

# **Attachment B**

**Submission prepared by Boskovitz  
Lawyers on behalf of Politic Pty Ltd**



**PROPERTY | PLANNING | CONSTRUCTION**

15 November 2018

Our Ref: AB:2018/119

Your Ref:

Mayor and Panel Members  
Central Sydney Planning Committee

**By Email:**

Dear Mayor, Councillors and Panel Members

**RE: POLITIC PTY LTD (ACN 088 901 759) OBJECTION TO DEVELOPMENT  
APPLICATION D/2018/405 (“DA”)  
PROPERTY: 378-394 GEORGE STREET, SYDNEY NSW**

We continue to act for Politic Pty Ltd, the owner of 365 George Street Sydney.

We have had an opportunity to review the council staff officer’s report in respect of the DA and are instructed to make the following objections:

**1. DEVELOPMENT APPLICATION PROCESS AND COMPLIANCE WITH THE  
SYDNEY LOCAL ENVIRONMENTAL PLAN 2012**

a. Clause 6.21 and 7.20

We refer to the comments made by us in our correspondence of 28 May 2018 and submit that the council have failed to adequately consider the synopsis of the operation of clause 7.20 and clause 6.21 of the Sydney Local Environmental Plan 2012 (the “LEP”).

As outlined in our original correspondence of it is our view that clause 7.20(2) must be complied with. Clause 7.20(2) requires the preparation of a site-specific development control plan for certain land in Central Sydney. The land, the subject of this application falls within the to which this clause applies.

Similarly, we provided justification as to the necessity for a design excellence process to be undertaken in accordance with clause 6.21 of the LEP.

We submit that the justifications for not complying with the provisions contained in the council’s LEP are not appropriate and on this basis, there has been a substantial breach of process.

In respect of the requirements of the clause 7.20, we submit that the arguments raised in the council officers report at paragraphs 65 and 66 do not provide an adequate reason for a site

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specific DCP to be prepared. In fact, we submit that the development of a part of the property and especially a part that deals with pedestrian access and how the building addresses the street is an issue that would have been most appropriate to be dealt with by way of a specific DCP.

We submit that none of the items raised in 7.20(3)(a)-(d) have been addressed appropriately in the council officer's report and we submit that on this basis no substantive determination can be made to:

- a. determine that the provision of a site specific DCP is unreasonable or unnecessary; and
- b. approve the application pursuant to the matters contained in clause 7.20(2) of the DCP

Furthermore, that council has determined that there is excellence in design without having complied with the provisions of clause 6.21 of the LEP that require a competitive design process to be undertaken.

It would also appear that the council staff's argument for not proceeding with a competitive design process as required by clause 6.21(5) is that this has been done in house by the applicant. This is not contemplated as part of the clause in the LEP and does not allow the council to set aside the obligations as outlined in the LEP.

We submit that any approval granted on the terms as outlined in the recommendations and associated conditions to the Central Sydney Planning Committee are fundamentally flawed at law and that compliance with the LEP is required.

b. notification of amended plans

We note that the application was first advertised for a period of 28 days between 2 May 2018 and 28 May 2018.

We understand from the council officer's report that the plans have subsequently been amended on at least 2 occasions and the plans have not been renotified.

We submit that the changes which have been made are substantial enough and cause an environmental impact which would necessitate a renotification under clause 1.3 of Schedule 1 of the Sydney Development Control Plan (the "**SDCP**").

As we can determine from the council officer's report, the changes were undertaken on about 7 June 2018 and 6 September 2018. These changes dealt with bulk and scale, materiality and the public domain.

We submit that the changes are substantive enough to cause environmental amenity impacts to the community including our client's property and that renotification should have occurred.

The materiality changes are especially crucial as there are items of significance in close proximity to the development which need to be considered. This was an issue that our client considered in the provision of a report prepared by Mr Davies, heritage architect and one that could not be further explored as no notification occurred. We attach Mr Davies report for ease of reference.

This issue goes further as it is noted at paragraph 62 of the council officer's report deal with how the architectural expression has changed which is also a consideration that we submit

results in an environmental amenity issue that ought to have been renotified in accordance with clause 1.3 of Schedule 1.

## 2. PLANNING MATTERS

We have reviewed the plans and discussed same with Mr Darroch who prepared the original report objecting to the original application and we submit that the planning matters raised by Mr Darroch in his letter dated 21 May 2018 have largely been ignored despite the responses in paragraph 112 of the council officer's report.

Furthermore, we submit that substantive responses have not been provided to how the applicant addresses the impacts of the following matters:

- a. the reorientation of the pedestrian through-link;
- b. the impact of the podium development on the street; and
- c. the impact of the building form on the pedestrian views to the heritage listed ES & A Bank Building

In our respectful submission these matters together with the non-compliant FSR which we submit is unable to be founded using the applicant's clause 4.6 result in a development that is not in a form that can be approved at this time.

We wish to reiterate our client's position that the clause 4.6 fails the tests as provided in case law. Similarly, we reiterate Mr Darroch's comments about the starting proposition in the applicant's clause 4.6 about floorspace bonuses which cannot be attributable if compliance with the requirements of the LEP have not occurred.

## 3. CONCLUSION

We submit that the development fails numerous tests contained in the LEP and is not in a form that can warrant a legal approval.

As outlined in our original letter, we are instructed to lodge an appeal in the event that the application is approved. We provided council with substantive and clear reasons why the application should be refused and we submit that these have overwhelmingly been ignored notwithstanding the fact that the matters to be considered in this application are reasonably clear.

In the event that we are required to lodge an appeal and are successful, we will use this letter and our previous correspondence on the question of costs.

We look forward to the panel reconsider this application.

Yours faithfully,

### **BOSKOVITZ LAWYERS**



### **ANTHONY BOSKOVITZ**