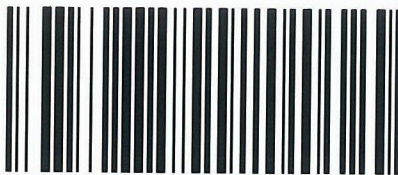


Our Ref: IGC:NM:20130197



21 January 2014



PCU50822

The Manager
Sutherland LEP Review
NSW Department of Planning & Infrastructure
PO Box 39
SYDNEY NSW 2001

Attention: Marian Pate

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Dear Madam

RE: AMENDED DRAFT SUTHERLAND SHIRE LEP 2013

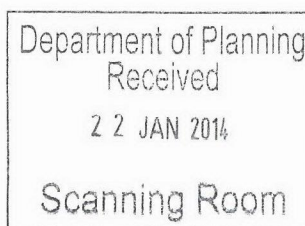
We act for Adsim Pty Ltd, owner of Lot 12 Strata Plan 83316, located at Level 1, 570 President Avenue, Sutherland.

In 2013, we lodged submissions with Sutherland Shire Council in respect of the draft SSLEP 2013.

Our client has asked that we re-submit that submission to the Review Panel, and accordingly we **attach**:

1. Copy submission dated 17 April 2013;
2. Copy of our further letter addressed to Sutherland Shire Council dated 16 August 2013; and
3. Copy of our additional letter addressed to Sutherland Shire Council dated 12 September 2013.

In our view, our client's submission regarding the floor space ratio, whilst being put forward by our client obviously having its own situation in mind, is of general application. Our client believes the submission is of merit, but was not given any or any adequate consideration by Sutherland Shire Council.



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Accordingly, we are instructed to request that this submission be incorporated into the review.

Yours faithfully,
MCW LAWYERS



IAN CONNOR

Writer's email Address: iconnor@mcwlaw.com.au

Our Ref: BP:20130197
Your Ref: LP/03/252376

MCW LAWYERS

17 April 2013

**SUBMISSIONS ON DRAFT SUTHERLAND SHIRE LOCAL
ENVIRONMENTAL PLAN 2013**

We act for Adsim Pty Limited, the owners of commercial floor space at
Level 1, 570 President Avenue ("the subject site").

We are instructed to make submissions to the draft LEP 2013.

LEP 2006

Under the LEP, the subject property has a floor space ratio ("fsr") of 2:1
and a maximum height of 8 storeys.

An inspection of the local environment will confirm buildings within the
area bounded by President Avenue, Old Princes Highway, the railway
line south of Park Street and Eton Street ("the Defined Area") contain a
mixture of mixed developments and residential flat buildings ranging
from 2 storeys to 8 storeys in height. Furthermore, the fsr, bar one
property to the rear of 570 President Avenue, all excessively exceed the
2:1 ratio as set out in the SSLEP 2006.

The configuration of buildings in the area described above **greatly**

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exceeds the fsr of 2:1 permitted for the majority of buildings in the Defined Area.

Unfortunately, prior to the gazettal of LEP 2006, the Council appear to have ignored the considerable variation between the maximum fsr and the physical form of buildings existing in the Defined Area. For reasons unknown, the 2:1 fsr was retained in the LEP 2006, despite the obvious form of developments in the Defined Area.

This glaring anomaly between the fsr and the existing urban landscape appears to have been overlooked over the past 7 years or so and is further ignored in the draft LEP 2013.

Nowhere in any documentation made available to the public is there any analysis, rationale or persuasive argument to clearly demonstrate why the 2:1 fsr for the subject site and the Defined Area is to remain at 2:1, when such an fsr is uncontrovertibly not in keeping within the relevant built environment.

Draft LEP 2013

570 President Avenue is to be:

Zoned B3 – Commercial Core.

The maximum height is set at 30 metres.

The maximum fsr is set at 2:1.

Our client strenuously objects to the maximum fsr set at 2:1 when one takes into account the existing building on the subject site.

Aims and Objectives of Draft LEP 2013

It has been and is continuously recognised by the Land and Environment Court the aims and objectives of planning instruments, development control plans and associate documents are closely examined during the appeal process.

It is our client's submission that to increase the fsr for the buildings within the Defined Area to 3.5:1 does not conflict with the aims of the plan as set out in clause 1.2 of the draft document.

On the contrary, an increase in fsr from the current 2:1 falls within the aims as set out in clause 1.2(2)(a), (b) and (j) in particular. The increase in fsr would conform with the community's vision (as opposed to Council's town planner's vision) by achieving the appropriate balance between development and management of buildings within the zone and importantly command socially equitable and economic viability to the subject site and beyond.

The increase in fsr would also sit comfortably with sub-paragraph (b) in that the existing fsr for the subject site and buildings of the Defined Area have all been approved by the granting of consent pursuant to the EPA Act which would have

taken into account the adverse impacts of the existing development and protecting the area from inappropriate development.

As for sub-clause (j) the subject building and all those within the Defined Area contribute to the future housing of the population of Sutherland Shire. It is for the very reason of the excess fsr afforded to these buildings that the housing needs have been generously advanced by the totality of residential units within the areas referred to above.

Turning to the objectives of Zone B3 – Commercial Core, it is equally submitted the suggested increase in fsr would not conflict with the objectives of the zone for the subject site and buildings in the Defined Area.

The subject site and other buildings all provide a wide range of retail, business and office space thereby contributing to the employment opportunities in the Sutherland core area, are all within close proximity to public transport and contribute positively with the existing commercial centre through increased economic activity, employment and residential population.

Importantly, it must be recognised the subject site and buildings within the Defined Area on the basis of their existing fsrs have effectively added socio-economic benefits to the Sutherland centre in their current format as opposed to a restriction of all such properties having to comply with the 2:1 fsr development standard in the 2000 and 2006 LEPs.

Objectives of the EP&A Act 1979

When examined against the relevant objectives of the Act the proposed increase in fsr, from 2:1 to 3.5:1 for all sites in the Defined Area, sits conformably with s5 (a)(i) and (ii).

The increase in fsr reflects the existing urban form, would preclude any notion of existing use rights and in so doing promote the social and economic welfare of the community and advance a better environment. Similarly, it would positively promote the orderly and economic use and development of the numerous sites involved without causing uncertainty in the future.

Existing Use Provisions pursuant to the EP&A Act

Council's records will reveal approval for a mixed commercial building containing a ground floor, devoted to retail use, a first floor as commercial use and 6 storeys of residential flats contained in 2 towers, has been granted over the years despite the fsr being set at 2:1.

As mentioned above in the SSLEP 2006, the discrepancy between the fsr and the form of buildings does not lend to good planning practice. The foremost reason being, that all those buildings exceeding the 2:1 fsr will, under the *Environmental Planning & Assessment Act 1979 (As Amended)* rely on their use and floor space ratios upon the existing use provisions of the *EPA Act*. Such a situation does not augur well for the future development of the Sutherland commercial core area, as identified in the draft LEP 2013, for the reasons set out below.

Future developments for the subject site and buildings described in the Defined Area will undoubtedly rely upon existing use rights for future developments. It is further suggested, the subject site and all properties within the Defined Area would retain

their current configuration and current land use for well in excess of at least 30 to 40 years, at a conservative guess. It is wholly unlikely a developer will wish to demolish all those buildings in excess of a 2:1 fsr and replace them with considerably smaller buildings to comply with the proposed fsr in the draft LEP. The existing use provisions would undoubtedly be invoked, this could also include the addition of floor space as provided in the *EPA Act* and Regulations.

Reliance on existing use rights does not promote the objectives of Section 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*.

Existing use rights has always been recognised as an anomaly in planning terms. Properties benefiting from the existing use rights provisions make for uncertainty in future development of the land. It also promotes instability in the future and reflects poorly on the prevailing planning instrument.

As Council is aware, legislative changes over the years have attempted to restrict the form of developments to be permitted on properties benefiting from the existing use provisions of the legislation. In fact, it is recognised in planning circles there is considerable advantage in removing the existing use provisions associated with land by either re-zoning the land, or providing for any particular land use to be a land use permitted in the subject zone, with or without Council's consent. Apart from limiting the land uses on properties formerly benefiting from existing use provisions, it also negates any legal action relying on the existing use provisions. The latter, is very much in the public interest.

It is pure fantasy to suggest, let alone consider, the subject site and all those mixed use developments adjacent to and within a short compass will be torn down and redeveloped with structures limiting the fsr to 2:1. Such a scenario is nothing short of myopic when viewed against the cost/benefit analysis associated with all those properties where the fsr has been reduced to 2:1.

The proposal to restrict the fsr in the draft LEP to all properties, including the subject site, in the Defined Area to 2:1, is not in the interests of efficient, coherent and good planning when contrasted with the proposed fsr in the draft LEP, to other commercial areas in the nearby vicinity and within the context of Council's document titled "*Sutherland Centre*".

The Sutherland Centre document purportedly rationalises and suggests that despite the "generous" controls permitting 8 storey buildings, Sutherland has failed to live up to its expectations, and cannot be regarded as a "*Potential Major Centre*". The same document describes the commercial centre as consisting of 1 and 2 storey older buildings. This statement is not entirely reflective of the area. The **entire** commercial area is expanding beyond its previously identifiable boundaries and now includes a large number of buildings between 5-8 storeys. Unfortunately, nowhere among the documents available to the public is there any description of, or schematic drawing setting out the parameter of the commercial centre.

An inspection of the DA approvals for 570 President Avenue and properties in the Defined Area will clearly establish the existence of a large number of commercial uses located on the ground and/or first floor of many of the buildings. The

commercial floor space extends to buildings along Gray Street and includes 23-29 Gray Street at the southern end of Gray Street. In fact, the commercial/ retail floor space of 570 President Avenue itself would by itself account for the maximum 2:1 fsr under the 2006 and draft 2013 LEP.

It is interesting to note, in the draft LEP 2013, the site immediately opposite 570 President Avenue and adjacent sites to the west of President Avenue up to Old Princes Highway are to have their fsr increased from 2:1 to 3.5:1. Furthermore, for reasons we cannot decipher from the vast array of documents accompanying the draft LEP, the corner block on the southern side of President Avenue where it intersects with Old Princes Highway, is to have its fsr increased to 3:1. To add to the confusion, in the allocation of fsr, the building immediately to the south of the aforementioned site will have its fsr restricted to 2:1. From an urban design perspective, there appears to be no justification for two buildings adjacent to one another should have a 100% variation in the fsr, between the two sites.

As the result of Council's assesment of the fsr of 2:1 under the draft LEP 2013, there will now be a variation of fsr extending from 2:1 to 4:1 in the relatively small area encompassed by Eton Street, Flora Street, Old Princes Highway and the railway line to the south of Park Street.

The Sutherland Centre strategy claims to increase the fsrs consistent with the increase in building height. This control raises the obvious question, why is Council reducing the fsr on sites containing mixed developments of 8 storeys in height, all of which are greatly in excess of the 2:1 fsr?

It is submitted the existing urban space, for the subject site and the Defined Area is structured against an fsr of approximately 3.5:1. This structure has arisen as a consequence of the several approvals granted by Council over the years, stretching back to at least 2000. Such consents strongly argue the existing urban environment has not been organised or structured in reliance on the relevant planning instruments.

Council's actions in reducing the fsr for 570 President Avenue and those other buildings referred to in this submission does nothing to contribute to the growth and rejuvenation of the Sutherland Commercial Core Centre, as suggested in its Fact Sheet.

To better understand the background to the draft LEP, it would have been appropriate and, indeed, viewed as a positive act towards public participation, for Council to have made the urban design and building shadow study available to the public in consult with the documents associated with the draft LEP.

Mere reference to the urban design and building shadow study in the Sutherland Centre Facts Sheet does not enhance the understanding associated with the overall assessment of the fsr in the Sutherland Commercial Core Centre.

It is our client's submission, the subject site and the other sites in the Defined Area should be permitted a fsr in the region of 3.5:1, to reflect the existing developments, and be in conformity to the proposed increase in fsr to 3.5:1 for all those properties

immediately north of the subject site. Such an increase in fsr would contribute to an urban form as envisaged by the objectives of the B3 Commercial Code and the relevant objectives of the draft LEP.

MCW LAWYERS

B PHILLIPS

Writer's email Address: bphillips@mcwlaw.com.au
Lawyer and Town Planner

Draft Local Environment Plan (LEP) 2013



Enter your address



Change Map ▼

Floor Space Ratio

OR right click on the map to select a property.

LEP 2013 Info

LEP Downloads



DEFINED AREA

- E 0.55
- G 0.65
- H 0.7
- J 0.8
- N 1
- P 1.2
- S 1.5
- T 2
- U1 2.5
- U2 2.75
- V 3
- W 3.5
- X 4



Floor Space Ratio

Our Ref: BP:20130197

MCW LAWYERS

16 August 2013

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Dear Sir

**RE: DRAFT SUTHERLAND SHIRE LEP 2013
REPORT TO COUNCIL**

We refer to the above and the Report tabled at a Special Council meeting on 29 July 2013.

Within the body of the report at the section headed "Centres" comment is provided at section "32. Sutherland Centre". The report deals with submissions made in relation to the Centre. Within that section, reference is made to 570 President Avenue with a comment claiming that:

"An owner in Sequoia has requested an increase in FSR from 2:1 to 3.5:1,"

The reference to the owner making such a submission is inaccurate. In the body of the more detailed report relating to Sutherland Centre, the submission allegedly made by an owner in Sequoia is set out at pages 40 and 41 of the detailed report.

In the Summary of Issues of the detailed report, it is stated:

"One submission on behalf of a commercial tenancy in the lower floors of the recently built residential flat building ... has requested an increased FSR ... in keeping with surrounding development potential".

As council is aware, submissions to a draft Local Environmental Plan in NSW can be made by any member of the community. The submission may be directed to an individual building, a general locality, or a specific item such as zoning, FSR, landscaping, parking, amenity etc.etc., covered by the draft Local Environmental Plan. In this instance, a **general** (not site specific) submission was made by the owners of commercial floor space at 570 President Avenue.

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The submission addressed the glaring and anomalous situation relating to a large section of the Sutherland area described as the "Defined Area" in the submission. The submission was also accompanied by a map setting out the Defined Area. The Defined Area was not restricted to 570 President Avenue, but rather related to the entire block bounded by President Avenue, Gray Street, Park Street and Eton Street.

A detailed examination of the submission, dated 17 April 2013, would clearly establish the submission related to the wider area and set out the discrepancy between the existing urban environment, in which all but one of the buildings in the Defined Area have a FSR in excess of 2:1, yet, the council insists in retaining that FSR rather than increasing the FSR to cover the reality of the current development. This position is illogical.

Under the circumstances, it is submitted the report should be amended to reflect the accuracy and intent of the submission filed by the owner of commercial space at 570 President Avenue, rather than suggest, incorrectly, the submission related to one property only and should further address the actual submission made.

A copy of this letter is being sent to the Department of Planning with a request the Department notes the inaccurate and misleading information in the report that has now been submitted at Council's meeting of 29 July 2013 and is available for public consumption.

Yours faithfully,
MCW LAWYERS



B. PHILLIPS

Writer's email Address: bphillips@mcwlaw.com.au

Our Ref: JP/BP:20130197

12 September 2013

General Manager
Sutherland Shire Council
DX 4511
SUTHERLAND NSW

Dear Sir

RE: AMENDED DRAFT SUTHERLAND SHIRE LEP 2013

Council's records will reveal we have made submissions to the original draft LEP 2013 under cover of our letter dated 17 April 2013.

Despite our submissions Council has not seen fit to give serious consideration to the floor space ratio of those properties referred to in our original submissions.

We take this opportunity to resubmit our original submissions to the amended draft LEP 2013.

We believe our submissions are of a serious nature, contributed to the fundamental tenets of good planning and contribute to the orderly and proper planning of the Shire. Further, our submissions support the relevant objectives of the *Environmental Planning & Assessment Act*.

For the sake of abundant clarity it is submitted our submissions are not made on behalf of any one particular entity, be it an individual or a corporate organisation. On the contrary, the submissions are made as general submissions on a facet of town planning that covers features associated with floor space ratio.

We trust Council will review its original decision and make the appropriate change to the floor space ratio of the properties identified in our original submissions, a copy of which is **enclosed**.

Yours faithfully,
MCW LAWYERS

J C PROWSE

Accredited Specialist - Commercial Litigation

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Encl.

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