

**SUPPLEMENTARY REPORT - JOINT REGIONAL PLANNING PANEL
(Sydney East Region)**

JRPP No	2013SYE094
DA Number	13(208)
Local Government Area	City of Botany Bay
Proposed Development	<p>Joint Regional Planning Panel (JRPP) and Integrated Development Application for the redevelopment of the site for residential purposes, comprising:</p> <ul style="list-style-type: none"> - excavation and site preparation works and construction of the site for residential purposes; - Four (4) buildings containing a maximum Gross Floor Area (GFA) of 42,804sqm and Floor Space Ratio (FSR) of 0.96:1 in the B4 zone and 1.55:1 in the R3 zone, comprising a total of 438 apartments; - Building heights between three (3) storeys to eight (8) storeys; basement and ground level parking; - 3,000sqm of publicly accessible open space; - pedestrian and cycle through-site links; and new vehicular access from Pemberton Street. - The proposal also includes dedication of land and stratum and Torrens Title subdivision. <p>A letter of offer to enter into a Planning Agreement has under S93F of the Environmental Planning and Assessment Act, 1979 accompanies the development application.</p>
Street Address	52-54 Pemberton Street, Botany NSW 2019
Applicant/Owner	<p>Applicant - Australand Property Group Pty Ltd</p> <p>Owner - Newtown Dyers and Bleachers Pty Ltd</p>
Number of Submissions	<p><i>First Round</i> – 23 October 2013 to 29 November 2013 – Nine (9) letters of objection and two form letters of objection.</p> <p><i>Second Round</i> – 15 October 2014 to 29 October 2014 – Forty three (43) submissions of objection, with thirty four (34) of these submissions being in form letters of objection.</p> <p><i>Third Round</i> - 22 April 2015 to 22 May 2015. Three (3) submissions of objection were received plus nine late submissions received up until Friday 10 July 2015.</p>
Regional Development Criteria (Schedule 4A of the Act)	<p>The development application is referred to the JRPP pursuant to Clause 3 of Schedule 4A of the Act as the Capital Investment Value (CIV) of the proposal is over \$20 million.</p> <p>The CIV of original development \$181,294,482.00.</p> <p>The CIV of amended application \$138,554,483.00.</p>
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • Environmental Planning & Assessment Act 1979, Part 4 – Development Assessment

	<ul style="list-style-type: none"> • Environmental Planning & Assessment Regulation 2000, Part 6 – Procedures relating to development applications • State Environmental Planning Policy No. 55 – Contaminated Land • State Environmental Planning Policy 2004 (BASIX); • State Environmental Planning Policy No. 65 – Design Quality of Residential Flat buildings • Botany Bay Local Environmental Plan 2013 • Draft amendment to Botany Bay Local Environmental Plan 2013 • Botany Development Control Plan 2013
List all documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> • Statement of Environmental Effects – JBA Urban Planning • Clause 4.6 Exception – JBA Urban Planning • Architectural Plans & Design Report – Group GSA • Landscape Plans – Tract Landscape Architects • Traffic Impact Assessment – Ason Group • Phase 1 and 2 Environmental Site Investigation - WSP • Geotechnical Report – Douglas Partners • Access Report – Brentnall Technical Solutions • VPA Letter of Offer – Australand • Acoustic Report – Acoustic Logic • Waste Management Plan - GHD • Housing Diversity Assessment – JBA Urban Planning • Remediation Action Plan – DLA Environmental • Survey – Dunlop Thorpe • Pedestrian Wind Environment Statement – Windtech • Stormwater Management and Flooding Analysis Report – Mott MacDonald
Recommendation	Refusal
Report by	Heather Warton, Director City Planning & Environment

PURPOSE OF REPORT

This report is in response to a submission made to the Panel by JBA Urban Development Services, on behalf of Australand on Friday 10 July. Council was requested to advise whether the submission was accepted (it was) and to respond.

SUMMARY OF COUNCIL'S POSITION

- The Panel's previous decision was based upon a Stage 1 application, and not the current application before the Panel. Therefore, whilst the Panel's decision on the original DA should be considered, the Panel is not bound by that decision.
- The application is now a Stage 2 application and issues which were not apparent in the Stage 1 application are now more determinative. These include the scale of buildings, resultant heights, extent of height variation and issues with apartment sizes.

- Council had recommended that any approval of a Stage 1 application (Deferred Commencement approval) retain compliance with certain controls, including the height within the B4 zone and apartment sizes.

ISSUES RAISED IN THE APPLICANT'S LETTER DATED 10 JULY 2015

Building Height

- The 5 storey building with a height variation of 9.5 metres within the B4 zone is excessive and results in an incompatible streetscape presentation along Pemberton Street, when compared with the proposed 3 storey building within the B4 zone, and the adjoining northern portion of 42-44 Pemberton Street which is also 3 storeys. The variation is not considered to retain compliance with the objectives of the standard and is not supported. It does not comply with point 1(a) of the Panel's recommendation.
- The height variation for the 7 and 8 storey buildings within the R3 zone are not supported, as they are inconsistent with PP 2/2013 in terms of the removal of Clause 4.6 with regard to height variations. The site already benefits from the bonus allowing up to 22 metres.
- Council's officers did support variation of heights to 8 storeys in the previous version of the application which was for a Stage 1 DA only. However, when that report was written, there was no Planning Proposals afoot with any formal status under the Act, as there is now.
- With regards to the comments from Council's strategic team, these were internal comments only and were placed in error on Council's web site. They have no formal status and do not represent any Council position. Council's Assessment staff have undertaken their own assessment.
- There is no planning reason why compliance is unreasonable or unnecessary and cannot be achieved. The site is a large site that is capable of accommodating a compliant FSR and height without difficulty.

Effect of Planning Proposals

- At the time of writing the assessment report for the Stage 1 DA, the planning proposal to add urban design clauses and remove use of clause 4.6 (PP 2/2013) had not been progressed to exhibition, and the later proposal to delete the bonus clauses altogether (PP 1/2015) as only progressed to seek Gateway in February 2015. The policy framework has now changed.
- Planning Proposal 1/2015 for the removal of the bonus clauses may soon receive a Gateway determination. Council has had several meeting with the Department to address their issues with this PP. It would not be consistent with this policy approach for Council to support a development that exceeds the bonus height, when Council is seeking as a minimum to keep heights to within the LEP controls and ideally to delete the bonus clause altogether. It is noted that the Panel has supported the review of the bonus provisions.
- It is not known if the Department's position on whether or not there will be a saving clauses placed in the LEP has been communicated to the applicant. Council's did not request that a savings clause be inserted into the LEP for the subject provisions.

Even if a savings clause was to be applied, Council's position on this DA does not change.

Apartment Sizes

- Council previously recommended 'deferred commencement consent' to the Stage 1 application subject to a condition requiring that any future Stage 2 development must comply with Council's unit sizes and unit mix. The applicant has not complied with this recommendation, and therefore the application is inconsistent with the previous recommendation. Council would not have recommended 'deferred commencement approval', if it was aware that the applicant was not going to comply.
- Council's own expert advice from SGS Economics supports the apartment mix under the BB DCP 2013, and therefore, no variation is considered appropriate. The SGS report indicates that there will be supply of unit types to suit the incoming population of Botany Bay, if the unit mix in the DCP is maintained.
- The proposed apartment sizes represent a substantial breach from the requirements under the BB DCP 2013 and importantly, a breach from the relevant Table in the applicable version of SEPP 65 and the Residential Flat Design Code (RFDC) that applies. It is open to the Panel to accept Council's argument that the amenity of the unit sizes as proposed is not appropriate for this location (compared to say Mascot, where a different demographic may be relevant) and the Panel may refuse the development based on non-compliance with the RFDC unit sizes.
- There have been no applications within the Botany Bay Council area that have been approved with non-compliant unit sizes, and certainly none have been approved with units less than the Table in the RFDC. Approval would set an undesirable precedent.

Non-compliance with DCP visitor car parking

- Council notes that the applicant indicates it can expand the basement to increase car parking to comply with the required 37 additional visitor spaces.
 - Further detail would be required to confirm that the additional car parking can be accommodated on site without reducing deep soil and landscaping. This will also require a traffic consultant assessment to determine compliant turning circles and vehicle movements.
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