

MEMORANDUM

TO : Amy Suta - Senior Development Officer
FROM : Jaime Hogan – Urban Designer
CC : Cathy McMahon – Principal Planner
FILE NO. : DA13/208
DATE : 24 April 2015
SUBJECT : 52-54 Pemberton Street, Botany (Lot 1-5 in DP 979152, Lots 100 and 101 in DP 867427; and Lot 51 in DP 15704)

Background

The subject site is located at 52-54 Pemberton Street, Botany (Lot 1-5 in DP 979152, Lots 100 and 101 in DP 867427; and Lot 51 in DP 15704). The application comprises the following:

- Excavation and site preparation works;
- Construction of four residential flat buildings, comprising 438 dwellings;
- Construction of a one level basement comprising 777 car spaces, loading facilities and residential storage;
- Landscaping works including the construction of:
 - A 3200sqm public park;
 - An east-west and north-south landscaped pedestrian through site link;
 - Communal and private open space within and around the buildings; and
- Stratum and Torrens Title subdivision.

Site Character

The subject site is an irregular shape lot with a western frontage length to Pemberton Street of 175m (approx); an eastern boundary length to Wilson Street of 190m (approx.); a northern boundary to Warrana Street of 47m (approx.); and vehicular access is also available from Kurnell Street. The site has an area of 31,079.5m². The site has a gentle slope from the northeast to southwest. The subject site adjoins Park Grove site / New Street 1.

The site is located on Class 4 – Acid Sulfate Land.

Part of the site is located within 20-25 ANEF contour.

The site is subject to road widening and impact by flooding.

History of the Development Application

A Stage 1 Masterplan DA for the subject site was originally submitted 11 October 2013 by Newtown Dyers and Bleachers Pty Ltd. Council's assessment of the DA recommended refusal, and on 18 June 2014 the JRPP resolved to defer the consideration of the DA pending submission of amended plans addressing the specific items in Council's assessment report.

At the same time, Australand purchased the site, and took over the responsibility of the DA.

Australand proceeded to make changes to address the issues in Council's report. Following public exhibition of the plans, Council prepared a revised assessment, recommending approval subject to deferred commencement conditions that required a number of design changes.

The amended design was considered by the JRPP on the 20 January 2015 who resolved that the application be deferred again subject to further modifications.

The key changes between the scheme considered by the JRPP in January 2015 and the current submission are as follows:

- Full compliance with the FSR development standards;
- Conversion of Building A and Building B West along Pemberton Street from 4 storey RFBs to a 3 storey terrace style typology;
- Setting back and reducing the height of the taller building elements at the end of Building B North and Building D North along the new Public Park and East West Pedestrian Link;
- Provision of a 333sqm commercial tenancy on Pemberton Street;
- Provision of a break in Building B East and Building D West; and
- Conversion of Building E South and West from terraces to a 5 storey RFB.

These changes have allowed for the 7 and 8 storey buildings which are located in the centre of the site to remain, transferring the height from the fringe of the site to the centre. These heights have consistently been supported by Council and JRPP to improve the planning outcome for the site. The main bulk has also been set back from streets and the public pedestrian through-site links.

The submitted application is no longer a staged development application under section 83B of the EP&A Act. The subject DA represents 2 years of detailed design development with Council to address the local community's concerns.

Australand lodged a 'Demolition DA' (DA14/239) which is currently under assessment. The subject DA (DA13/208) does not seek approval for this.

Botany Bay Local Environmental Plan 2013 (BBLEP)

Zoning

The site comprises B4 – Mixed Use, R2 – Low Density Residential and R3 – Medium Density Residential zone under the Botany Bay Local Environmental Plan 2013.

Residential flat building is permissible within the R2 – Low Density Residential, R3 – Medium Density Residential and B4 Mixed Use zones.

Building Height

Lots 1-5 in DP 979152 and Lots 100 and 101 in DP 867427 have a maximum building height of

10m.

Lot 51 in DP 15704 has a maximum building height of 8.5m.

Clause 4.3(2A) of the BBLEP2013 is applicable to the R3 zone of Lots 100 and 101 of DP 867427, hence this section of the site has a permissible height of 22m.

The proposed buildings are as follows:

Building	Height	Zone	Compliance
Building A	Terraces 10m	B4	Complies
Building B	Terraces 12.4m	B4	Does not comply
	RFB 28.6m	R3	Does not comply
Building D	Terraces 12.1m	R3	Complies
	RFB 25.5m	R3	Does not comply
Building E	Terraces 11.5m	R3	Complies
	RFB 18.7m	R3	Complies

The applicant requests a variation to the development standard for height of buildings pursuant to Clause 4.6 of the LEP.

Note: Building height is defined as the vertical distance between ground level (existing) and the highest point of the building, including **plant and lift overruns**, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

FSR

Lots 1-5 in DP 979152; Lots 100 and 101 in DP 867427 and Lot 51 in DP 15704 have a maximum floor space ratio of 1:1 (i.e. 31,079.5m²).

Clause 4.4A of the BBLEP 2013 is applicable to the B4 zone, and Clause 4.4B(3) is applicable to the R3 zone.

The application complies as follows:

Zone	Proposed FSR	Permissible FSR	Compliance
B4	0.958:1	1:1	Complies
R3	1.554:1	1:65	Complies
Total	1.377:1		Complies

Clause 6.1 (Acid Sulfate Soils)

The site is located on Class 4 – Acid Sulfate Land. Hence Clause 6.14 (Acid Sulfate Soils) is applicable to the development application.

Clause 6.2 (Earthworks)

Excavation is required for the proposal. Hence Clause 6.2 is applicable to the development application.

Clause 6.3 (Stormwater management)

The clause is applicable to the DA. The site is also flood affected and the stormwater design is required to consider the flood affectation of the site.

Clause 6.8 (Airspace operations)

The building envelopes exceed 15.24m. Hence, the proposal should be referred to SACL for comments.

Clause 6.9 (Development in areas subject to aircraft noise)

Part of the site is located within the 20-25 ANEF contour. Hence, Clause 6.9 is applicable to the development application.

Other Strategic Documents

A Plan for Growing Sydney

A *Plan for Growing Sydney* establishes a long-term planning framework to manage Sydney's growth in a sustainable manner and strengthen its economic development whilst enhancing the unique lifestyle, heritage and environment of Sydney.

The development application is consistent with the following objectives and actions:

Direction 2.1: Accelerate housing supply across Sydney

- **Action 2.1.1:** Accelerate housing supply and local housing choices.
- **Action 2.1.2:** Accelerate new housing in designated infill areas (established urban areas) through the priority precincts and urbangrowth nsw programs.

The subject site is located within the "Global Economic Corridor".

Draft East Subregional Strategy

The draft *East Subregional Strategy* is an intermediate step in translating the Metropolitan Plan at a local level and acts as a broad framework for the long-term development of the area, guiding government investment and linking local and state planning issues.

The development application is consistent with the following objectives and actions:

- **A1.9** – Facilitate the use of old industrial areas.
- **A3.2** – Increase integration of employment and housing markets
- **C1.3** – Plan for increased housing capacity targets in existing areas.
- **C2.1** – Focus residential development around centres, town centres, villages and neighbourhood centres.
- **C2.1.1** – East councils to ensure the location of new dwellings maintains the subregion's performance against the target for the State Plan Priority E5.
- **C2.3** – Provide a mix of housing.
- **E3.1** – Contain Sydney's urban footprint.

The subject site is located within the "Port Botany & Environs Specialised Centre".

Botany Bay Planning Strategy 2031

The *Botany Bay Planning Strategy 2031* (the Strategy) establishes a framework for growth and development for the Botany Bay Local Government Area and addresses the draft East Subregional Strategy dwelling and job targets. The Strategy also provides the foundation for the development of the *Botany Bay Local Environmental Plan 2013*.

The following objectives and actions are applicable to the development application:

- **Objectives 1.2** – Minimise residential development in locations heavily affected by aircraft and traffic noise or other environmental impacts.
- **Objective 1.3** – Protect the valued characteristics of Botany Bay's centres and suburbs and minimise the impacts from industrial areas and activities.
- **Objective 1.5** – Provide a greater range of housing types.

The subject site is located within Area 3: Botany and Banksmeadow.

Other Consideration

Botany Bay Development Control Plan 2013

Part 3A – Car Parking

The SEE states that the parking complies with the DCP, in accordance with Part 3A of the DCP.

Part 3C – Access & Mobility

The SEE states that the proposal meets the current controls for adaptable apartments.

Part 4C – Residential Flat Buildings

Dwelling Mix

Part 4C – Residential Flat Buildings prescribes that:

"The combined total number of one-bedroom and studio dwellings shall not exceed 25% of the total number of dwellings within any single site area in residential zones."

The number of studio and 1 bedroom dwellings totals 37% of the total number of dwellings, and as such is not in accordance with the BBDCP controls for dwelling mix.

Apartment Sizes

Apartment sizes within the proposal vary between the RFDC 'Rules of Thumb' and the BBDCP controls for apartment sizes.

However as the recently ruled case of *Botany Bay City Council v Botany Development Pty Ltd (No 2) [2015] NSWLEC 55* found, the apartment sizes for 'recommended internal

and external areas' referred to in cl 30A(1)(b) of SEPP 65 are those in the table on page 69 of the RFDC (and not the 'Rules of Thumb').

This application was submitted prior to this ruling; however the DA planner should still consider its findings.

Part 9C

Part 9C (Wilson Pemberton Street Precinct) of the Development Control Plan 2013 outlines the development controls to guide future developments within the Wilson-Pemberton Street Precinct.

The main vision of the Wilson-Pemberton Street Precinct is as follows:

"Predominately residential neighborhood that integrates with the suburb of Botany and Banksmeadow. It will be a place where people can live, work and play in a safe and comfortable environment.

The area will offer diversity in housing types of a high design standard, and good quality communal open spaces and local public open spaces to meet the needs of the Botany Bay local community.

The Precinct will help to support and improve the Banksmeadow village shops along Botany Road by increasing the population who can use these services.

The road and pedestrian system through the Precinct is intended to act as structuring element that will integrate the development with the surrounding areas and the existing street network."

The Planning Framework Principles are as follows:

- **P1** – To provide for adequate and legible vehicular, pedestrian and cycle circulation through and within the precinct;
- **P2** – To provide high quality public open spaces which are accessible to new and existing residents;
- **P3** – To achieve an integrated development and good quality design; and
- **P4** – To encourage a live and work environment in the west of the Precinct.

Please refer to **9C.2 – Vision Statement** and **9C.2.2 – Planning Framework Principles** for further information. Detail planning controls for Wilson Pemberton Street Precinct can be found in **Section 9C.3 to 9C.5** of the BBDCP 2013.

Planning Proposals

Amendment with regard to Residential Bonus Clauses

At its meeting (11 December 2013), Council resolved to prepare a Planning Proposal in accordance with the Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 200 to amend the Botany Bay Local Environmental Plan 2013.

The Planning Proposal seeks the following amendments:

1. Insertion of new Clause 4.4C

The amendment will apply to development on sites that have an area of 2000m² or over, which are zoned R3 Medium Density Residential or R4 High Density Residential. Currently, these sites are able to obtain bonus building height and floor space ratio under Clause 4.3(2A) and 4.4B(3) of the BBLEP 2013. This Planning Proposal is to introduce a new Clause 4.4C – Building Form and Scale into the BBLEP 2013 to ensure that development applications which utilise Clauses 4.3(2A) and 4.4B take into account the surrounding development.

2. Insertion of new Clause 4.6 (d) and (e)

The amendment also seeks to restrict the application for Clause 4.6 of the BBLEP 2013 for sites that have an area of 2000m² or over, which are zoned R3 or R4. Presently, Clause 4.6 of the BBLEP 2013 allows that development standards of building height and floor space ratio to be varied from that set out in the BBLEP 2013. Clause 4.6(d) and (e) will ensure that development applications that have the benefit of Clauses 4.3(2A) and/or 4.4B(3) of the BBLEP 2013 (i.e. bonus provision) do not seek further variation to the development standards, above that permitted on the FSR Map and Height of Building Map

As the application utilises both Clause 4.3(2A) and 4.4B(3), the applicant seeks for Council to include a savings provision with the Planning Proposal to preserve the rights of the development that existed at the time of lodgement. However the proposal is largely consistent with the new controls sought by the planning proposal.

Conclusion

It is understood that the applicant has worked with at length with Council to come to a design solution which is both appropriate for the site, and consistent with Council's controls.

The proposed development aligns with Part 9A.2 – Vision Statement and Part 9A.2.2 – Planning Framework Principles of the BBDCP and is largely consistent with the controls.

The major non-compliances in the proposal concern dwelling mix, dwelling size, and building height.

The proposal has created an urban situation which is integrated with the context, including stepping down the bulk and scale of the building to meet surrounding lower density development at Wilson Street, Pemberton Street and Kurnell Street. The bulk of the development has been moved to the centre of the site, away from roads and pedestrian links, so that the most adverse environmental impacts have been mitigated within the site, and allowed for a higher level of amenity for residents both within and around the development.

As the height non-compliance has seemingly led to an improved urban outcome for existing neighbouring residents and the larger community, it is considered acceptable in this instance that only two towers effectively do not comply. These non-compliances are also unlikely to impact upon the streetscape of Wilson Street or Pemberton Street, as lower density terrace style housing is proposed at the existing residential interface. The height non-compliance is also supported as the proposal has created appropriate mediation between the development to the south (Park Grove) where the number of storeys is 7 or 8. Hence it is consistent in scale with the existing surrounding developments to both the south and the east, west and north.

The non-compliances of dwelling mix and size, whilst inconsistent with the controls of the BBDCP, are consistent with the objectives of the BBDCP and the 'Rules of Thumb' of the RFDC, in that the

proposal provides a range of dwelling choices and styles, accommodating a wide variety of housing needs.

As a whole the application provides a well-considered proposal for the site which is consistent with the original master plan for the Wilson-Pemberton Street Precinct in terms of siting, and appropriately meets all surrounding developments with regards to height and bulk.

Architecturally the proposal provides a departure from the existing style of the Park Grove development and creates a strong sense of place within the development and at the existing interface. The non-compliances are supported in this case to achieve a better urban outcome which will provide a higher-quality development in terms of urban amenity and architectural design.

Note: A detailed assessment of the development application has not been undertaken. The development application should be assessed in accordance with the BBLEP 2013, BBDCP 2013 and other relevant policies and guidelines.

King regards

Jaime Hogan

24.4.15

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