

**JOINT REGIONAL PLANNING PANEL
(Sydney West)**

SUPPLEMENTARY REPORT

JRPP No	2011SYW027
DA Number	DA-76/2011
Local Government Area	Bankstown
Proposed Development	Demolition of the existing dwellings and associated site structures and the construction of a part two / part three storey residential flat building development containing 144 dwellings with basement car parking, an internal road and strata subdivision pursuant to the provisions contained in State Environmental Planning Policy (Affordable Rental Housing) 2009.
Street Address	81 to 95 Boronia Road, Greenacre
Applicant/Owner	Creative Planning Solutions Pty Ltd GPV Investments
Number of Submissions	283
Recommendation	Refusal
Report by	Stephen Arnold Team Leader - Development Assessment

Supplementary Report

Background

On 27 October 2011 the Sydney West Joint Regional Planning Panel considered a report in relation to Development Application No. DA-76/2011 lodged with Bankstown City Council for a residential development at No 81-95 Boronia Road, Greenacre.

The development comprised the demolition of the existing dwellings and associated site structures and the construction of a part two / part three storey residential flat building development containing 144 dwellings with basement car parking, an internal road and strata subdivision pursuant to the provisions contained in State Environmental Planning Policy (Affordable Rental Housing) 2009.

The 'Business Item Recommendation' of the Panel was as follows:

The Panel unanimously agreed to defer development application No.DA76-2011 for the applicant to provide legal advice regarding State Environmental Planning Policy (Affordable Rental Housing) 2009.

Should the applicant seek to obtain legal advice, this must be submitted to the Joint Regional Planning Panel within 14 days. The legal advice is to address the following:

Whether in forming the opinion mentioned in Clause 5(1)(b) of State Environmental Planning Policy (Affordable Rental Housing) 2009 as to whether a land use zone is one in which (in the opinion of the Panel) equivalent land uses are permitted to those permitted in a named land use zone, does the Panel:

- a) Compare all uses permitted in each of the subject and named land use zones to determine in its opinion if there is an overall equivalence;*
- b) Determine whether there are any uses permitted in both the subject and named land use zones to determine whether there is any equivalence amongst those permitted uses;*
- c) Determine the suite of permitted land uses in the subject land use zone that should be used as the relevant comparator for equivalence with the permissible land uses in the named land use zone; or*
- d) Determine whether there is equivalence in terms of permissibility of the particular development proposed to be carried out in both the subject and named land use zones.*

Upon receipt of any legal advice, the Panel will then meet to decide whether there will be a decision on the permissibility of the development and any other matters required to be addressed.

Legal Advice

The applicant engaged Lander & Rodgers Lawyers to prepare legal advice in response to the Panels recommendation.

Council has sought advice from Lindsay Taylor Lawyers regarding the resolution of the Panel and has also sought a review of the advice provided by Lander & Rogers Lawyers, in order to provide the Panel with specific advice in relation to this particular development application as opposed to generic advice. Further, it is considered appropriate that the Panel be afforded the opportunity to review a position other than that put by the applicant. The advice of Lindsay Taylor Lawyers also takes into consideration the findings of Commissioner Tuor in the case of Chami -v- Bankstown City Council, which the advice of Lander & Rogers Lawyers pre-dates.

Specifically, Council posed the following questions to Lindsay Taylor Lawyers in relation to this matter:

- (i) Having regard to the resolution of the Sydney West Joint Regional Planning Panel (JRPP), in order to form the opinion mentioned in Clause 5(1)(b) of the ARH SEPP that the land use zone is one in which equivalent land uses are permitted to those permitted in a named land use zone, what is appropriate equivalency test for the JRPP to apply.*
- (ii) After applying the appropriate test(s), would it be reasonably open to the JRPP to form the opinion that in this case, the land use zone is one in which equivalent land uses are permitted to those permitted in a named land use zone;*
- (iii) A review of the legal advice prepared by Lander & Rogers Lawyers to determine whether the advice answers the specific questions raised by the JRPP and whether LTL would form a similar view to that provided by Lander & Rogers Lawyers.*

Following receipt of the advice, Council's position on the proposed development is:

- Lindsay Taylor Lawyers and Council disagree with the view provided by Lander & Rogers
- Lander & Rogers consider that significant weight can be given when forming an opinion under cl5(1)(b) to practice notes and guidelines published by the Department of Planning. However these documents have no statutory force and do not affect the uses permissible in the relevant zones.
- Commissioner Tuor in Chami -v- Bankstown City Council also accepted that this information is not relevant when forming the opinion under Clause 5(1)(b) of SEPP ARH.
- Lander & Rogers consider that cl5(1)(b) of SEPP ARH is to be applied having regard to the objectives of the relevant zones. However, there is no reference to this in cl5(1)(b).

- Accordingly, it is Council's view that it is the permitted uses that are relevant not the combined operation of permitted uses and associated zone objectives.
- The development which is the subject of this development application is neither expressly permissible nor expressly prohibited in the named R2 Zone, but is prohibited in the local 2(a) zone under BLEP 2001 as it is development for the purpose of a residential flat building.
- In the R2 Zone there may be residential flat buildings.
- In the local zone, residential flat buildings are prohibited form of development.
- Accordingly, it is Council's position that the zones are not equivalent.