

Our Ref: 0197/12lt3

23 August 2014

Botany Bay City Council
PO Box 331
MASCOT NSW 1460

Attention: Mr Rodger Dowsett

Dear Rodger,

**BOTANY BAY LEP 2013
CLAUSE 4.6 REQUEST FOR EXCEPTION TO DEVELOPMENT STANDARD
CONSTRUCTION OF A 13 STOREY MIXED-USE DEVELOPMENT - 2013SYE084
246 COWARD STREET, MASCOT**

We refer to the above proposed development and confirm that we act on behalf of the applicant. We prepared the Statement of Environmental Effects (SEE) submitted with the application, and this submission is to specifically document a request pursuant to clause 4.6 of the Botany Bay Local Environmental Plan (LEP) 2013 following deferral of determination of the application by the Sydney East Joint Regional Planning Panel (JRPP) at its meeting on 19 August 2014.

The Botany Bay LEP 2013 permits, pursuant to clause 4.4 and the *Floor Space Ratio Map*, a maximum floor space ratio (FSR) of 3.2:1 on the site. That FSR control is a "development standard" to which exceptions can be granted pursuant to clause 4.6 of the LEP. The objectives and provisions of clause 4.6 are as follows:

- " **4.6 Exceptions to development standards**
- (1) The objectives of this clause are as follows:
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (5) In deciding whether to grant concurrence, the Director-General must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4."

The development standards in clause 4.4 are not "expressly excluded from the operation of" clause 4.6.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of subclauses 4.6(3) & (4) in order to demonstrate to the JRPP that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, we note that the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, for example, subclause 4.6(6).

Objective 1(b) of clause 4.6 is addressed later in this request.

The objectives and relevant provisions of clause 4.4 are as follows, inter alia:

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- 4.4 Floor space ratio**
- (1) The objectives of this clause are as follows:
- (a) to establish standards for the maximum development density and intensity of land use,
 - (b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,
 - (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,

- (d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,
 - (e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,
 - (f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,
 - (g) to facilitate development that contributes to the economic growth of Botany Bay.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

As previously noted, the *Floor Space Ratio Map*, nominates a maximum FSR of 3.2:1 on the site. It is hereby requested that an exception to this development standard be granted pursuant to clause 4.6 so as to permit a maximum FSR of 3.88:1 for the subject development.

In order to address the requirements of subclause 4.6(4)(a)(ii), each of the objectives of clause 4.4 are addressed in turn below:

(a) to establish standards for the maximum development density and intensity of land use,

The site is ideally located to accommodate additional density as it has excellent access to public transport and areas of employment, educational facilities, entertainment and open space. These characteristics are consistent with the aims and objectives for additional housing and population density as outlined under the *NSW Draft Metropolitan Strategy for Sydney to 2036*. In fact, on 16 March 2013 the NSW Premier announced the Urban Activation Precincts program and the Mascot Station Precinct (MSP) was included in the precincts identified. The MSP was selected for higher density housing and the NSW Growth Infrastructure Plans will ensure that State Infrastructure is delivered to support growth in the MSP community. Accordingly, the density of development and intensity of land use proposed is considered to be appropriate and satisfies objective (a) of the standard.

(b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,

The additional GFA is accommodated within the maximum 44m building height applicable to the site under clause 4.3 of the LEP and offers generous areas of open space at the northern and western portions of the site. In terms of bulk and scale, the proposal is consistent with the evolving built form character of the locality and will not appear to be an overdevelopment of the site for the reasons detailed in sections 4.2 and 4.3 of the SEE that forms part of the application. In terms of building design and apartment layout, the proposal is considered to set an exemplary standard as it maximises northern orientation, has generous open space areas and takes advantage of district views. Combined with the internal layout of apartments and connected balconies that serve as an extension of each apartment's living area, all dwellings will offer high levels of occupant amenity.

The proposed FSR variation (21.3% of the development standard) is considerably less than FSRs and variations approved in recent years for other sites within the MSP as listed in the Table on the following page:

TABLE: COMPARISON OF PERMITTED AND APPROVED FSRs					
MSP site address	BLEP 1995 Permitted FSR	Approved FSR	% Variation	BBLEP 2013* Permitted FSR	% Variation
4 Bourke Road & 37 Church Avenue	3.3:1	4.24:1	28.48%	3.2:1	32.5%
24-26 John Street	2:1	3.46:1	73%	3.2:1	8%
214 Coward Street	2.5:1	4.5:1	80%	3.2:1	40.62%
7 Bourke Street & 30-32 John Street	2.9:1	4.16:1	43.44%	3.2:1	30%
208-210 Coward Street	2.5:1	4.44:1	77.6%	3.2:1	38.75%
5 Haran Street	2:1	3.4:1	70%	3.2:1	6.25%
2-4 Haran Street & 1 Church Avenue	-	3.79:1	-	3.2:1	18.43%

It is acknowledged that the definition of Gross Floor Area changed between BLEP 1995 and BBLEP 2013, however, the primary change related to exclusion of wall thickness under the 2013 LEP which would equate to no more than 5% of the total GFA. The above figures are therefore appropriate for analysis as the extent of variation in all but 2 cases is much more than 5% (BLEP 1995 and approved FSR data sourced from Council's JRPP report No.2011SYE072 for 208-210 Coward Street).

In relation to the data in this Table, it is evident that exceptions to the FSR development standard for numerous projects located within close proximity to Mascot Station have been found to be appropriate and have therefore been approved by both Council and the JRPP. It is also apparent from the above analysis that the 2 largest variations have been granted on sites that have their primary frontage to Coward Street, as does the subject site. In terms of the desired future character of the locality, the site will effectively mark the corner of Coward Street and Bourke Street and create an important gateway into the MSP from the south.

Additionally, the SEPP 65 Design Statement prepared by Olsson & Associates Architects Pty Ltd that forms part of the application provides a detailed response to the 10 design principles specified in SEPP 65, including the matters of context, scale, built form and density. We note that this Statement was reviewed by Council's Design Review Panel and the acceptability of the design is supported by Council's officer in the Assessment Report submitted to the JRPP Meeting as detailed on pages 13-18 of that report.

Having regard to the above, the bulk and scale of the proposed building is compatible with the bulk and scale of the existing and desired future character of the MSP and therefore satisfies objective (b) of the standard.

- (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*

The site is located within the MSP which is an area undergoing substantial transformation. Accordingly, this objective is not applicable as the existing character of the MSP has been undergoing radical transformation over recent years, consistent with the desired future character identified in Council's planning documents.

- (d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,*

As noted above, the additional GFA is accommodated within the 44m building height applicable to the site under clause 4.3 of the LEP and offers generous areas of communal open space at the northern and western portions of the site. In terms of bulk and scale, the proposal is consistent with the evolving built form character of the locality and will not appear to be an overdevelopment of the site for the reasons detailed in sections 4.2 and 4.3 of the SEE that forms part of the application.

Additionally, as previously noted the SEPP 65 Design Statement that forms part of the application provides a detailed response to the 10 design principles specified in SEPP 65 including the matters of context, scale, built form and density. That Statement was reviewed by Council's Design Review Panel and the acceptability of the design is also supported by Council's officer in his Assessment Report.

Accordingly, the effect of the proposed building on the streetscape, skyline and landscape when viewed from the public domain is considered to be appropriate and therefore satisfies objective (d) of the standard.

- (e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*

As detailed in Section 4.3.6 of the SEE, the proposal will not create any significant adverse amenity impact on any surrounding property (in terms of view loss, privacy impacts or overshadowing) as the height and setbacks of the building are consistent with that anticipated by the LEP and DCP controls and, on this basis, associated impacts are within expected limits. We note the acceptability of the impacts on adjoining properties and the public domain is also supported by the Council's officer in his Assessment Report submitted to the JRPP Meeting.

On this basis, the proposal is considered to be appropriate and satisfies objective (e) of the standard.

- (f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*

As noted previously, the site is ideally located to accommodate additional density as it has excellent access to public transport and areas of employment, educational facilities, entertainment and open space. These characteristics are consistent with the aims and objectives for additional housing and population density as outlined under the *NSW Draft Metropolitan Strategy for Sydney to 2036*.

In fact, on 16 March 2013 the NSW Premier announced the Urban Activation Precincts program and the Mascot Station Precinct was included in the precincts identified. The MSP was selected for higher density housing and the NSW Growth Infrastructure Plans will ensure that State Infrastructure is delivered to support growth in the MSP community. Accordingly, the size of the site and the extent of development on that site are considered to be appropriate and to satisfy objective (f) of the standard.

- (g) to facilitate development that contributes to the economic growth of Botany Bay.*

The site is located in the MSP Town Centre in close proximity to the Mascot station which enhances the excellent accessibility of the area. The precinct is located in close proximity to major regional road networks and Port Botany. As such the site has excellent accessibility to major transport and employment opportunities.

The proposed development includes ground floor retail/business tenancies both for activation of the Coward Street frontage and to provide employment opportunities. The proposed development will also result in an increase in the available housing stock in the locality by the provision of a high quality residential development. The subject site enjoys excellent access to commercial services, community facilities and public transport that provides access to a wide range of commercial centres. In addition, the MSP has been earmarked under the *NSW Draft Metropolitan Strategy for Sydney to 2036* as an Urban Activation Precinct which is suitable for high density residential living.

The proposed development will also deliver, in a timely manner, the following additional public benefits that extend beyond the site:

- Dedication of land so as to increase public open space by allowing an extension to Nancy Bird-Walton Park at the intersection of Bourke and Coward Streets. The existing Park has an area of 189m². The land to be dedicated (215m²) will be fully landscaped and dedicated to Council and will thereby increase the size, attraction and utility of the existing park;
- Dedication of a fully installed and operational public toilet facility to John Street; and
- Public domain work upgrades as outlined in the Council officer's Assessment Report.

Accordingly, the development will contribute significantly to the economic growth of Botany Bay and therefore satisfies objective (g) of the standard.

Having regard to the public benefits arising from the proposal, in our opinion the JRPP can also be satisfied that the proposal meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve "a better outcome for and from development".

Clause 4.6 (4) also requires consideration of the relevant zone objectives. The objectives of the *B2 - Local Centre* zone are as follows:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.

The proposed development includes ground floor retail/business tenancies that will add to the range of retail and business uses to serve the needs of people working and living in the local area as well as activating the Coward Street frontage and providing employment opportunities in this highly accessible location. Accordingly, the proposal satisfies the first and second zone objective.

The site's proximity to Mascot Station will encourage use of public transport and the development incorporates storage facilities to encourage cycling. Therefore, the proposal satisfies the third zone objective.

In conclusion, having regard to all of the above, it is our opinion that compliance with the FSR development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. Therefore, insistence upon strict compliance with that standard would be unreasonable. Additionally, the public benefits arising from the additional housing and employment opportunities that will be delivered through this development, together with the identified public domain improvements, provide more than sufficient environmental planning grounds to justify an exception to the development standard. On this basis, the requirements of clause 4.6(3) are satisfied.

We trust that this further information enables Council and the JRPP to favourably determine the development application. However, should you require any further information, please do not hesitate to contact the undersigned.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'L. Fletcher'.

Lindsay Fletcher
Planning Ingenuity Pty Ltd