

## JOINT REGIONAL PLANNING PANEL (Sydney East Region)

<b>JRPP No</b>	2015SYE010
<b>DA Number</b>	DA-14/306
<b>Local Government Area</b>	City of Botany Bay Council
<b>Proposed Development</b>	<p>Joint Regional Panel Application comprising:</p> <ul style="list-style-type: none"> <li>▪ Demolition of existing factory buildings;</li> <li>▪ Construction of: <ul style="list-style-type: none"> <li>○ three levels (one at grade two above ground) of car parking for a total of 41 vehicles</li> <li>○ a nine (8) storey hotel comprising 150 rooms (including 8 accessible rooms); a sky lobby, bar, lounge, two conference rooms and restaurant with outdoor terrace on Level 9;</li> </ul> </li> <li>▪ On-site drop-off and pick up zone for a bus with vehicle entry and exit points along Baxter Road;</li> <li>▪ Shuttle bus service;</li> <li>▪ All vehicular access to be obtained from Baxter Road;</li> </ul>
<b>Street Address</b>	113 Baxter Road, Mascot
<b>Applicant/Owner</b>	Baxter International Pty Limited/ Adam Standfield
<b>Number of Submissions</b>	Two Submissions
<b>Regional Development Criteria (Schedule 4A of the Act)</b>	The development application is referred to the JRPP pursuant to Clause 3 of Schedule 4A of the Act as the Capital Investment Value (CIV) of the proposal is over \$20 million. The Council Estimate of the CIV of this development \$24,000,000.00.
<b>List of All Relevant s79C(1)(a) Matters</b>	<ul style="list-style-type: none"> <li>• List all of the relevant environmental planning instruments: s79C(1)(a)(i) <ul style="list-style-type: none"> <li>○ Botany Bay Local Environmental Plan 2013;</li> </ul> </li> <li>• List any relevant development control plan: s79C(1)(a)(iii)</li> <li>• Botany Bay Development Control Plan 2013;</li> <li>• List any relevant regulations: s79C(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288</li> </ul>
<b>List all documents submitted with this report for the panel's consideration</b>	<ul style="list-style-type: none"> <li>• Statement of Environmental Effects</li> <li>• Architectural Plans</li> <li>• Contamination Assessment</li> <li>• Traffic Impact Assessment</li> <li>• Geotechnical Assessment</li> <li>• Acoustic Assessment</li> <li>• Access Review</li> <li>• BCA Assessment Report</li> </ul>

	<ul style="list-style-type: none"><li>• Waste Management Plan</li><li>• ESD DA Report</li><li>• Building Services DA Report</li><li>• Wind Impact Assessment</li></ul>
<b>Recommendation</b>	Refusal
<b>Report by</b>	Lincoln Lawler, Senior Development Assessment Officer

Assessment Report and Recommendation Cover Sheet

---

## EXECUTIVE SUMMARY

Council received Development Application No. 14/306 on the 16 December 2014 seeking consent for a hotel development comprising the following:

- Demolition of existing factory buildings;
- Construction of:
  - three levels of car parking (one at grade two above ground) for a total of 41 vehicles
  - a eight (8) storey hotel comprising 150 rooms (including 8 accessible rooms); a sky lobby, bar, lounge, two conference rooms and restaurant with outdoor terrace on Level 8;
- On-site drop-off and pick up zone for a bus with vehicle entry and exit points along Baxter Road; and
- Shuttle bus service.

The application is referred to the Joint Regional Planning Panel (JRPP) for determination pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act as the Capital Investment Value (CIV) of the proposed by the Applicant is \$18,802,310 however the Council estimates the CIV to be \$24, 000, 000. The applicant has not included demolition costs, or excavation costs of the development in their QS Report.

The application was publicly exhibited for a period of thirty (30) days from 21 January 2015 until 23 February 2015. Two objection letters were received relating to traffic, car parking and the provision of the cul-de-sac.

The site is zoned B5 Business Development under Botany Bay LEP 2013 (BBLEP 2013). The main controls in the LEP are height, 44 metres and FSR 3:1. Council's DCP requires car parking spaces to be provided for the development at 1 space per 2.5 rooms where the development is 400m from the station or a shuttle bus service is provided.

The JRPP approved a previous application on the site (JRPP Reference 2014SYE011/Council Reference DA-13/266) on 3 September 2014 for the demolition of the existing structures and construction of a 12 storey hotel with 172 rooms with 69 car parking spaces. The approved hotel was compliant with the Botany Bay LEP 2013 (BBLEP) height limit but the FSR was non-compliant. A clause 4.6 variation to the development standard for FSR in the BBLEP 2013 was submitted and was accepted on the grounds that the development had complied with all other controls and the intensity of the development would be lower than a commercial use located on the subject site. In that DA, the applicant had offered a voluntary contribution of \$100,000 towards public domain upgrades.

The difference between the previous DA and the subject application is that there is a deletion of one floor, which results in a deletion of a basement car parking level. However the footprint of the building, setbacks, landscaping and internal amenity remain the same.

Although still compliant with the height, the application does not comply with the FSR control. In addition, there is a significant shortfall in car parking spaces, as a result of the removal of the basement level and no cumulative traffic assessment being carried out. The application is therefore **recommended** for refusal.

It is noted that the applicant has lodged an appeal on the deemed refusal of the application to the Land and Environment Court. The section 34 Conference is set for 7 April 2015. Therefore Council requests that the Panel makes a decision on this application at the meeting.

## **RECOMMENDATION**

It is recommend that the Joint Regional Planning Panel (JRPP) for the Sydney East Region, as the Consent Authority, resolve to **refuse** Development Application No. 14/306 for the following reasons:

1. The proposed development is inconsistent with the objectives and standards of Clause 4.4 of Botany Bay Local Environmental Plan 2013 as it exceeds the Maximum FSR of Buildings for the subject site, which results in adverse impacts on parking and traffic and t streetscape amenity. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
2. The proposed development fails to adequately justify the contravention of the FSR development standard in clause 4.4 of Botany Bay LEP 2013 and has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and there are insufficient environmental planning grounds to justify contravening the development standard. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
3. The contravention of the FSR development standard will not be in the public interest as it is not consistent with the objectives of the standard for the zone. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)*).
4. The proposed development fails to satisfy the requirements of Parts 3A and Part 6 of Botany Bay Development Control Plan 2013, in relation to non-compliance with setbacks, off street car parking and the visual dominance of the car parking facility. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(iii)*).
5. The proposed development is not in the public interest as the proposed design in its current form results in adverse impacts on the amenity of the locality as a result of non-compliance with setbacks, and off street car parking, which are inconsistent with the built form envisaged for the subject site. (*Environmental Planning & Assessment Act 1979 Section 79C(1)(e)*).

## **THE SITE**

The subject site is located on the northern side of Baxter Road with O’Riordan Street (State classified road) being located approximately 78m to the west of the site and Botany Road, being located approximately 575m to the east of the site. The site is currently used for warehouse/industrial activity and associated parking purposes. The site has a total area of 1,481m<sup>2</sup> and is generally rectangular in shape. The site has a primary southern frontage of 45.95m along Baxter Road and a northern boundary of 42.37m length which partially abuts the existing Quest Hotel to the north. The western boundary is approximately 33.385m with the eastern boundary of 34.01m in length.



## **SITE HISTORY**

A previous Development Application DA-13/266 by the same applicant was approved by JRPP on 3 September 2014 for the demolition of the existing structures and construction of a 12 storey hotel with 172 rooms with 69 car parking spaces. The approved hotel had a height of 40.6 metres (the maximum is 44 metres) and had an FSR of 3.48:1 (the maximum is 3:1).

The main difference with this DA and the subject DA is that one floor of hotel rooms and one the basement car parking level has been deleted. However the footprint of the building, setbacks, landscaping and internal amenity remain the same.

Other uses previously approved on the site are:

- The continued use of the existing industrial building (DA12/27) approved on 1 August 2012 as a wood machinery workshop, for joinery and cabinet making;
- DA 12/21 approved on 17 July 2012 for the continued use of the site for storage, hire and distribution of products and equipment for sealing and polishing of concrete floors, serving primarily to tradespersons;
- DA 09/149 for the temporary use of the premises (113 Baxter Street) for a maximum 24 month period for storage, hire and distribution of products and equipment for sealing and polishing of concrete floors, serving primarily to tradespersons was approved on 15 December 2008;
- DA 05/046 was approved on 18 February 2006 for use as a wood machinery workshop, for joinery and cabinet making (113-115 Baxter Road). A Section 96(1A) Application to amend the consent to extend the use as a wood machinery workshop for an additional two years was approved by Council on 22 March 2007; and
- DA 05/306 was approved on 4 May 2005 for the temporary use of the land as a car park (vacant western component of site). A Section 96(1A) application to amend the consent to extend the use of the land as a car park for a further 3 year period was approved by Council on 21 June 2007.

## **DESCRIPTION OF THE DEVELOPMENT**

The development application seeks consent for:

- The demolition of existing factory buildings and structures on site.
- Construction of a eight storey hotel (RL 48) comprising:
  - a ground floor lobby,
  - bar, restaurant, lounge, and two conference rooms on level 8 with a total GFA 571.1m<sup>2</sup>
  - a 44 seat restaurant with outdoor terrace on Level 8

The building is of modern architecture incorporating the use of panel cladding and glass to emphasize the horizontal and vertical elements of the building. The front entrance of the hotel is accentuated by an awning

It will have 150 rooms, of average size 23m<sup>2</sup>. Of these eight rooms will be suitable for persons with a disability.

There are three levels of car parking, for a total of 41 vehicles. There are 11 car parking spaces on ground level, 15 spaces on level 1 and 15 spaces on Level 2. Access is from Baxter Road.

The proposal includes an on-site drop-off and pick up zone for a bus with vehicle entry and exit points along Baxter Road, and a shuttle bus service to and from the airport.

The operator will be Baxter International with a 3-4 star rating.

The site area is 1481m<sup>2</sup> and total GFA is 4621.8m<sup>2</sup>.

### **SECTION 79C CONSIDERATIONS**

In considering the Development Applications, the matters listed in Section 79C of the Environmental Planning and Assessment Act 1979 have been taken into consideration in the preparation of this report and are as follows:

**(a) The provisions of any EPI and DCP and any other matters prescribed by the Regulations.**

State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land

The development application has been accompanied by an Environmental Site Assessment Report which combined a Phase 1 and 2 site assessment as the proposed development involves excavation of a former industrial site. This report found that there was no evidence of contamination.

Clause 7 of State Environmental Planning Policy 55 requires Council to be certain that the site is or can be made suitable for its intended use at the time of determination of an application. Council’s Environmental Scientist has reviewed the report and application and has no objection to the proposal. As stated above, Council is satisfied there is no contamination of the land and as such no remediation is required. As such the site is considered suitable for the proposed development.

Botany Local Environmental Plan 2013

The provisions of the BBLEP 2013 have been considered in the assessment of this Development Application and the following is provided:

<b>Principal Provisions of BBLEP 2013</b>	<b>Compliance Yes/No</b>	<b>Comments</b>
Land use Zone		B5 – Business Development
Is the proposed use/works permitted with development consent	Yes	The proposed hotel building is permissible with consent.

Does the proposed use/works meet the objectives of the zone?	Yes	The objective of the zone is: <i>To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area in locations that are close to, and that support the viability of centres.</i>  In so far as the fact that the use is permissible in the zone, and the zones does allow for a mix of businesses, the development is not inconsistent with the objective.
Does Clause 2.6 apply to the site?	N/A	The development does not propose any subdivision.
What is the height of the building?  Is the height of the building below the maximum building height?	Yes	The proposed building height is 8 storeys with a maximum height of 37.56m (R.L 48.050)  The height of the building is below the permitted 44m.
What is the proposed FSR? Does the FSR of the building exceed the maximum FSR?	<b>No – Note 1 Clause 4.6 Variation submitted</b>	The proposed GFA is 4,637m <sup>2</sup> , being FSR 3.13:1. This exceeds the maximum permitted FSR of 3:1 (allowing GFA of 4,444.8m <sup>2</sup> ). This exceedance represents 192.2m <sup>2</sup> of GFA. The applicant has submitted a Clause 4.6 variation to the FSR development standard.
Is the land affected by road widening?	N/A	The subject site is not affected by road widening on the Land Acquisition Map.
Is the site identified on the Key sites Map?	N/A	The subject site is not identified in the Key Sites Map
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not identified as a Heritage Item or within a Heritage Conservation Area.
The following provisions in Part 6 of the LEP apply to the development:		
6.1 – Acid Sulfate Soils  6.2 – Earthworks		Clause 6.1 – Acid Sulfate Soils. The subject site is affected by Class 4 Acid Sulfate Soils. The development application has not been accompanied by Acid Sulfate Report but this was discussed in the Environmental Site Assessment which found no ASS up to a depth of 5m where the excavation levels are proposed.  Clause 6.2 – Earthworks. The proposed development seeks to demolish the existing buildings and excavate the subject site to depth of 5m for the footings of the building.



<p>6.3 - Stormwater management</p>		<p>Clause 6.3 – Stormwater. A Stormwater Report and Plans have been prepared for the subject site and concludes that the existing stormwater infrastructure in the vicinity of the site should be adequate to accommodate the proposed development. The development is considered to be consistent with Clause 6.3 of the BBLEP 2013.</p>
<p>6.8 - Airspace operations</p>		<p>Clause 6.8 – Airspace Operations. The subject site lies within an area defined in the schedules of the Civil Aviation (Building Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority. The application proposes buildings which exceed the maximum height and was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration. SACL raised no objections to the proposed maximum height of 45.01 metres AHD, subject to conditions to be imposed on any consent. The development is considered to be consistent with Clause 6.8 of the BBLEP 2013.</p>
<p>6.9 – Development of areas subject to aircraft noise.</p>		<p>Clause 6.9 – Aircraft Noise. The subject site is affected by the 25-30 ANEF contour. An acoustic report has been submitted with the development application, which indicates that if the development incorporates the recommendations of the report it will comply with ASA2021-2000. The development is considered to be consistent with Clause 6.9 of the BBLEP 2013.</p>
<p>6.16 – Design excellence</p>		<p>Clause 6.16 - Design excellence. The design as previously approved in DA approved by the JRPP on 3 September 2014 had been the considered by Council’s Design Review Panel on 13 July 2013. The DRP was supportive of the proposal. Council and the DRP made a number of recommendations which were been incorporated into that design. This application involves the reduction of one floor. The overall design is consistent with what was previously approved.</p>

		On this basis, it is considered that the Applicant has adequately addressed the recommendations of the DRP and the concerns of Council and the proposed development is considered to be consistent with Clause 6.16 of the BBLEP 2013.
--	--	--

**Table 2 – BBLEP 2013 Compliance Table**

**Note 1 – Clause 4.4 Floor Space Ratio**

**Clause 4.6 Exceptions to a Development Standard (FSR)**

The maximum FSR permitted by the BBLEP 2013 is 3:1 (4,444.8m<sup>2</sup>). The development application seeks an FSR of 3.13:1 (4637m<sup>2</sup>) being an additional 192.2m<sup>2</sup>. This represents 8 hotel rooms.

Accordingly, the proposal is inconsistent with the FSR development standard pursuant to Clause 4.4 of the BBLEP 2013. The applicant has submitted a variation to Clause 4.4 pursuant to Clause 4.6 requesting a greater FSR. This variation is considered below.

Clause 4.6 of BBLEP 2013 states:-

- 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*
  - b) *the concurrence of the Director-General has been obtained.*

- 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.*

*Note. When this Plan was made it did not include 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 E3 Environmental Management or Zone E4 Environmental Living.*
- 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.*

Consent may be granted for the proposal subject to Clause 4.6, notwithstanding that the proposal would contravene this development standard, as the FSR development standard is not expressly excluded from this Clause (Cl 4.6(2)). The applicant has provided a written request justifying the contravention of the development standard pursuant to Clause 4.6(3) of BBLEP 2013, which is considered below. The matters for consideration pursuant to Clause 4.6(4) and (5) are also considered below. Clause 4.6 (6), (7) and (8) are not relevant to the current proposal.

In assessing the proposed departure, consideration has been given to the objectives of the standard, the objectives of the zone, and the objectives of BBLEP 2013 (including Clause 4.6(1)) as outlined below. The following justification for this proposed departure from the FSR development standard has been provided by the applicant:

*The proposed FSR variation is considered to be justified on the following basis:*

*1. Consistency with the objectives of the height standard in the LEP and DCP LEP FSR objectives:*

*4.4 Floor space ratio [relevant clauses quoted]*

*(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.*

### ***Applicant's justification***

*The proposed floor space represents only a slight variation (0.13:1) to Council's FSR control of 3:1. The subject site is currently underdeveloped however it is earmarked for an increase of density as base on Council's LEP and DCP controls. The locality is undergoing a transition with underdeveloped residential and light industrial properties being replaced with large scale hotel development namely Stamford Plaza, The Quest Hotel, 2 x new developments at no. 210 O'Riordan Street [Note, one of these applications, hotel has been refused by the JRPP and is subject to appeal] and 210 Baxter Road and 2 x approved hotel/commercial buildings at no. 289 and 342 King Street. The proposed bulk and scale is consistent with the surrounding hotel developments whilst its height is well below Council's requirement.*

*The proposal will introduce a contemporary building which is of high architectural merit and will add visual interest to Baxter Road. The abundance of landscaping to the front setback area and to the first 3 storey levels (in the form of vertical planter climbers) will screen the car parking levels whilst it will soften the built form along Baxter Road. The proposed wrap around ground floor awning will ensure the proposed development will be of pedestrian scale along Baxter Road thereby reducing the appearance of bulk and scale. The featured sky lounge level with large glazing areas with a thick solid frame will add a feature to longer distant views.*

*The hotel accommodation is located from the 4th storey and above. The elevated nature and sufficient building separation distances will minimise acoustic and visual privacy impacts to the residential properties to the northern rear and eastern side. Furthermore, the wide landscaping buffers and tall mature planting along the rear creates further privacy for adjoining neighbours. The additional overshadowing will fall onto Baxter Road and the non-residential developments to the south whilst the morning sunlight to the eastern neighbours will be maintained. There are no iconic views whilst will be affected by the proposal whilst the development is sufficiently separated from the Quest Hotel and therefore maintains its views.*

*The proposal will be a more efficient use of the site by introducing high quality hotel accommodation within a convenient location which contributes to the economic growth of Botany Bay.*

*Therefore the FSR is considered to be acceptable given the proposal is consistent with surrounding hotel development, is a positive contribution to the public domain whilst there will be minimal amenity impacts to surrounding neighbour.*

## 2. Consistency with the objectives of the B5 Business Development

### 1 Objective of zone

- *To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*

### ***Applicant's justification***

*The proposed hotel development is permissible within the B5 Business Development zone whilst it accords with the zone objectives. The proposal seeks to introduce hotel accommodation within a convenient location, close to Sydney Airport and Mascot train station. The hotel development is a more efficient use of the site and will introduce 150 hotel rooms to the locality thereby supporting the viability of Sydney Airport, Mascot town centre and the wider Botany Bay locality. The minor variation to Council's FSR control will allow for further gross floor area for the hotel development and will accord with the zone objectives.*

## 3. Consistency with State and Regional planning policies

### ***Applicant's justification***

*The proposed FSR variation ensures the orderly and economic use of land as envisaged by the Environmental Planning and Assessment Act, 1979. The subject site is currently underutilised which is earmarked for an increase in density as stipulated in Council's controls and the proposed development is considered to be a more efficient use of the site. The proposed FSR allows for high quality hotel accommodation within a highly accessible location in close proximity to the Sydney Airport, public transport facilities and various services and uses at Mascot town centre.*

## 4. The variation allows for a better planning outcome

### ***Applicant's justification***

*The proposal represents a significant improvement from the existing form and condition of the site. The proposal will introduce a contemporary building to the locality which is of high architectural merit and will be a positive contribution to Baxter Road.*

*The variation to Council's FSR control will introduce hotel accommodation which has high internal amenity with sufficient solar access and ventilation, pleasant expansive outlooks and the provision of communal areas to the sky lounge level. The hotel accommodation is suitably located within close proximity to the Sydney Airport, public transport facilities and various services and uses at Mascot town centre which is a preferred planning outcome.*

*The abundance of landscaping to the scheme will soften the built, screen the car parking levels to the public domain, improve pedestrian amenity and allow for natural drainage.*

*The proposal allows for adequate car parking whilst the shuttle bus service to the airport will minimise traffic impacts to the existing road network.*

*Overall the variation with the FSR control allows for a better planning outcome while there are minimal impacts to the surrounding properties.*

5. There are sufficient environmental grounds to permit the variation

- *The proposal will create an appropriate built form which is consistent with surrounding hotel developments whilst the proposal is well under Council's height control;*
- *The proposal will introduce an architectural feature to Baxter Road which incorporates high quality facade treatments and an articulated form which creates a superior presentation to what exists on the subject site and sets a precedent for future hotel development in the area;*
- *The hotel accommodation will comprise of high internal amenity with large room sizes, sufficient solar access and natural ventilation, expansive outlooks and access to communal areas;*
- *The proposal will be a more efficient use of the site and will introduce 150 hotel rooms which is conveniently located in close proximity to various uses and public transport services;*
- *The hotel accommodation caters for disabled and elderly people with barrier free access to all rooms and communal areas, special accessible hotel rooms and nominated accessible car parking spaces;*
- *The departure from the maximum FSR control will not result in any significant adverse amenity impacts such as overshadowing, privacy impacts or any significant view loss to the surrounding neighbours; and*
- *The proposal will provide adequate car parking whilst the occupants will generally rely on the shuttle bus services to travel to the airport which will alleviate traffic impacts to the road network.*
- *When compared with the existing approval the proposal will have slightly reduced shadow impacts.*

6. The variation is in the public interest

*The minor FSR variation is considered to be in the public interest, given the proposal will introduce hotel accommodation to the locality and will contribute to the economic growth of Botany Bay. The building mass, height and separation distances combined with the provision of sufficient deep soil landscaping demonstrates the floor space is suitable for the site. Furthermore, the hotel is located in an accessible location whilst it will not create any impacts to the public domain or the amenity of surrounding properties. Therefore the proposal and its associated FSR are in the public interest.*

*Conclusion*

*For reasons mentioned herein, this Clause 4.6 variation is forwarded to Council in support of the variation to the FSR associated with the development proposal at 113-121 Baxter Road, Mascot and is requested to be looked upon favourably by Council.*

This Clause 4.6 variation has been assessed in accordance with the principles of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (Wehbe) in which the Hon. Brian Preston, Chief Justice of the Land and Environment Court, set out a new test (the long-standing 5 part test was set out in *Winten Property v North Sydney* (2001) 130 LGERA 79). This test sets out the following assessment process:

1. *The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*

2. *The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and*
3. *It is also important to consider:*
  1. *whether non-compliance with the development standard raises any matter of significance for State or regional planning; and*
  2. *the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

The Chief Justice then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

These matters are considered below.

- A. Objection well founded and compliance with the development standard is unreasonable or unnecessary in the circumstance of the case (Cl 4.6(3)(a))

The Land and Environment Court have set out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development standards is well founded. This test is outlined below for the variation to FSR.

- 1) *The objectives of the standard are achieved notwithstanding noncompliance with the standard*

The objectives of Clause 4.4 Floor Space Ratio of the Botany Bay LEP 2013 are:

- 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.*

The proposal is considered to be inconsistent with the objectives of the FSR development standard for the following reasons:-

- The proposed development is not compatible with the bulk and scale of the existing development in the area and the future desired character of the locality, given the mixed use nature of the site and locality;
- The proposal has not maintained an appropriate visual character in that the parking levels will be visible from the adjoining development and is not consistent the transformation of the area.
- There will be adverse impacts on the road network as a result of the proposed additional GFA and the deficiency in the car parking; and
- It is likely there will be significant adverse impacts from the additional floor space proposed on the amenity of adjoining properties in terms of increased traffic and the lack of on street car parking.
- The proposal does not provide for an appropriate correlation between size of the site and the extent of the development site as the additional floor space generates a additional parking demand which has not being complied with.

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

The underlying objective and purpose of the floor space ratio control has not been achieved as stated above, therefore the standard is relevant and strict compliance with the numerical requirement of 3:1 is considered necessary in this instance as the proposal does not meet all the objectives of Clause 4.4. The proposed development is not compatible with the existing and desired future character of the area.

3) *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable*

The underlying objectives and purposes of the FSR control remain relevant to the proposed development. The proposed development is not consistent with the objectives of the FSR control in the BBLEP 2013 as detailed above.

4) *The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*



While the FSR control has been varied previously for this site, the development standard has not been abandoned. This development standard remains generally relevant in the area, and a variation to the standard is not warranted as discussed above.

- 5) *The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone*

It has been established that the proposed development is not appropriate and strict adherence to the development standard in this instance is considered to be reasonable and necessary. Furthermore, the additional floor space does result in adverse impact to adjoining properties in terms of residential amenity, loss of on-street car parking and increased traffic. The proposed development does not provide a high quality tourist accommodation that facilitates the orderly and economic development of the land in a manner that is appropriate in this area as it is deficient in car parking in an area where car parking is at a premium and the parking levels will be visible from public vantage points.

Accordingly, since the proposal does satisfy all the objectives of the FSR development standard pursuant to Clause 4.4 of BBLEP 2013, the proposed development is considered to be inappropriate and strict adherence to the development standard in this instance is reasonable and necessary.

It is considered that the applicant's Clause 4.6 is not well-founded and the departure is not in the public interest given the non-compliance with car parking and increased traffic movements which will impact on the existing area.

- B. Consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and

The Policy referred to in this instance is SEPP 1 which is not relevant in this case since Clause 4.6 is the applicable instrument, however, the objectives of both are similar in that flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances is desirable.

The objects specified in section 5 (a) (i) and (ii) of the Act are:-

*a) to encourage:*

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land.*

It is considered that in this instance, non-compliance with the planning controls is not acceptable in this instance as the proposal does not achieve the objectives of the development standard and in this instance will not allow for the co-ordination of the orderly and economic

use and development of land, as the development does not comply with the car parking and the justification for the variation of the car parking controls are not supported. A compliant building can be built, with compliant car parking. Compliance with the controls results in a more orderly outcome.

C. Sufficient Environmental Planning Grounds (Cl 4.6(3)(b))

It is considered that there are insufficient environmental planning grounds arising from the proposal to not support of this variation to the FSR development standard given:-

- The development will adversely impact on the surrounding road network; non-compliance with car parking will impact on the availability of on-street car parking;
- The proposal has provided above ground car parking levels which will be visible from the street and will reduce the quality of the streetscape and adjoining properties.
- Other hotels approved by both Council and JRPP have complied with the parking controls and have provided a better interface to the street. No justification has been given as to why this development cannot comply.

Therefore, it is considered that there are insufficient planning grounds for a variation to the FSR and the variation is not in the public interest.

D. Other Matters For Consideration (Cl 4.6(1), (4) & (5))

The following matters pursuant to Clause 4.6 also need to be considered:-

- Objectives of Clause 4.6;
- Public interest and public benefit of maintaining the development standard Cl 4.6(4)(a)(ii) and (5)(b) of BBLEP 2013); and
- Any matters of state or regional importance (Cl 4.6(5)(a) of BBLEP 2013)

*Objectives of Clause 4.6*

The objectives of Clause 4.6 (pursuant to Cl 4.6(1) of BBLEP 2013) are:

- 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.*

It is considered that the proposed development will not achieve a better outcome for the site in that the proposal will adversely impact on the visual amenity, and adjoining road network of the area. This is addressed further in this assessment. Therefore, for the reasons outlined this assessment, it is considered that flexibility cannot be applied to this development, as it does not achieve a better outcome for the site, in that it provides for a development that is deficient in car parking and impacts on the streetscape.

### *Public Interest and Public Benefit*

In terms of public benefit, the proposal will not provide for a public benefit. The proposed development is not compatible with the existing development and the approved development surrounding the site.

Preston CJ noted that there is a public benefit in maintaining planning controls and a SEPP 1 objection should not be used in an attempt to effect general planning changes throughout the area. It is considered that in the current case, the planning control should not be varied as it will affect the general planning change in the area, as it will not be consistent with other tourist development already approved and construction in the area.

The proposed development will impact on the existing road network and rely on street car parking to compensate for the non-compliance with car parking. During the notification period Council received two objections to the development relating to the loss of on-street car parking, increased traffic and that no provision for a cul-de-sac (proposed at the residential end of Baxter Road) was to be provided. On the basis of this assessment, it is concluded that the variation is not in the public interest and can be supported.

### *Matters of State or Regional Importance*

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

### Summary

The Clause 4.6 Exception to the FSR control has been assessed in accordance with relevant case law, being the principles of *Wehbe v Pittwater Council [2007] NSW LEC 827*. It is considered that the proposal is not consistent with the underlying objectives of the standard identified.

The proposed development provides for a hotel development that does not comply with the car parking on a site, which can comply, therefore it is considered the site is not being developed in an orderly and economic development of land in a manner that is appropriate for the site and the locality.

While it is acknowledge that the development will provide increased employment and investment opportunities for the area, however it will impact on the existing area through the non-compliance of car parking and the visibility of the car parking levels from the street and not consistent with the transformation of the area. The impacts from the proposed development on the amenity of surrounding properties resulting from the departing FSR are adverse as they it will not be consistent with the existing and future amenity of the area. Council officers disagree that the proposal will result in a public benefit.

It has been established that the proposed development is inappropriate and strict adherence to the development standard in this instance is reasonable and necessary. Maintaining and enforcing the development standard in this case is reasonable and does not prevent the orderly and economic development of this site.

It is considered that the applicant's Clause 4.6 is not well-founded and the departure in FSR is not in the public interest. On this basis of, it is recommended that the development standard relating to the maximum FSR for the site pursuant to Clause 4.4 of the BBLEP 2013 should not be varied in the circumstances as discussed above.

Botany Bay Development Control Plan (BBDPC) 2013

BBLEP 2013 is the comprehensive development guideline for the City of Botany Bay. Compliance with relevant controls is as follow:

<b>Part and Control</b>	<b>Proposed</b>	<b>Complies</b>
<p>3A.2 Parking Provisions</p> <p>C2 – Car parking provisions shall be provided in accordance with Table 1.</p>	<p>The car parking rate is required to be:</p> <p>1 space for manager</p> <p>1 space/ 2 employees; plus</p> <p>1 space/1.5 rooms, plus 1 taxi pick and set-down space/100 plus</p> <p>2 coach pick-up and setdown spaces; and</p> <p>Additional parking must be provided for other licensed parts of the use.</p> <p>A total of 160 spaces is required for the hotel and 60 spaces for the restaurant/bar/lounge and function rooms which requires 1 space per 10m<sup>2</sup> and 1 space per 2 employees.</p> <p>Therefore a total of 220 spaces is required.</p> <p>Where a shuttle bus service will be provided to the airport. This allows the parking rate to reduce to 1 space per 2.5 rooms, being 60 spaces</p> <p>A shuttle bus is being provided, therefore a total of 120 car spaces are required and the development proposes 41 spaces, being a shortfall of 79 car spaces.</p>	<p><b>No - see Note 1</b></p>
<p><b>3A.3.1 - Car Park Design</b></p> <p>C1 – All off-street parking facilities shall be designed in accordance with current Australian Standards AS2890.1 and AS2890.6. The design of off-street commercial vehicle facilities shall be in accordance with AS2890.2.</p>	<p>The Traffix Impact Assessment report prepared by Traffix confirms that the internal configuration of the car park and loading area has been designed in accordance with AS2890.1 and AS2890.2</p>	<p>Yes</p>

Part and Control	Proposed	Complies
<p><b>3C.1 – Access and Mobility</b> C2 – All development must comply with the provisions of the Disability Discrimination Act 1992, BCA, the Premises Standards and the relevant Australian Standards</p>	<p>The proposal is accompanied by a Statement of Compliance Access for People with a Disability prepared by Accessible Building Solutions which demonstrates that the proposal can achieve compliance with the access provisions of the BCA.</p>	<p>Yes</p>
<p><b>3G.2 – Stormwater Management</b> C1 – Development shall not be carried out on or for any lands unless satisfactory arrangements have been made with and approved by Council to carry out stormwater drainage works.</p>	<p>The Engineering report concludes that the existing stormwater infrastructure in the vicinity of the site is adequate to accommodate the proposed new hotel development.</p>	<p>Yes</p>
<p><b>3G.3 – Water Sensitive Urban Design</b> C3 – All developments shall adopt an integrated approach on water management through a coordinated process to address water efficiency, water conservation, stormwater management, drainage and flooding.</p>	<p>The ESD and Energy Efficiency report prepared by SLR provides several initiatives for water sensitive design that can be implemented throughout the development.</p>	<p>Yes</p>
<p><b>3G.4 – Stormwater Quality</b> C1 – Water quality objectives stated in “<i>Botany Bay &amp; Catchment Water Quality Improvement Plan (BBWQIP)</i>” shall be satisfied.</p>	<p>The Stormwater plans prepared by IGS include appropriate sediment and stormwater measures to ensure the quality of stormwater runoff meets the objectives of the BBWQIP.</p>	<p>Yes</p>

Part and Control	Proposed	Complies
<p><b>3I.- Crime Prevention Safety and Security</b></p> <p>C1 – Building entrances shall be visible from the street and be clearly recognisable through design features</p> <p>C8 – Entrances to new development shall front the street to maximise surveillance to the public environment and provide clear sightlines with direct access from the street to the building entrance.</p> <p>C10 – Entrances and exits of buildings shall be well lit, secure and highly visible to and from public spaces, streets and adjoining buildings.</p>	<p>The entrance to the proposed hotel will be clearly recognisable from Baxter Road.</p> <p>The entrance to the proposed hotel fronts Baxter Road and will provide maximum surveillance to the porte cochere area and direct sightlines and access from Baxter Road. Further it is noted that there will be a staff member located in the ground level of the building at all times.</p> <p>Adequate lighting will be provided to the building entrance along Baxter Road and the pick-up and drop-off area. Lighting will be provided to the car parking areas.</p>	<p>Yes</p>
<p><b>3J.2 – Aircraft Noise and Exposure Forecast</b></p> <p>C2 – Where a building site is classified as “conditional” under Table 2.1 of AS20121-2000, development may take place, subject to Council consent and compliance with AS2021-2000</p>	<p>The subject site is affected by the 25-30 ANEF Contour. An Acoustic Report has been prepared by Acoustic Logic and concludes that provided the measures recommended are implemented aircraft noise emissions will comply with AS2021-2000.</p>	<p>Yes</p>
<p><b>3J.3 – Aircraft Height Limits and Prescribed Zones</b></p> <p>C1 – If the building is located within a specific area identified on the OLS map or seeks to exceed the height limit specified on the OLS map or seeks to exceed the height limit specified in the map the application must be referred to Civil Aviation Safety Authority and Airservices Australia for</p>	<p>The development application has been referred to SACL. SACL raised no objections to the proposed maximum height of 45.01 AHD, subject to conditions to be imposed on any consent.</p>	<p>Yes</p>

Part and Control	Proposed	Complies
assessment.		
<p><b>3L - Landscaping</b></p> <p>C3 – landscaping shall be designed to reduce the bulk, scale and size of buildings, to shade and soften hard paved areas, to create a comfortably scaled environment for pedestrians in the public domain, or from within the site, and to screen utility and vehicle circulation or parking areas. Emphasis should be placed on landscaped setbacks designed to soften buildings.</p>	<p>The proposed development is accompanied by Landscape Plans prepared by JILA.</p> <p>The proposed building envelopes provide generous setbacks to all site boundaries and 13.5% of the site will be in the form of deep soil planting although the DCP has no requirements for hotels to provide deep soil planting.</p> <p>The landscaping including the elevated planter boxes provided to the front and east of the site will soften the built form and enhance the streetscape when viewed from Baxter Road. The deep soil landscaping will allow for natural drainage to occur and minimise overland flow onto adjoining premises.</p>	Yes
<p><b>3N.2 – Waste Minimisation and Management/ Demolition and Construction</b></p> <p>C1 – A Site Waste Minimisation and Management Plan in accordance with Part 1 – Model Site Waste Minimisation and Management Plan must be submitted.</p>	<p>A Waste Management Plan prepared by The Baxter International Hotel has been submitted and addresses the waste minimisation at design stage and during demolition, excavation and construction and future on-site waste management.</p>	Yes
<p><b>6 – Mascot Business Development Precinct</b></p> <p>C1 – Development is to encourage a higher public transport (including walking and cycling) use and include strategies to encourage and promote car sharing and carpooling strategies. In this respect a Workplace Travel Plan is to be lodged with the development application. The Workplace Travel Plan shall establish measurable targets to achieve the mode share</p>	<p>The proposals close location to Mascot Train Station (930m north) and Domestic Terminal Station is approximately 875m from the hotel. The hotel will also provide a shuttle bus service however it has not provided the minimum parking rate required by the Section 3D – Car parking. The Development has bar/lounge/restaurant and function rooms, which will be available to the public. This will increase the demand for on-site car parking and additional staff. It considered the proposed development has not fully satisfied this control.</p>	No

Part and Control	Proposed	Complies
<p>targets stated in the Mascot Town Centre Precinct TMAP – maximum car mode share: 65% by 2021 and 57% by 2031.</p>		
<p>C2 – Development, including alterations and additions shall:</p> <p>(i) improve the appearance of buildings, particularly along the roads which serve a gateway function to Sydney Airport and the Sydney CBD; and</p> <p>(ii) Comply with Sydney Airport’s regulation in regard to safety, lighting and height of buildings.</p>	<p>The proposed hotel is of a modern design which will incorporate modern materials which will be an improvement to the current structures on the site.</p> <p>The landscaping to the front of the building will soften the built form and enhance the existing streetscape. However concerns is raised that the parking levels will be visible from the street and adjoining levels it considered the treatment to these levels needs further improvement.</p> <p>The proposal will comply with the Sydney Airport’s regulation with regard to safety and lighting and SACL has raised no objections to the proposed maximum height of 48.050 metres AHD, subject to conditions to be imposed on any consent</p>	<p>Yes</p>
<p>C7 – Development shall be designed and constructed in accordance with Australian Standard AS2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction)</p> <p><b>Note:</b> Details to be included in the Development Application. For further details in relation to Aircraft Noise refer to Part 3J – Development Affecting Operations at Sydney Airport.</p>	<p>An Acoustic Report prepared by Acoustic Logic was submitted with the application and made recommendations to ensure that the development when built complies with AS2021-2000.</p>	<p>Yes</p>
<p>C8 – The introduction of noise abatement measures to achieve compliance with current AS 2021 must be done in a manner that does not compromise the</p>	<p>The proposed development incorporates noise abatement measures to achieve compliance with AS 2021-2000 and so as not to compromise the architectural design of a building or impact on the character of</p>	<p>Yes</p>



Part and Control	Proposed	Complies
architectural design of a building or impact on the character of an existing streetscape.	an existing streetscape.	
C9 – All development that is in, or immediately adjacent to, the rail corridor or a busy road must be designed in accordance with NSW Department of Planning ‘Development Near Rail Corridors and Busy Roads – Interim Guidelines, December 2008’.	The proposed development has been designed in accordance with NSW Department of Planning ‘Development Near Rail Corridors and Busy Roads – Interim Guidelines, December 2008’.	Yes
<p><b>6.3.1 Amalgamation and subdivision</b></p> <p>Development to comply Part 3E to ensure consistency with the Desired Future Character</p>	Proposal has demonstrated that sites to north can develop independently of the proposed development	Yes
<p><b>6.3.5 Setbacks</b></p> <p>Side Setback - 2m</p> <p>Front – 3m landscape</p> <p>9m to Building</p> <p>Rear nil to 3m</p>	<p>Side setback – 1.2 m over a distance of 2.7m (Fire Stairwell) on the western boundary.</p> <p>Remainder of building setback 3m.</p> <p>2.5m setback to awning and between 7.5 to 8.5m to the building is proposed. Given the landscaped appearance that will result, the setback and open air nature of the awning do not contribute to additional bulk and as such the front setback is considered acceptable.</p> <p>Rear setback is approximately 2.9m</p> <p>As there a non-compliance in car parking and the floor space ratio, there is no justification as to why the setbacks could not be complied with.</p>	No
<p><b>7F.2 General Requirements – Hotels &amp; Motel Accommodation</b></p> <p>C1 – The maximum stay permitted is 3 months.</p>	A Plan of Management has been submitted confirming the maximum stay period permitted will be for 3 months.	Yes

Part and Control	Proposed	Complies
C2 – The main access point is to be located at the main street frontage of the property. Access Points should be avoided at the boundaries of the property where and impact on noise or privacy could result for adjoining residences.	The main access point has been provided off Baxter Road. There are no residential properties immediately abutting the subject site.	Yes
C4 – The minimum size for a visitor’s room is 5.5m <sup>2</sup> for the bedroom floor area for each person staying within the room.	The rooms are all 22m <sup>2</sup> plus.	Yes
C7 – A small kitchenette is permitted if adequate cupboards and shelves are provided.	The proposal incorporates a kitchenette within each hotel room.	Yes
C9- Bathrooms must be provided in accordance with the <i>Building Code of Australia</i> .	A separate bathroom is provided within each hotel room in accordance with the BCA.	Yes
C10 – The design and operation of hotel and motel accommodation must take into account possible noise impacts on adjacent properties and the surrounding area.	An Acoustic Report by Acoustic Logic has been prepared for the site. There are no residentially zoned properties in the area and it is therefore considered that the proposed hotel will not have any adverse noise impacts on adjacent properties or the surrounding area.	Yes
C11 – A Plan of Management (POM) is required to be submitted. The POM is a written report which describes how the ongoing operation of hotel and motel accommodation will be managed to reduce its impact upon the amenity of surrounding properties.  The POM allows Council to exercise control over the ongoing operation of a premises by requiring, as a	A Plan of Management has been provided with the application.	Yes

Part and Control	Proposed	Complies
condition of consent, that the premises operate in accordance with the POM. A condition of consent may require that a POM be regularly revised and submitted to Council.		
C12- The building is to comply with Parts C, D, and E of the BCA.	The proposal has been reviewed by a building consultant confirming compliance has been achieved by the proposal with regards to fire safety requirements.	Yes
C13 – Each room is to comply with Parts C, D E and F5 of the BCA so as to ensure there is adequate fire safety in the building and adequate sound insulation between each room.	The proposal has been reviewed by a building consultant confirming compliance has been achieved by the proposal with regards to fire safety requirements.	Yes

**Table 3 – BBDCP 2013 Compliance Table**

**Note 1: Car parking**

The applicant has provided car parking for 41 vehicles where 120 spaces are required (60 for the hotel and 60 for the licensed areas). The development is deficient in 79 spaces. It is noted that the proposed development is under the height limit and as such could easily accommodate an additional level of car parking in either above ground or basement level and still be within the height limit.

The applicant’s traffic report prepared by Traffix has been based on an application that does not involve two conference rooms on the top floor of the hotel. Further the traffic report discusses the proximity of the approved Park n’ Fly operation. This is not a suitable option for casual parking, given how this car park operates, and is not in the same ownership. In addition to this the development has not provided any leasing agreement with the Park n Fly to lease spaces or purchase car spaces.

The traffic report comments *“It is also noted that an approved car park development proposed at a distance of 400m from the site will provide a Park and Fly commercial car parking facility with a capacity of 650 car parking spaces. In the unlikely event that the development were to experience parking demands in excess of the 41 space provided, then it is envisaged that an arrangement may be put in place to utilised a proportion of this publicly available car parking;”*

It is further noted that such an agreement would likely trigger an amendment to the Park n fly Development Application as the traffic impacts associated with a more frequent ingress and egress have not been considered. No agreement has been proposed in the application.

The traffic report concludes *“The subject development will predominantly focus on tourist related accommodation. In this regard, Council’s DCP rates are considered too general and do not reflect the proposed use appropriately. Therefore parking rates from the RMS Guide, which specifically refers to 3-4 star tourist accommodation, have been adopted by this TIA. Application of these rates indicates that the proposed hotel should provide about 38 parking. In response, the development provides 41 parking spaces; thereby satisfying RMS requirements.”*

Parking is a known problem in this locality given its proximity to the airport and is not particularly well served by easily accessible public transport. It should also be noted that the RMS figures are based on hotels located near major public transport hubs or are well serviced by public transport. This subject site is not. In addition to this the Traffic Report has not conducted a cumulative assessment of the approved developments and this development as to the impacts on the existing road network and the demand for car parking.

The previous DA for the site has proven that a hotel development on the site it can comply with the desired parking rates and that if amendments were made, it could comply with the relevant controls. It is considered that there is no appropriate justification for the car parking shortfall against Councils DCP requirement. In addition, the traffic report has not considered the two conference rooms which now form part of the proposal.

Council has consistently applied the rate of 1 space per 2.5 rooms to all its hotel developments which have been approved and are under construction. It is evident from Council TMAP that was undertaken for the area that there is a demand for car parking. As stated above the area is not well serviced public transport and the on street car parking on Baxter Road in time restricted.

As such it is considered that there will be adverse impacts associated with the car parking shortfall would not be in the public interest and as such shall not be supported.

**(b) The likely impacts of the development including environmental impacts on both the natural and built environments, social and economic impacts of the locality**

These matters have been considered in the assessment of the application. It is considered that the proposal will have a significant adverse environmental, social or economic impact on the locality in respect non-compliance with FSR, setbacks and car parking under the BBLEP 2013 and BBDCP 2013.

**(c) The suitability of the site for the development**

These matters have been considered in the assessment of the development application. The subject site is currently a commercial warehouse building used for the purposes of a car/truck rental business. A Contamination Report prepared by Environmental Investigations has been submitted which concludes that the site can be made suitable for the proposed use based on carrying out the recommendations contained within the report. In addition the subject site is affected by the 25-30 ANEF contour and also affected by road traffic noise. In this regard the applicant has submitted an acoustic report which demonstrates that the development can meet the acoustic requirements of both affectations.

Accordingly, it is considered that as a result of the proposed development in its current form and the resulting amenity impacts arising non-compliance with car parking and setbacks and

its visual impact of the car parking levels on the streetscape and adjoining properties. In addition, the proposed development is not consistent with the maximum FSR of buildings applicable to the subject site under Clause 4.4 of Botany Local Environmental Plan 2013 (BBLEP 2013) is therefore not considered to be a suitable in its current form.

**(d) Any submissions made in accordance with the Act or Regulation**

These matters have been considered in the assessment of the development application. In accordance with the Botany Bay Development Control Plan 2013 Part 2 – Notification and advertising, the development application was notified to surrounding property owners for thirty (30) days from 21 January 2015 to 23 February 2015 and two (2) submissions were received.

The issues in the submissions are summarised as follows:

- *Additional Traffic and delivery vans, safety of road.*
- *No cul-de-sac [at the residential end of Baxter Road] as promised by Council.*

Comment

It noted that the development is likely to increase traffic within the vicinity, insufficient assessment has been conducted in terms that the conference facilities were not included in the traffic assessment and as such a complete assessment of the impact the development is not provided.

A cul-de-sac is being considered by Council at the eastern end of Baxter Road, and it is noted the objectors all live eastward of the proposed cul-de-sac. A cul-de-sac is not part of this application. The previous DA provided monies that could have been used towards the construction of the cul-de sac.

- *Construction traffic, noise and safety*
- *Trucks to Enter from O’Riordan Street only*

Comment

The applicant has submitted a Construction Management Plan, which details the Traffic Management Plan. The traffic management plan indicates that trucks to either come from Botany Road or O’Riordan Street.

- *Inadequate staff parking and high on street parking demand in area.*

Comment

The submission identifies that only 41 parking spaces are provided and that on street car parking is at a premium and time restricted. This reinforces Councils position that additional car parking should be required. It is therefore considered appropriate that parking should be provided on the site to cater for staff and guests given the location.

- *Traffic report hasn’t considered cumulative impact of recent approvals in the area increasing congestion and parking demand.*

### Comment

The submission has correctly identified that the report has not considered the cumulative impact of the approved developments in the street and nearby.

#### **(e) The public interest.**

These matters have been considered in the assessment of the development application. It is considered that approval of the proposed development is not in the public interest as it will have a significant adverse impact upon the locality in terms of visual impact arising visibility of the car parking levels, non-compliance with car parking and the impact it will have on the existing road network.

### **Other Matters**

#### External Referrals

##### *Sydney Airports Corporation Limited (SACL)*

The subject site lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority.

Correspondence received from Sydney Airports Corporation Limited (SACL) dated 3 February 2015, grants approval to a maximum height of the building to 45.01 metres AHD.

##### *Ausgrid*

Correspondence was received from Ausgrid dated 24 January 2015, and raises no objection to the proposed development, subject to a condition requiring an electricity substation within the premises. The location of the substation has not been identified.

##### *NSW Police*

Correspondence was received from NSW Police dated 5 March 2015 stating that the comments from the previous application on the site can be relied on for this application.

#### Internal Referrals

The development application was referred to relevant internal departments within Council, including the Traffic Engineer, Development Engineer, Landscape Officer, Environmental Health Officer and Environmental Scientist for comment and relevant conditions.

#### Section 94 Contributions

It is considered that the proposed development will increase the demand for public amenities within the area, and in accordance with Council's Section 94 Contributions Plan 2005-2010, if approved payment of contributions of **\$192,779.17** would be required. A contribution towards the construction of the cul-de sac as a means to mitigate traffic impacts on Baxter Road would also have been required if the application was recommended for approval.

### **Conclusion**

In accordance with Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act, the Application is referred to the The Joint Regional Planning Panel Sydney East Region (JRPP) for determination.

The proposed development is permissible in the B5 Business Development Zone. The applicant has submitted a Clause 4.6 Variation to the maximum FSR of Buildings for the subject site 3:1 in respect of the proposed noncompliance. The Clause 4.6 variation is not supported in this instance as it is inconsistent with the objectives of the standard, and the variation to FSR is considered outside the scope of Clause 4.6 of LEP. In addition to this the proposed development is inconsistent with the development controls of BBDCP 2013.

The proposal has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979* and the *Botany Bay Local Environmental Plan 2013*. The proposed development is largely inconsistent with the FSR control of BBLEP 2013, with the development controls stipulated in BBDCP 2013, in particular setbacks, car parking and visual appearance of the parking levels to the adjoining development therefore will result in adverse amenity impacts in the locality. On this basis, it is recommended that the proposed development in its current form is not supported and it is recommended that the Panel refuse Development Application No. 14(306) for the reasons outlined in this report. The recommendation with reasons for refusal is on page 1 of this report.

-----