



9 December 2021

Ms Laura Locke  
Department of Planning, Industry and Environment  
Locked Bag 5022  
SYDNEY NSW 2001

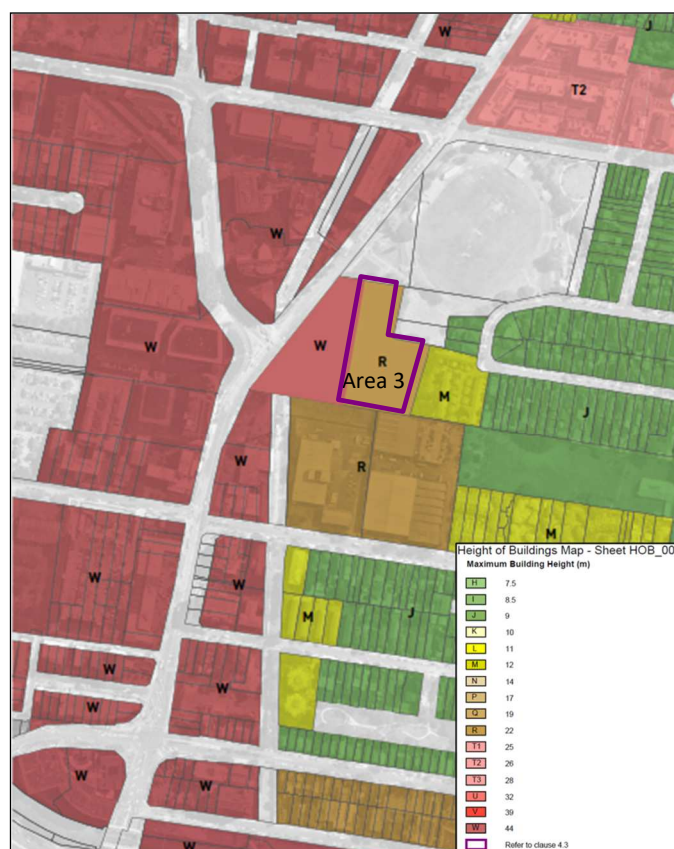
Dear Ms Locke,

**REQUEST FOR REZONING REVIEW**

**PROPERTY: 146 – 154 O’RIORDAN STREET, MASCOT**

**LGA: BAYSIDE COUNCIL**

- 1.1 This letter has been prepared by LJB Urban Planning (LJB) on behalf of Toplace Pty Ltd (the applicant) to support a request for a Rezoning Review by Sydney Eastern City Planning Panel of the Planning Proposal dated 18 May 2021 as attached.
- 1.2 The Planning Proposal seeks to amend *Botany Bay Local Environmental Plan 2013 (Botany Bay LEP 2013)* to increase the Height of Buildings (HOB) over the part of the site fronting O’Riordan Street from 22 metres to 44 metres and introduce a Building Height Plane as outlined below:
  - *Amending Botany Bay LEP 2013 Height of Building Map to achieve a maximum permissible height of 44 metres along part of the site adjacent to O’Riordan Street as shown on the map provided at Part 4 of the Planning Proposal (extract below)*
  - *Amending Botany Bay LEP 2013 Height of Buildings Map to identify part of the site as ‘Area 3’ as shown on the map provided at Part 4 of the Planning Proposal (extract below)*
  - *Amending Botany Bay LEP 2013 to include a site specific Building Height Plane clause applying to the part of the site identified as ‘Area 3’. It is suggested that the clause be worded as follows:*
    - *(2D) Despite subclause (2), the area of land identified as “Area 3” is subject to a 45 degree Building Height Plane that is measured on the northern boundary at a height of RL19 and a height of RL26 on the eastern boundary.*



**Figure 1: Proposed Botany Bay LEP 2013 Height of Buildings Map**

- 1.3 The land subject to the Planning Proposal is identified as 146-154 O’Riordan Street Mascot.
- 1.4 A Planning Proposal was forwarded to the Department of Planning in August 2019 and received a Gateway Determination on 19 December 2019. The Planning Proposal was amended in accordance with the conditions of the Gateway Determination, was placed on public exhibition and consultation occurred with relevant public authorities.
- 1.5 The planning proposal was endorsed by Bayside Local Planning Panel on 29 September 2020 and referred to Bayside Council on 9 December 2020 with a recommendation that Council request the Minister make the LEP. Council resolved not to proceed with the Planning Proposal. The minutes of the Council meeting provided no reasons for the Council to resolve not to proceed.
- 1.6 The Planning Proposal was re-lodged via the Planning Portal on 18 May 2021. The application was referred to the Local Planning Panel on 21 September 2021 and received unanimous support. The PP was referred to Bayside Council meeting on 3 November 2021 where the Councillors resolved not to forward the planning Proposal to the Department of Planning for Gateway. The resolution stated:

*'That Council considered the recommendation of the Bayside Local Planning Panel from 21 September 2021 and rejects the draft Planning Proposal for land known as 146-154 O'Riordan Street, Mascot for reasons including that the proposal:*

- is excessive in height (approximately double of the planning controls);*
- adjoins a low rise residential zone;*
- adjoins an item of local heritage significance under the Bayside LEP 2021, namely Mascot Oval (also known as Lionel Bowen Park); and*
- is not in the best interest of the community.*

*and will not forward it to the Department of Planning, Industry and Environment (DPIE) for a Gateway determination.'*

- 1.7 A response to each of the above reasons is provided within this letter.
- 1.8 This request for rezoning review is therefore submitted to the Department of Planning for consideration by the Sydney Eastern City Planning Panel. The Planning Proposal has received positive support from Bayside Council Planning Officers and the Local Planning Panel. The proposal has both site specific and strategic merit and is suitable to proceed to Gateway.
- 1.9 Despite Council's opposition, the Planning Proposal is considered to exhibit strategic and site-specific merit as confirmed in the detailed assessment carried out in the preparation of the planning proposal.
- 1.10 The following documents accompany this request for Rezoning Review:
- Planning Proposal Report prepared by LJB Urban Planning using Bayside Council's template dated 18 May 2021
  - Urban Design Report prepared by PTW dated May 2020
  - Supplementary Urban Design Report prepared by PTW dated October 2020
  - Traffic Report prepared by TSA dated 12 March 2019
  - Heritage Report prepared by Extent Heritage dated March 2019
  - Flood Statement by Cardno dated 19 December 2019
  - Economic Impact Assessment Report prepared by MacroPlanDimensi dated February 2019
  - Aeronautical Report prepared by AVLAW Consulting dated 20 March 2019
  - Detailed Site Investigation Report by Trace Environmental dated 1 November 2018
  - Controlled Activity Approval dated 22 June 2020
  - Report to Bayside Council dated 10 November 2021
  - Letter from Bayside Council advising of decision not to proceed dated 17 November 2021

## Summary of the strategic and site-specific merits of the Planning Proposal

- 1.11 Part 3 of the Planning Proposal report that accompanies this submission demonstrates the strategic merits on the PP in accordance with the relevant strategies, including Greater Sydney Region Plan 2056, Eastern City District Plan, Bayside Local Strategic Planning Statement and Bayside Community Strategic Plan 2030.
- 1.12 In summary, the site is located within 400 metres of the Mascot Railway Station and is located with the Green Square-Mascot Strategic corridor. The Planning Proposal retains the B5 Employment land zoning to ensure employment and urban services land is retained within the precinct and enables improved access to local jobs and services by encouraging growth within the strategic centre. The Planning Proposal recognises the importance of the corridor and allows for the achievement of the permitted floor space ratio.
- 1.13 The planning proposal clearly has site specific merit. The Planning Proposal provides the opportunity to develop the site to its permitted density and with the introduction of the Building Height Plane, ensures future development minimises potential impacts to the adjacent low density residential land and heritage listed Mascot Oval. An increase in building height in this location will reinforce the importance of the economic corridor providing greater consistency with the existing and future urban form along O’Riordan Street.
- 1.14 The proposal is also suitable to be fast tracked under the Departments Planning System Acceleration Program. A development application has been approved for a mixed-use development under the current planning controls. A Development application for the additional storeys along O’Riordan Street to accommodate the increased height sought by this Planning Proposal has been prepared and is ready for lodgement. The final development outcome on this site will include:

*Mixed use development comprising approximately 559 serviced apartments, hotel with approximately 264 hotel rooms, restaurants and commercial uses at ground level and basement car parking.*

## Local Planning Panel and Council’s Resolution

- 1.15 The Planning Proposal was referred to the Local Planning Panel on 21 September 2021. The LPP recommended the Council support the Planning Proposal to proceed to Gateway as follows:

1. *The Bayside Local Planning Panel notes that a previous Local Planning Panel supported the Planning Proposal to proceed to Gateway but noted the need for further investigation to ensure that the increased height proposed did not result in adverse impacts to Mascot Oval. The particular concern related to the risk that the increased height could have a bulky, overbearing appearance from the Oval.*
2. *Having considered the additional information provided by the Applicant, in defining specific Building Height Planes, the Panel is satisfied that the Planning Proposal will result in an appropriate relationship with the public domain including Mascot Oval and that an extension of the building height plane along the entire northern boundary is not warranted.*

3. *The existing 22 metre height limit along the O’Riordan Street frontage is an anomaly in this area and the increase to 44m is consistent with existing controls, adjoining developments and in keeping with the character of the location.*
4. *The Planning Proposal is consistent with the strategic planning framework and promotes growth of the Green Square-Mascot strategic centre*
5. *The Bayside Local Planning Panel recommends to Council that pursuant to s3.33 of the Environmental Planning and Assessment Act 1979 (EPAA) the draft Planning Proposal for land known as 146-154 O’Riordan Street, Mascot be submitted to the Department of Planning, Industry and Environment for a Gateway determination.*
6. *The Bayside Local Planning Panel recommends to Council that should a Gateway determination be issued, a further report be presented to Council following the public exhibition period to demonstrate compliance with the Gateway determination, and to provide details of any submissions received throughout that process.*

1.16 The PP was referred to Bayside Council meeting on 3 November 2021 where the Councillors resolved not to forward the Planning Proposal to the Department of Planning for Gateway. The following section provides a response to the reasons not to proceed:

- ***Is excessive in height (approximately double of the planning controls)***

1.17 The Planning Proposal seeks to increase the height to part of the site from 22 metres to 44 metres. The proposed increase has been supported and justified by a detailed Urban Design Report prepared by PTW. The Urban Design Report recommended an increase in building height for the following reasons:

- The site is located at a key and highly visible intersection of Bourke and O’Riordan Street;
- The sites proximity to Mascot Station;
- The existing built form which includes: 11 storey Holiday Inn, 14 storey Pullman Hotel, 14 storey Travelodge and 7 storey Ibis Hotel;
- The heights along O’Riordan Street corridor and achieving a consistent height as all other sites with frontage to O’Riordan Street south of the Park; and
- Ability to achieve more consistent heights along O’Riordan Street that will transition across the site towards the east.

1.18 The urban design analysis recommended an increase of across approximately 50% of the site to 44 metres (western side) and retaining the 22 metres to the remainder of the site (eastern side). It also provides for a transition in building height by the inclusion of a Building Height Plane to the northern and eastern boundary in the rear portion of the site.

1.19 The purpose of the Building Height Plane is to achieve a transition or stepping in building height towards Mascot Oval and the R3 zone to the rear. It is noted that the Building Height Plane will in effect ensure appropriate setbacks are achieved. Should



a future development seek to provide a lesser setback (as permitted by BDCP 2013) the Building Height Plane clause will require the height of the building to be reduced to maintain a transition. This is an appropriate outcome to ensure an appropriate interface with Mascot Oval and residents within the R3 zone. The front portion of the site that falls within the proposed 44m height zone, does not have the same relationship with Mascot Oval and therefore does not have the same transition requirements.

- 1.20 The additional height will provide an appropriate balance of building form along O’Riordan Street and will be a consistent approach to the building form in the surrounding locality.

- ***Adjoins a low rise residential zone***

- 1.21 The Planning Proposal does not propose an increase in height to any part of the site that adjoins a low-rise residential zone. The Planning Proposal proposes the introduction of a Building Height Plane that will effectively restrict the existing height permitted by the LEP to the land that adjoins the low rise residential as outlined above. This is not a valid reason not to support the progression of the Planning Proposal.

- ***Adjoins an item of local heritage significance under the Bayside LEP 2021, namely Mascot Oval (also known as Lionel Bowen Park).***

- 1.22 The relationship of the Planning Proposal with Mascot Oval has been considered in detail with the submission of a Statement of Heritage Impact. The Heritage Impact Statement was assessed by Council’s Heritage consultant and their advice to Council was included in the Report to Bayside Council dated 3 November 2021 and stated:

- *The Park is located to the northeast of the subject site and the proposed amendment to the height of future development will not block any sun from the oval or overshadow the park;*
- *The area is already quite densely development;*
- *Proposed change of the permissible height from 22 metre to 44 metres only applies to the western area of the subject site, which is consistent with heights on the other side of O’Riordan Street.*
- *Mascot Oval and Lionel Bowen Park have a strong inward-looking focus. The heritage data sheet describes how the Park turns inward, away from surrounding development. The strong inward focus of the park along with its size and location on a corner will ensure that the heritage significance of the park is not adversely impacted by the change in planning controls.*

- 1.23 Bayside Councillors in its resolution gave no consideration to the Heritage Advice provided by Councils experts and accordingly this is not a valid reason not to support the progression of the Planning Proposal. The introduction of the Building Height Plane that forms part of this proposal will ensure a positive relationship of any future development with Mascot Oval. This protection will not be achieved without the progression of this Planning Proposal.

- ***Is not in the best interest of the community.***

1.24 Councillors have not provided any valid arguments to support this statement. Furthermore, should this Rezoning Review be endorsed to proceed, the community will have the opportunity to comment on the proposal as required by Section 3.34(2)(c) of the Environmental Planning and Assessment Act 1979.

## Conclusion

- 1.25 The accompanying documents are considered to suitably justify the amendment to *Botany Bay LEP 2013* to increase the height to part of the site adjacent to the O’Riordan Street frontage and introduce a Building Height Plane to the rear of the site.
- 1.26 The Planning Proposal was recommended to proceed by Council’s Technical Planning staff and the Local Planning Panel. It is unfortunate the Councillors yet again ignored the expert advice and made the decision not to proceed. The reasons given by the Council are not warranted and have no substantive basis.
- 1.27 It is therefore recommended that the Planning Proposal is supported and that the necessary steps are taken to enable the PP to provide to a Gateway Determination under Section 3.34 of the *Environmental Planning and Assessment Act 1979*.
- 1.28 We would recommend considering the history on this site, that Bayside Council not be appointed the Local Plan Making Authority in this instance.

Yours sincerely



Larissa Brennan

**Director**

**LJB Urban Planning Pty Ltd**