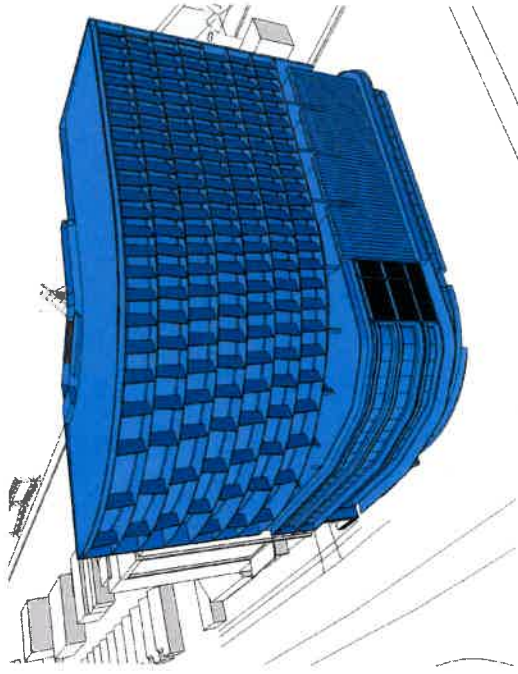
Commercial Scheme from South East



Hotel Scheme from North West



Hotel Scheme and Commercial Scheme from North West



Commercial Scheme from North West

9 Appendix 2 – Isak Superannuation Fund letter

Isak Nominees Pty Ltd INF Isak Provident Fund

952 Botany Road
Mascot NSW 2020
ACN 096084471
Phone: 02 9667 2638

23 October 2014

Dr John Roseth
Chairman
Sydney East JRPP

Dear Dr Roseth

Isak Nominees Pty Limited is the registered proprietor of the site at 127 Baxter Road, Mascot.

The JRPP is concerned that approval of the Hotel DA will create an isolated site at 131 Baxter Road, immediately adjacent to the hotel site and on the western side of the company's property at 127 Baxter Road.

The allotment at 131 Baxter Road, is one of three (Nos 131, 127 and 125) held in separate ownership and which, if amalgamated with the other two, would form a potential development site of some 1100sqm. Neither No.131 nor No.127 (owned by the company) is needed for whatever development is approved for the main hotel site known as 210 O'Riordan Street. The site at No.127 is therefore potentially available, at an appropriate price, to a developer who may wish to amalgamate and develop the three sites.

Yours sincerely



Spiro Isak

10 Appendix 3 – Proposed building envelope for the sites at 131, 127 and 125 Baxter Road

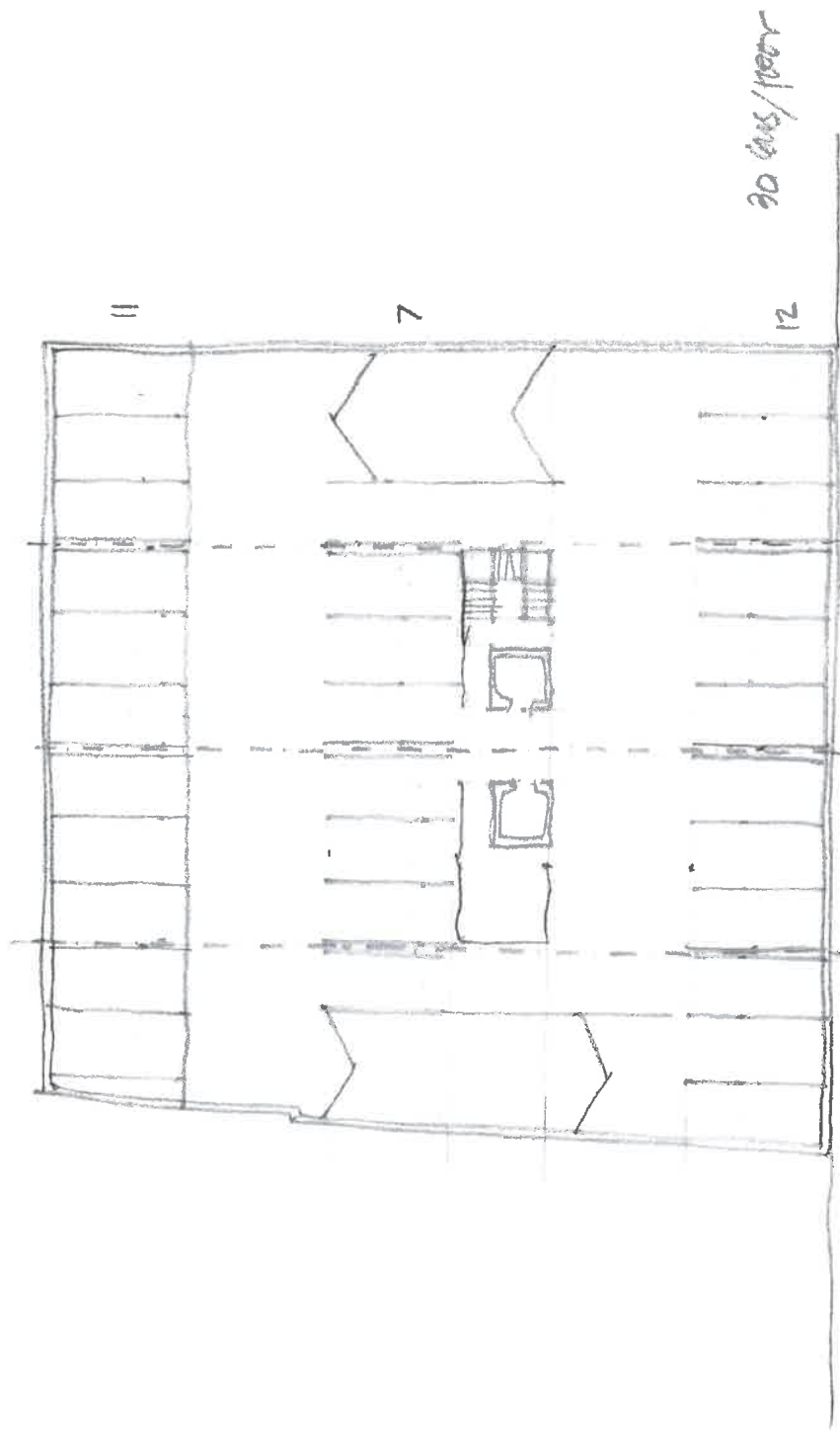


674m²

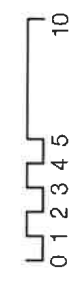
BAXTER ROAD

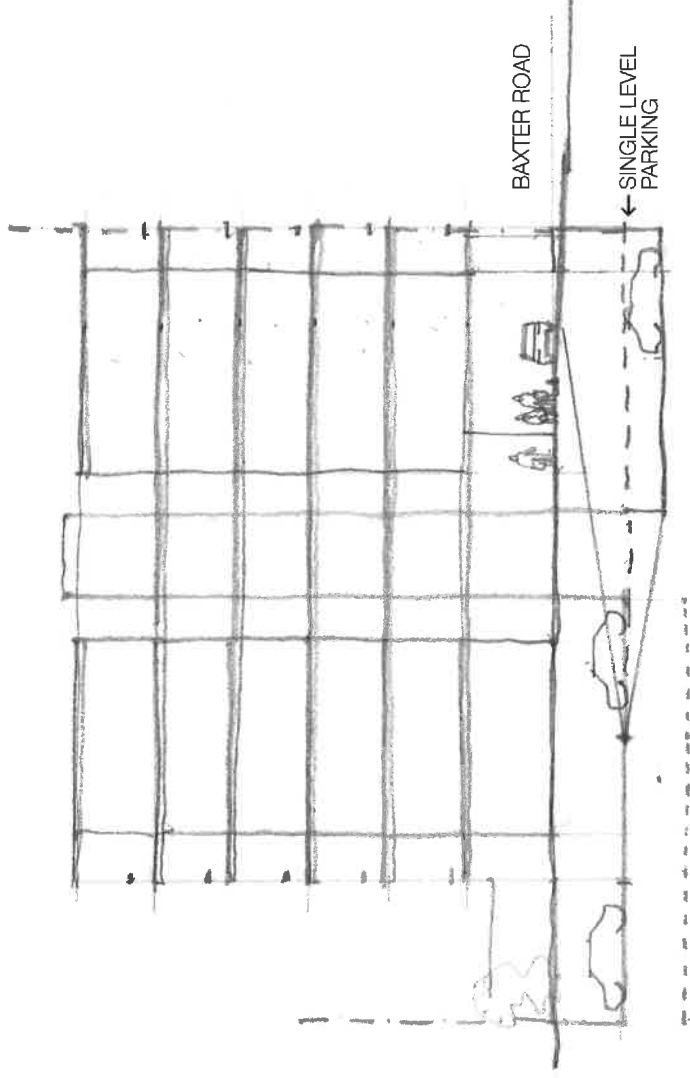


0 1 2 3 4 5 10



BAXTER ROAD





11 Appendix 4 – Correspondence regarding offer of purchase for the site at 131 Baxter Road

Our Ref: RJ Dowsett/jh/PPTY/15-131

15 April 2009

Preston Rowe Paterson (NSW) Pty Ltd
Level 11,
80 Clarence Street
SYDNEY NSW 2000

Attention: Mr G Preston

Dear Sir,

**REF: QUOTATION – VALUATION OF LAND AND BUILDING
131 BAXTER ROAD, MASCOT**

This letter serves to confirm our telephone discussion on 9th inst. wherein the Council requests that you peruse the material attached hereto for the purpose of providing a valuation of the above land.

The essence of the matter is that, the land supports an aged single storey dwelling and residual outbuildings. The land is zoned 4c2 "Airport Related-Restricted" and in recent weeks the Council has approved a 12 storey (high rise) commercial building on the adjoining land.

The adjoining land is known as 210 O'Riordan Street, Mascot being land bounded by Robey Street, O'Riordan Street and Baxter Road, Mascot.

It is the expressed position of the Council that the 4c2 zone be developed as is intended by the zoning objectives. In respect of 131 Baxter Road there is a willingness by the owner to sell and in so far as the applicant to the Development Application for the high rise building next door is concerned, there is similarly a willingness to purchase and acquire 131 Baxter Road, Mascot.

The dissent between parties therefore relates to true land value.

Prior to the determination of the Development Application for the high rise development, the parties entered into a Memorandum of Understanding.

A copy of this Memorandum of Understanding is attached, as is a valuation brief which has been prepared by Council.

The parties are:

1. Mr J McGhee – Marvay Holdings, agent for the owners of 131 Baxter Road, Mascot, telephone no. 9715 1665 &

Administration Centre, 141 Coward Street, Mascot NSW 2020. (PO Box 331 Mascot NSW 1460)

Telephone: (02) 9366 3666 Facsimile: (02) 9366 3777

E-mail: council@botanybay.nsw.gov.au Internet: <http://www.botanybay.nsw.gov.au>

2. Isak Investments Pty Ltd, being the applicant of the adjoining development.
Contact persons are T & S Isak, telephone no. 9667 2638

In accordance with the terms of the Memorandum of Understanding your quotation should allow separate consultation time with each party and their agent ahead of the valuation process.

This prerequisite is within the terms of the Memorandum of Understanding.

In due course please provide Council with your quotation.

The writer hereof is available for any assistance you may require.

Yours faithfully



R J DOWSETT
DIRECTOR – PLANNING & DEVELOPMENT

Encl.

1. Memorandum of Understanding
2. Valuation Brief V2.0

C/c Mr J McGhee
Marvay Holdings Pty Ltd
PO Box 164
ENFIELD NSW 2136

Isak Investments Pty Ltd
952 Botany Road
MASCOT NSW 2020

COPY

Our Ref: RJ Dowsett/bp/DA.08 132



29 October 2008

Isak Investments Pty Ltd
952 Botany Road
MASCOT NSW 2020

Dear Sir,

**REF: 210 O'RIORDAN STREET, MASCOT
DEVELOPMENT APPLICATION 08/132**

In response to the submission made in respect of your Development Application, the Council at its meeting held on the 15th instant has resolved to obtain an Independent Valuation in respect of the adjoining site 131 Baxter Road, Mascot.

A copy of the Brief prepared for this purpose is enclosed for your perusal and comment.

A copy of this Brief has been sent to the owners of 131 Baxter Road, Mascot for their perusal and comment.

Yours faithfully

A handwritten signature in blue ink, appearing to read "RJ Dowsett".

**R J DOWSETT
DIRECTOR – PLANNING & DEVELOPMENT**

Encl.

VALUATION BRIEF – 131 BAXTER ROAD, MASCOT

Preamble

- The Council has before it an as yet undetermined Development Application, serial no.08/132 (“the Development Application”) for consent to erect a high rise commercial building on land at 133-137 Baxter Road, 116-118 Robey Street and 210 O’Riordan Street, Mascot, being Lot 1 DP 135997; Lots 3, 4 & 5 DP 262141; Lot 4 DP 653471; Lot 67 DP 979354; and Lot 133 DP 1030495 (the development site).
- The design of the building the subject of the Development Application is based upon the development site attaining its full development potential.
- The development site is adjoined by an adjoining lot known to the Council as 131 Baxter Road, Mascot, being Lot 65 in DP979354 (the adjoining site).
- The adjoining site supports a dwelling and appurtenant outbuildings. The dwelling remains in use and occupation as a residence.
- The Council is concerned to ensure, in so far as it reasonably can, in the consideration and possible approval of the Development Application that the adjoining site does not become an orphan site and becomes part of either the development site or of any re-development of lands to the east of the adjoining site.
- In this regard the particulars of Development Application 08/132 contain schematic design particulars for the amalgamation of the adjoining site with the development site and the Council accepts from assessment of these particulars, it is feasible to do so, although not essential given the development potential of uniting the adjoining site with other lands, namely 127, 125 & 113-121 Baxter Road, Mascot or any combination thereof. A copy of the schematic is available at Council’s office for inspection.
- It is known to Council that the applicant in Development Application 08/132 has made an attempt to purchase the adjoining site for the purpose of incorporating it in the development site. Council is not aware of the terms of that offer, but understands it has been rejected.
- To ensure that all reasonable attempts are made for purchase of the adjoining site by the applicant in DA08/132, and to encourage consolidation of the adjoining site with the development site and avoidance of any future orphan site isolation problem, the Council has resolved to obtain an independent valuation of the adjoining site and to make it available to both parties as an aid to their discussions.
- The resolve of the Council to obtain a valuation report was taken at its meeting held on the 15th October 2008. The Planning Report that recommended this approach is a public document and therefore available for inspection.

Valuation

- Without in any way limiting the factors to be taken into account in determining a valuation of the adjoining site, or limiting whatever additional expert opinion you may find it necessary to obtain, the following issues need to be considered, namely:
 - (i) If not consolidated with the development site, there is likely to be only one further opportunity for the adjoining site to be consolidated with properties to its east in Baxter Road;
 - (ii) The size of the adjoining site makes it unsuitable for redevelopment in its own right given the statutory controls of Council's LEP and relevant DCP's;
 - (iii) Amalgamation of the development site and the adjoining site appears feasible, given that the current Development Application contains schematic plans that indicate feasibility of site amalgamation is possible; and
 - (iv) Whether the consolidation of the adjoining site with the Development Site would bring any special enhancement to the combined site that would affect valuation of the adjoining site.

Relevant Details:

- Site area of the adjoining site (Lot 65) is 340m² (approx)
- Statutory controls
 - The site is zoned Industrial Special 4(c2) Airport Related restricted under the provisions of the Botany Local Environmental Plan 1995.
 - Relevant provisions within the Botany Local Environmental Plan 1995 are as follows:
 - Clause Nos. 4(aims), 5(objectives), 10(zone objectives & development control table), 12 (FSR), 13(aircraft noise), 13A(noise or vibration), 13B(development & obstacle limitation surfaces), 17(development in industrial zones), 22(environmental considerations), 28(excavation & filling of land), & 30A(Acid Sulphate Soils); and
 - Schedule 1 definitions.

A copy of Botany Local Environmental Plan 1995 can be downloaded from Council's website:

<http://www.botanybay.nsw.gov.au/council/services/planning/local.htm>

- Relevant DCPs are as follows:
 - Off Street Car Parking DCP
 - Aircraft Noise DCP
 - Access DCP
 - Subdivision DCP
 - Energy Efficiency DCP
 - DCP for Exempt & Complying Development

- DCP No. 24 – Notification of Development Applications
- DCP No. 29 – Waste Minimisation and Management Guidelines
- DCP No. 32 – Landscape
- DCP No. 33 – Industrial Development

A copy of Council's DCP's can be found at

<http://www.botanybay.nsw.gov.au/council/services/planning/development.htm>

R J DOWSETT
DIRECTOR – PLANNING & DEVELOPMENT

MEMORANDUM OF UNDERSTANDING

The undersigned parties agree on the purchase of
131 Baxter Road on the following terms:

1. Isak Investments Pty Ltd will purchase the subject property, 131 Baxter Road, Mascot, for the price set by independent valuation subject to approval of a Development Application generally in accordance with the sketches already submitted to Botany Bay City Council.
2. The Boyd family (P&A holders) will remove their objection to the proposed development.
3. The Boyd family will provide an appropriate letter of Owners' Consent to allow Isak Investments to lodge the Development Application in 1. above.
4. Isak Investments will use its best endeavours to secure approval by all means available in the event that the Development Application is not approved by the Council.
5. The Boyd family will use its best endeavours to assist in obtaining the approval of the Council for the subject Development Application.
6. Upon receipt of a consent for a development generally in accordance with the submitted sketches, the contract for purchase will become unconditional.
7. The valuation process will be managed by the Council.

MEMORANDUM OF UNDERSTANDING

ISAK INVESTMENTS

DIRECTOR

Theo Isak

DATED

18 MARCH 2009

DIRECTOR

Spiro Isak

BOYD FAMILY

Jacqueline Boyd

J. Boyd

Dated

18 MARCH 2009

Anne
Kerry Boyd

Kerry Boyd

Our Ref: RJ Dowsett/bp/DA 08/132

26 March 2009

Isak Investments
C/- Urban Neustein Urban
PO Box 636
BONDI JUNCTION NSW 1355



26 MAR 2009

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION
ISSUED UNDER THE ENVIRONMENTAL PLANNING AND
ASSESSMENT ACT 1979 - SECTION 81(1)(a)

DEVELOPMENT APPLICATION NO. DA 08/132

Applicant Name: Isak Investments C/- Urban Neustein Urban

Owner: Isak Investments Pty Ltd

Date of Application: 21 November 2007

Land to be Developed - 210 O'Riordan Street, 116-118 Robey Street,
Address: and 133-135 Baxter Road, Mascot
Lots 3, 4, & 5 DP 262141, Lot 1 DP 135997,
Lot 4 DP 653471, Lot 67 DP 979354, and
Lot 133 DP 1030495

Proposed Development: Demolition of existing residences and
construction of a new multi-level commercial
office building comprising of 12 storeys
including car parking, landscaping and open
plaza area

Drawing No. Refer to Condition No. 1

Building Classification: Class 5 – commercial building
Class 7a – car park

DETERMINATION

Made on: 18 March 2009

Determination: Consent granted subject to conditions contained
within the attached schedule.

Consent to Operate From: 26 March 2009
Administration Centre, 141 Coward Street, Mascot NSW 2020. (PO Box 331 Mascot NSW 1460)
Telephone: (02) 9366 3666 Facsimile: (02) 9366 3777
E-mail: council@botanybay.nsw.gov.au Internet: <http://www.botanybay.nsw.gov.au>

RIGHT OF APPEAL:

If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within twelve (12) months after the date on which you receive this Notice.

REVIEW OF DETERMINATION

In accordance with Section 82A of the Environmental Planning and Assessment Act 1979, the applicant may within twelve (12) months after the date on which notice of determination was received, request the Council to Review its determination in respect of the application.

(NB. Section 82A is not applicable to integrated or designated development)

SIGNED

On behalf of the Consent Authority

Yours faithfully

A handwritten signature in black ink, appearing to read 'RJ Dowsett', is written over a horizontal line.

RJ DOWSETT

DIRECTOR – PLANNING & DEVELOPMENT

Our Ref: RJ Dowsett/sr/PPTY/15-131



9 June 2009

Isak Investments Pty Ltd
952 Botany Road
MASCOT NSW 2020

Dear Sir,

**REF: 131 BAXTER ROAD, MASCOT
DEED OF AGREEMENT**

This letter serves to confirm our discussions at Council's administration building on 15th May 2009 together with the outcome reached in that Council's solicitors would prepare a Deed of Agreement to formalise the terms of the Memorandum of Understanding (M of U).

The Deed prepared by Council's solicitors is enclosed. The Deed is in draft form to enable the parties to, if necessary, refine its contents.

Please review this Deed and if changes are required then it is suggested that the parties, together with their legal representatives, meet at a place and date to be agreed upon (Council's offices at Mascot) to enable modifications (if any) to be incorporated into the Deed.

Since our meeting Council has sought a further quotation for land valuation from Valuers, Landmark White.

Yours faithfully

A handwritten signature in blue ink, appearing to be "R J Dowsett", with a long horizontal flourish extending to the right.

**R J DOWSETT
DIRECTOR – PLANNING & DEVELOPMENT**

Encl: Draft Deed

SENT

16th June 2009

Isak Investments Pty Ltd

952 Botany Road

MASCOT NSW 2020

City of Botany Bay

Roger Dowssett

Director - Planning and Development

Dear Roger,

REF: 131 BAXTER ROAD, MASCOT

DEED OF AGREEMENT

Your draft deed dated 9th June, 2009 has the following conditions which are unacceptable:

- Clause [2]: The three month time limit on lodging with Council and amended DA, Section 96 is not feasible. We will want this to be changed to "Our Best Endeavors"
- Clause [3]a & b : The contract will become effective and operative only after the DA is approved by Council and all other relevant authorities i.e. Airport, Road Authority etc, then a ten per cent deposit will be paid with settlement six weeks later

When the valuation is completed and agreed with, a contract will be drawn up to be signed by all parties.

Yours sincerely,



Theo Isak

Theo Stamoulis & Associates Pty. Ltd.

ACN 001 113 640
Real Estate Valuers & Property Development Consultants
Suite 503, 5th Floor, 3 Waverley Street, Bondi Junction NSW 2022
Ph: 9369 3500 Fax: 9369 3568

RESTRICTED ASSESSMENT



INSTRUCTED BY
& ON BEHALF OF:

Sant Pty Limited
952 Botany Road,
Mascot NSW 2020

REF: M1209573/MV.MW/2009

1. **PROPERTY ADDRESS:** 131 BAXTER ROAD, MASCOT NSW 2020
2. **PROPERTY TYPE:** Detached Dwelling.
3. **LEGAL DESCRIPTION:** Lot: 65 Deposited Plan: 979354 Folio Identifier: 65/979354
4. **CONSTRUCTION:** Walls: Timber framed. Roof: Iron.
5. **ACCOMMODATION:** Two/three bedroom and one bathroom.
6. **OTHER IMPROVEMENTS:** Boundary fencing and garage.
7. **LAND AREA:** 342m².
8. **ZONING:** Industrial Special 4(c2) - Airport Related Restricted.
9. **LGA:** BOTANY
10. **INSTRUCTIONS:**

The above client hereby instructs the valuation firm to carry out a restricted valuation of the above property in accordance with this valuation instruction.

In providing this valuation, note that:

 - Any records you have for the property should be checked. This includes registered plans, zoning information and any sales of the property in the past three years,
 - The property must be identified at its street frontage,
 - An external inspection from outside the boundaries of the property is to be conducted,
 - The property is to be photographed and a photo retained on file,
 - Any property information supplied above that is known to be incorrect should be corrected, otherwise assume all information supplied to be correct,
 - The condition and quality of what is visible is to be assumed as indicative of the nature and condition of the property,
 - Unless stated otherwise, fee simple with vacant possession is to be assumed,
 - Unless ascertained within these limitations or physically obvious, it is assumed that there are no easements or encumbrances,
 - Recent comparable sales from your records must be reviewed, and
 - Within the above limitations, you are to provide the client with an indicative market assessment for the property, with reference to a 'typical broadly similar property' in the locality.

PROPERTY ADDRESS: 131 BAXTER ROAD, MASCOT NSW 2020

Note: In issuing these instructions the client acknowledges and accepts the commercial risks of relying on your 'Restricted Valuation' provided it is given in compliance with these instructions. Unless required by law or regulatory authority, the client will not convey the 'Restricted Valuation' or any part of it to a borrower or other third parties and will keep it confidential for its purposes only.

By accepting this report the client acknowledges and accepts it will not exercise any right of recourse against the valuation firm regarding its reliance on the Restricted Valuation.

11. **INDICATIVE RANGE:** \$480,000 - \$520,000

12. **ADOPTED AMOUNT:** \$500,000 (Five Hundred Thousand Dollars)

13. **DISCLAIMER:**

I hereby certify that I have undertaken an external inspection of the above property on 09/11/2009 and subject to the terms of the API Supporting Memorandum to this valuation report, I assess the Current Market Value of the property as above.

The valuation is for the use only of the party to which it is addressed and is not to be used for any other purpose. No responsibility is accepted or undertaken to any third parties in relation to this valuation and report. The valuers inspection and report does not constitute a structural survey and is not intended as such.

This valuation is subject to the property, land and improvements not being affected by materials of a dangerous or deleterious nature, which would classify the land as being contaminated.

Our valuation is based upon the land complying with both State and Federal Environmental Protection Agency Acts and Regulations in respect to soil contamination. This valuation is current as at the date of valuation only.

The value assessed herein may change significantly and unexpectedly over a relatively short period (including as a result of general market movements or factors specific to the particular property)

We do not accept liability for losses arising from such subsequent changes in value. Without limiting the generality of the above comment, we do not assume any responsibility or accept any liability where this valuation is relied upon after the expiration of three (3) months from the date of the valuation, or such earlier date if you become aware of any factors that have any effect on the valuation.

This report has been prepared in accordance with the Australian Property Institute Practice Standards. Mr Vmouxiou is a Registered Valuer and a Associate Member (currently accredited under the Continuing Professional Development Program) of the Australian Property Institute, with the relevant experience and qualifications to value the class of property being valued.

Furthermore, Mr Vmouxiou and Mr Stamoulis have no pecuniary interest in the said property past, present or prospective and the opinion expressed is free of any bias.

Firm: Theo Stamoulis & Associates Pty Ltd

Date: 09/11/2009

Valuer: Mario Paul Vmouxiou AAPI
Registered Valuer 6460 (Without Limitation)
Certified Practising Valuer

Director: Theo C. Stamoulis AAPI

Subject: FW: 131 Baxter Road, Mascot

From: Greg Golfin [<mailto:GregGolfin@mcgrath.com.au>]
Sent: Monday, 13 October 2014 3:10 PM
To: mascotinn@bigpond.com
Subject: 131 Baxter Road, Mascot

Isak Developments

952 Botany Road Mascot

Dear Spiro & Theo,

As discussed on behalf of your company I approached Mr Ron Boyd of 131 Baxter Road, Mascot in 2009 - 2010. I had about 5 face to face meetings with Mr Boyd in regards to coming to agreement with a purchase price to secure the property for Isak Developments, these offers started at \$500,000 which were not accepted.

I remember asking Mr Boyd who was the decision maker for the property and he explained that it was himself and his sisters, I asked many times to have a meeting with all parties but Mr Boyd refused to arrange this, he also would not give me any email addresses, he instructed me that all offers be done in person not in writing, the offers moving forward were, \$550,000, \$600,000, \$700,000 then \$800,000 and finally \$850,000. Each time I increased the offer for Isak Developments.

Mr Boyd would stretch his acceptance price, finally I explained to Isak Developments that in my experience Mr Boyd did not want to sell and was not forwarding the offers to his other family members.

In my opinion the market value for 131 Baxter Rd, Mascot was \$550,000 and for Mr Boyd not to accept \$850,000 was amazing with it being 40% over market value of the property.

At the time of this negotiations I was employed with Laing & Simmons Coogee/Clovelly.

If you require any further information please don't hesitate to contact me on 0401 227 770 or by email greggolfin@mcgrath.com.au

Regards,

Greg Golfin
McGrath Projects
D 02 9386 3310
F 02 9386 3344
M 0401 227 770
W www.mcgrath.com.au

Attention:

The information contained in this message and or attachments is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any system and destroy any copies.

HOUSTON DEARN O'CONNOR

Solicitors and Attorneys

T.J. O'Connor, B.A., LL.B.

Consultant

A.J. Houston, LL.B.

Our Reference:

AJH:AS:B5124

Your Reference:

1 February 2010

Isak Investments Pty Ltd
952 Botany Road
Mascot NSW 2020

Dear Sir

**RE: BOTANY BAY CITY COUNCIL
131 BAXTER ROAD, MASCOT**

We act on behalf of Botany Bay City Council and note that on the instruction of our client we prepared a draft of the Deed of Agreement between yourself and Dulcie Boyd concerning the sale by her and the purchase by Isak of the property 131 Baxter Road, Mascot and incorporated in the draft agreement a draft contract for sale of the property.

The Council has now instructed us that the above document has been forwarded both to Mrs Boyd and Isak, followed by a number of reminder letters, but that neither Mrs Boyd or Isak have responded. We are accordingly instructed to inform you that Council does not propose to take any further part in the matter and will be contacting you in due course to recover its costs incurred.

Yours faithfully,


HOUSTON DEARN O'CONNOR

Bert Houston

M:\Docs\B5124\141514.doc

P O Box 226
Burwood 1805
DX 8565
Burwood

Suite 33, 5th Floor,
12 Railway Parade
Burwood 2134

Tel: (02) 9744 9247
Fax: (02) 9744 6739

Liability limited by a scheme approved under Professional Standards Legislation



Isak Investments Pty Ltd.
952 Botany Rd.
Mascot NSW 2020

Roger Dowsett
Director - Planning and Development
City Of Botany Bay

1 February 2010

Dear Roger;

The negotiations with the Boyd family of 131 Baxter Rd. are at a stalemate. The past year has produced no results other than Mr. J. McGhee telling me "THIS PROJECT IS NOT A PRIORITY FOR ME".

I have had several meetings with Mr. J. McGhee asking for a price for the property. No price has been forthcoming I feel the family refuses to offer a price for the property as they are still hoping for, but afraid to ask, the millions they think the property is worth. I commissioned a street valuation that valued the property at \$480-\$520,000.00. I mentioned this to Mr. J. McGhee to which he replied "that would be nowhere near enough"

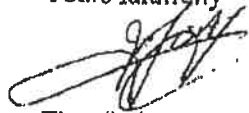
I feel this saga is going to go on for ever.

I would therefore enquire what would constitute a commencement on our D.A. approved site and what would be the contributions to Council for such a commencement?

I would also like to know if I was to obtain 131 Baxter Rd. property and obtained a section 96 council approval would the building D.A. 5 year approval commence from the date of the section 96 approval or from the original D.A. approval?

May I also suggest the Council convene a meeting between all parties to try and resolve this issue

Yours faithfully



Theo Isak.
Director



MASCOT INN
952 Botany Rd,
Mascot NSW 2020
Ph: 9667 2638
Fax: 9669 2147

FACSIMILE TRANSMISSION

DATE: 2.2.2010
ATTENTION: BERT HOUSTON
COMPANY: HOUSTON DEARN O'CONNOR
FACSIMILE NUMBER: (02) 9744 6739
FROM: SPIRO ISAK (ISAK INVESTMENTS)
NUMBER OF PAGES: 3 (Including this one)
TIME: 2.35
SUBJECT: 131 BAYTER ROAD

DEAR BERT,

YOUR LETTER DATED 1ST FEB 2010
IS INCORRECT. A LETTER OF RESPONSE WAS
SENT TO COUNCIL BY THEO ISAK ON BEHALF
OF ISAK INVESTMENTS A COPY OF WHICH
IS ENCLOSED.

YOURS FAITHFULLY

SPIRO ISAK

IMPORTANT NOTICE: The contents of this facsimile message and any documents attached to it may be privileged and confidential. Any unauthorised uses is strictly prohibited. If you received this message in error, please accept our apologies and destroy it. Thank you.

Isak Investments Pty.Ltd.

952 Botany Road

Mascot NSW 2020

5th March 2010

City Of Botany Bay

Roger Dowsett

Director-Planning and Development

RE; 131 Baxter Rd.

Roger,

Further to our meetings with yourself, Cathy McMahon, James McGhee and my brother Spiro yesterday, I would like a further amendment to the deed of agreement in addition to those we submitted to yourself (copy enclosed) on the 16th of June 2009.

A new clause to be inserted is for the Boyd family to immediately demolish the house on Baxter road upon an agreement being reached for the purchase of the property. The reason for this inclusion is at a previous meeting with James McGhee, he raised the spectre of a Heritage listing

Yours Faithfull,



Theo Isak.

Mascot Inn

952 Botany Road

Mascot NSW 2020

1st April 2010

City Of Botany Bay

Roger Dowsett

Director-Planning and Development

RE: 131 Baxter Rd. Mascot

Dear Roger,

Today is the 28th day since our meeting at Council, March 4th, concerning the above property and I am enquiring if there has been a reply from the Boyd Family or Mr. McCihee. As this matter appears to be at a stalemate would Council consider appointing a valuer on both parties behalf with instructions ONLY from Council as to the valuation process and valuing the property as a stand alone and not part of any existing D.A. If this is a possibility I would have no issue if Council used it's original nominated valuers, Civic or any other, with the fees paid equally between both parties. At present there is a window of opportunity for the development of the combined site but this alas, will not last forever.

Thank you

Yours Faithfully,



Theo Isak.

Mascot Inn

From: Mascot Inn [mascotinn@bigpond.com]
Sent: Wednesday, August 04, 2010 3:00 PM
To: 'james.McGhee@bigpond.com.au'
Subject: 131 Baxter Street

Importance: High

Dear James,

As discussed with you on a previous occasion we commissioned a Restricted Assessment of the above property in November 2009 by Licensed Valuer 6460. His valuation of the maximum Indicative Range was for 342m² as was furnished to him. In order to resolve this matter I have increased his Restricted Assessment by 27% to bring the land size to its correct dimensions, this then puts the value at \$666,000.00. In order to try and resolve this stalemate I am prepared to offer \$790,000.00 with settlement on the sale of our combined sites.

Regards Spiro

cc. copy sent to above address