

## **RECORD OF DECISION THE SYDNEY EAST JOINT REGIONAL PLANNING PANEL**

### **Members:**

John Roseth	Chair
Sue Francis	Member
George Glinatsis	Member

**Apology:** Peter Fitzgerald

The Regional Panel considered the following application via emails and this is a record of the process and decision.

### **Business Item**

***ITEM 1 – 2014SYE013 – Botany Bay - 13/278 - Construction of Buildings A and C, being six storey residential flat buildings containing 65 residential apartments and 8 soho units fronting Pemberton Street - 42-44 Pemberton Street, Botany***

At the public meeting on 16 July 2014, the Panel deferred its decision on this application, pending the submission of amended drawings and a revised justification of the variation of the height and FSR standard under cl 4.6 of the Botany LEP 2013. The Panel resolved to determine the application by electronic means.

Following receipt of the amended drawings and a revised justification under cl 4.6, the planning assessment officer submitted a supplementary report to the Panel, which found that the justification of the variation was well founded and recommended approval of the application.

The Panel Chair, John Roseth accepted the recommendation and indicated that he would vote for approving the application. Two of the members, Sue Francis and George Glinatsis, did not accept the recommendation and indicated their intention to refuse the application in its present form. Sue Francis indicated, however, that, subject to certain amendments, she would vote to approve the application. George Glinatsis indicated a similar intention, except that, in his case, the amendments were so substantial that in practice they amounted to refusal. The fourth member of the Panel, Peter Fitzgerald, was overseas and could not be contacted.

As three of the four Panel members had different positions, without a change of position the result would be refusal. In the event, the Panel Chair adopted a secondary position, identical with that of Sue Francis. Since the Chair has a casting vote, this position now becomes the majority position of the Panel and the decision can be made without knowledge of Peter Fitzgerald's vote, which would not change the result.

The reason for the majority decision not to accept the recommendation of the

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supplementary report is as follows.

The majority has read carefully the original assessment report, the proposed plans (as amended), the amended cl 4.6 variations to height and FSR and the supplementary assessment report of staff.

#### *4.4 Floor space ratio*

*(1) The objectives of this clause are as follows:*

- (a) to establish standards for the maximum development density and intensity of land use,*
- (b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*
- (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
- (d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,*
- (e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- (f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- (g) to facilitate development that contributes to the economic growth of Botany Bay*

The majority notes that the two stages of the development seek to adjust and re-allocate the FSR around the site (exceeding in some areas but being under the max permissible FSR in other parts of the site). The majority notes that the FSR exceeds the permissible by 0.44:1 on the B4 part of the site (1:1 permissible). Even though the argument for the variation to the standard relates to a re-allocation of the GFA over two sites, it is noted that the FSR still exceeds the amalgamated permissible GFA by some 9.35%.

The applicant has included the following public benefit arguments:

- “The minor variation is offset by the substantial public benefits including: Dedication of 474m<sup>2</sup> of land to Council for the purposes of widening of Pemberton Street.
  - Half road reconstruction of Pemberton Street including construction of new footpath, landscaped verge, kerb and gutter.
  - Relocation of existing in-ground services and construction of new storm water drainage system including inlet pits. The design is to be approved by City of Botany Bay.
  - Dedication of 354m<sup>2</sup> of land in fee simple to Council for through site link.
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- Construction of through site link including paving, landscaping, drainage and lighting. The design is to be approved by City of Botany Bay.
- Dedication of 77m<sup>2</sup> right of way or lot in stratum to Council for through site link.
- Construction of through site link including paving, drainage and lighting. The design is to be approved by City of Botany Bay.”

While the majority does not accept the road upgrades or the through-site link improvements to be anything other than what would normally be required of a DA of this kind, it does accept that the land dedications to Council are of some public benefit. However, the majority notes that the additional FSR over the total site is arises out of the additional height on the B4 land discussed below.

#### *4.3 Height of buildings*

*(1) The objectives of this clause are as follows:*

- (a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,*
- (b) to ensure that taller buildings are appropriately located,*
- (c) to ensure that building height is consistent with the desired future character of an area,*
- (d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- (e) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities*

In relation to the height variation, which results in the height limit of 10m being exceeded by a maximum of 11.6m, effectively double the permissible height standard, the majority is not satisfied that this magnitude of variation under cl 4.6 is justified.

The variation is not required to satisfy objective (a) below, nor specifically objective (b) which suggest that a lower height is anticipated on the street to reduce the scale of building fronting Pemberton Street.

In the applicant’s justification for cl 4.6 variation, it is suggested that:

*“The development locates taller building forms than envisaged by the controls in this location as the proposed building sits between the B7 Business Park zoning and the R3 Medium Density zoning. Due to this relationship, it is appropriate to position taller building forms to the western edge of the site providing a visual and acoustic buffer to the communal open space.*

*2.13 The development of the Wilson and Pemberton Street*

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*precinct has evolved with lower scale building forms by the incorporation townhouses along the eastern edge of the precinct addressing the R2 Low Density Residential zone increasing in height heading west across the precinct. The incorporation of higher building forms enables the site to realise its full floor space and density potential. The development provides a cohesive approach to height distribution, locating the taller building forms at the opposite side of the precinct, well removed from the R2 Low Density zoning and the townhouse developments along Wilson Street. The overall height transition as dictated by the height controls is achieved across the precinct.*

*2.14 The location of taller buildings in this location has no adverse impact by way of overshadowing,....”*

However, the increased height at Pemberton Street, if the applicant's assertion is correct, would be transferring the visual and acoustic impact of the adjacent industrial zone to the private residences rather than a communal space. The majority considers the private amenity of individual residences to outweigh that of a communal space. In the assessment report, however, it is suggested that there is no acoustic impact from adjacent industrial uses, rather it is aircraft noise that dominates; thus there is no need for the additional height argued by the applicant.

The applicant also suggests that, without the additional height, the applicant cannot achieve the maximum permissible FSR on the site (being both Stage 1 and 2). However, the applicant accepts that the proposed FSR exceeds the maximum standard by 'less than 10%')

*“Furthermore, the increased building height on this section of the site enables the site to realise its development density as determined by the FSR control. The development of stage 1 of the site (Buildings D, E, F) was approved below the permitted density established by the controls. Stage 1, which falls within the R3 zone, has a potential to achieve a FSR of 1.65:1. The approved GFA of Stage 1 was well below the maximum permitted FSR at 1.07:1. Increased building heights, appropriately located, enable the entire site to realise its maximum development density. (It is noted that a minor variation of less than 10% is sought to the FSR control).....’*

More specifically, however, the majority cannot accept that the proposal at double the height is 'consistent with the desired future character...' required to satisfy objective (d). The majority accepts that, to the north, the development exceeds the height by only approx. 3.6m but this too is greater by one storey than that anticipated in the zone and sets a precedent for future development, given that this is the first development fronting Pemberton street in respect of a brand new Environmental Planning Instrument establishing the desired future character for development fronting this street. The applicant accepts that Council has not abandoned its height standard in this area and the majority sees no reason why it cannot be achieved or the breach lessened so as to endure the maintenance of the objectives of the standard.

**Decision of the majority of the Panel** (John Roseth + casting vote + Sue Francis)  
Based on the above reasons for rejecting the current application, the majority of the

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Panel would be willing to approve a proposal which was amended such that the height of Block A was reduced to the required 10m (three storeys) height limit, so that, as it adjoins the northern boundary, it satisfies the desired future character objective of the standard. Block C should also be reduced in height by two storeys from RL 25.80 (to lift overrun, RL 25.00 to parapet) to approximately RL 18.90; to a point approximating the position of the lift core, approximately 30m southwards. The remainder of Block C may remain at the height proposed, as it relates to the New Street, where it will provide a focus to that new corner.

If the applicant wishes to respond to the above amendments, the majority of the Panel requests that it submits amended plans by 3 October 2014. The majority of the Panel requests the planning assessment officer to indicate, within five days of receiving the amended plans, to the Panel whether the amended drawings respond to the above decision. Following receipt of the requested report, the majority of the Panel will determine the application by communicating by electronic means.

Endorsed by



Dr John Roseth  
Chair, Sydney East  
Joint Regional Planning Panel  
22 September 2014