

## SYDNEY EAST JOINT REGIONAL PLANNING PANEL

Meeting held at Christies Conference Centre on Thursday 4 December 2014 at 3:30 pm

Panel Members: John Roseth (chair), David Furlong, Sue Francis, Ben Keneally  
and George Glinatsis

Apologies: None - Declarations of Interest: None

### Determination and Statement of Reasons

**2012SYE117 – Botany Bay - 12/230 - Construction of a 12 storey (238 room) hotel with ancillary facilities, retail space, basement carparking and associated landscaping - 210 O'Riordan Street, Mascot as described in Schedule 1.**

**Date of determination:** 24 September 2014

#### **Decision:**

The panel determined to refuse the development application as described in Schedule A pursuant to section 80 of the *Environmental Planning and Assessment Act 1979*.

#### **Panel consideration:**

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and the matters observed at site inspections listed at item 8 in Schedule 1.

#### **Reasons for the panel decision:**

- 1) The Panel has considered the supplementary planning report and the submissions made during the public meeting; however, it has not been persuaded to change the conclusion it reached at the previous meeting on 24 September 2014. This conclusion was that the proposal has two major and determinative shortcomings. These are: (a) the proposal isolates the site to its east, 131 Baxter Road; and (b) that the variation of the FSR to 6.6:1 (from a permissible FSR of 1.5:1 under the previous LEP and an FSR of 3:1 under the current and recently made LEP) is not justified.
- 2) As concerns the issue of isolating the adjoining site, the Panel does not accept that the adjoining site of 430 square metres is not an isolated site, ie that it is capable of reasonable development in the context of the zoning and planning controls that apply to it and the scale of new development around it. The Panel notes that it has not been presented with a single offer from the applicant to the owner of the adjoining site. The Panel understands an offer to be one written on paper, of reasonably recent date, signed by the applicant or its representative, sent by registered post and supported by an independent valuation, also of reasonably recent date. The Panel is astonished that the applicant has not availed itself of the opportunity to provide this offer in the period between the first and second public meetings, a period of 10 weeks.
- 3) As concerns the grounds for the SEPP 1 Objection to vary the FSR control, the Panel believes that many of the reasons put forward by the applicant are irrelevant. Thus, the Panel cannot take into account the economic viability of the hotel project, nor the high cost of building on this site. Moreover, the fact that the building is well designed, as observed by the council's Design Review Panel, is not a reason for additional floor space.
- 4) In its decision of 24 September 2014, the Panel indicated that it would accept a variation of the FSR standard such that the GFA not devoted to parking in the current application is similar to the GFA not devoted to parking in the application approved in 2009 for this site. The Panel based this decision on the acceptance that the previous approval on the site should be considered a circumstance of the case, irrespective of whether the previous approval was current or not.
- 5) The practical effect of the acceptance of the above variation to the FSR would be an FSR of about 5.2:1. In the Panel's opinion, this is a generous variation and a very high FSR. If the

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applicant finds that it cannot build an economically viable hotel at the FSR of 5.2:1, then the likely reason is that the site is too small for a large hotel.


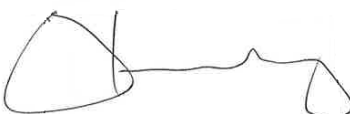



6) In summary, the two principal reasons for refusal are:

- The proposed FSR of 6.6:1 is excessive in relation to bulk and scale of the resulting development and represents an overdevelopment of the site. The SEPP 1 Objection relating to the requested variation is not well founded.
- The proposal, if approved, would result in 131 Baxter Street being “isolated”, while inadequate attempts have been made by the applicant to avoid this situation. Specifically no recent valuation has been obtained and no formal written offer has been made pursuant to that valuation and therefore no rejection of that offer could occur.

1.

**Conditions:** Not applicable

### Panel members:

 <b>John Roseth (chair)</b>	 <b>David Furlong</b>	 <b>Sue Francis</b>
 <b>Ben Keneally</b>	 <b>George Glinatsis</b>	

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### SCHEDULE 1

1	<b>JRPP Reference – LGA- Council Reference:</b> 2012SYE117 – Botany Bay - 12/230
2	<b>Proposed development:</b> Construction of a 12 storey (238 room) hotel with ancillary facilities, retail space, basement carparking and associated landscaping
3	<b>Street address:</b> 210 O'Riordan Street, Mascot
4	<b>Applicant:</b> Michael Neustein
5	<b>Type of Regional development:</b> Capital Investment Value > \$20M
6	<b>Relevant mandatory considerations</b> <ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979 – Part 4, Division 5 – Special Procedures for integrated Development and Environmental Planning and Assessment Regulations 2000 – Part 6, Division 3 – Integrated Development</li> <li>• SEPP 55 – Remediation of Land</li> <li>• SEPP (Infrastructure) 2007</li> <li>• SEPP Policy No 1 – Development Standards</li> <li>• Botany Bay LEP 2013</li> <li>• Botany DCP 2013</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality.</li> <li>• The suitability of the site for the development.</li> <li>• Any submissions made in accordance with the EPA Act or EPA Regulation.</li> <li>• The public interest.</li> </ul>
7	<b>Material considered by the panel:</b> Council Assessment Report dated: 12 September 2014 Written submissions during public exhibition: 4 Verbal submissions at the panel meeting on 24 September 2014: Against- Jacqueline Boyd, Ronald Boyd and James McGhee; On behalf of the applicant- Spiro Isak and Michael Neustein Supplementary Council Assessment Report dated 7 November 2014 Verbal submissions at the panel meeting on 4 December 2014: Against- Ronald Boyd, Jacqueline Boyd, Vicky Boyd, Dulcie Boyd, Kerry Boyd, Matthew Weetman and James McGhee; On behalf of the applicant- John Robson and Michael Neustein
8	<b>Meetings and site inspections by the panel:</b> Briefing Meeting 16 January 2013, public meeting on 24 September 2014
9	<b>Council recommendation:</b> Approval
10	<b>Draft conditions:</b> Attached to council assessment report dated 12 September 2014