

SYDNEY EAST JOINT REGIONAL PLANNING PANEL

Meeting held at Botany Town Hall on Thursday 20 November 2014 at 6:00 pm

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

Apologies: None - Declarations of Interest: None

Determination and Statement of Reasons

2014SYE036 - City of Botany Bay DA 14/40 [at 15-19 Edgehill Avenue, Botany] as described in Schedule 1.

Date of determination: 20 November 2014

Decision:

The panel determined by majority to approve the development application as described in Schedule 1 pursuant to section 80 of the *Environmental Planning and Assessment Act 1979*. John Roseth, Sue Francis and David Furlong formed the majority and Ben Keneally and Peter Fitzgerald formed the minority.

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 decision of the majority of the Panel

1. The principal reason for the majority decision is that the proposal complies with the major planning controls. In most cases an applicant has a reasonable expectation to be permitted to build to the permissible density. In this case the proposal whilst maximising the FSR did not maximise the height limit of 22m. The built form to all boundaries was less than allowed specifically to the streetscape and the dwellings houses to the west. The DCP controls with which the proposal does not comply are of lesser importance and would not justify the refusal of the application. In order to ensure that this proposal is of a scale that is more compatible with its surroundings, the density and specifically the height would have to be drastically reduced even lower than that which the applicant has already proposed. Minor tinkering with the design would achieve little benefit.
2. Given an acceptance of the permissible height and density, the design of the proposal has followed the suggestions of the council's Design Review Committee and has attempted to reduce the impact on single housing neighbours.
3. The majority of the Panel agrees with the minority that the controls applying to this site, in particular the bonus clause, are inappropriate for this site, because the bonus clause more than doubles the permissible height for large sites. The majority notes that the council has resolved, in December 2013, to amend the bonus clause in a way that it would not apply to this site. The majority notes that the law does not permit it to take into account this amendment because it has not been exhibited. The Panel requests the Department of Planning and Environment to expedite the Gateway Determination of this amendment so that it can be exhibited at the earliest possible time, thus preventing further proposals, which are out of scale with their surroundings.

Reasons for the decision of the minority of the panel:

1. The proposed height, while permissible under the LEP, is excessive when considered against the objectives of the LEP provisions relating to height (Clause 4.3(1) (b), (c), (d), (e) and when considered in light of the planning principles in *Seaside*. In particular it is considered that:
 - a. The building is not of appropriate height and scale in relation to existing character of the area;
 - b. The building height is not consistent with the desired future character of the area as demonstrated by the R2 zoning of the surrounding precinct
 - c. The building height will result in the loss of privacy and solar access on existing surrounding development;
 - d. The building height will be visually obtrusive when viewed from the adjoining nursing home site and Edgehill Avenue;
 - e. The building height adversely affects the streetscape and skyline when viewed from the street
 - f. The height is excessive at the transition between zones, especially given that the site is surrounded on three sides by R2 zoned land
2. The proposed FSR, while permitted under the LEP, is excessive when considered against the objectives of the LEP relating to FSR (Clause 4.4(1) (b), (c) and when considered against the planning principles in *Seaside*

- a. The proposal is not compatible with the bulk and scale of the existing and desired future character of the locality, which is a precinct of mixed low and small scale medium density dwellings to a maximum height of 4 storeys which has been zoned R2;
 - b. The proposal does not maintain an appropriate visual relationship with surrounding area which, due to its zoning, is not likely to undergo transformation and is a precinct of mixed low and small scale medium density dwellings to a maximum height of 4 storeys;
 - c. The FSR is excessive at the transition between zones

3. The minority panel notes that the LEP “bonus provisions” contained within the height and density controls state that applications on large sites “may exceed” the controls that would apply but “must not exceed” the stated amounts. The minority panel considers that the proper construction of this provision is that the degree of non-compliance with the basic controls for the zone should be considered in light of the objectives of the controls rather than granting the full bonus provisions as of right.

4. Further, the minority panel notes Council’s resolutions of 11 Dec 2013 to initiate a Gateway process to abolish the “Bonus” height clause for large sites, and its resolution of 26 Feb 2014 to exhibit an amendment to the DCP to restrict bonus heights within 30 -35 metres of a boundary with a low density zoning. While these are not formal considerations for assessment, these resolutions were made prior to the lodgement of the application and indicate Council’s dissatisfaction with the operation of the “bonus” clauses. The minority panel notes that had either of Council’s resolutions been part of the LEP or DCP, the application would not be compliant with those terms.

5. The proposed development does not comply with the following provisions of the Council’s DCP 2013:
 - a. Part 3A.3.1 – Car Park Design: The development does not provide an onsite service for waste collection and does not accommodate access for service vehicles - waste collection and servicing is proposed from Edgehill Avenue. Given the size of the development and the narrowness of Edgehill Avenue on site waste servicing is required;
 - b. Part 3A.3.4 – On site Loading and Unloading: The development does not provide at least 1 service bay on site for medium rigid vehicles;
 - c. Part 4C.2.2 – Local Character – Botany: The development is inconsistent with the existing and future character of Botany. The form of development to Edgehill Avenue is in the form of a residential flat building instead of a townhouse style dwelling form;
 - d. Part 4C.2.3 – Streetscape Presentation: The development is not compatible with the bulk and scale of adjoining development within the street and surrounding area;
 - e. Part 4C.2.4 – Height: The development does not respond to the character of the neighbourhood; height and bulk has not been distributed to ensure that there is no significant loss of amenity to adjacent sites;
 - f. Part 4C.2.4 – Height: The development has a significant height transition between the adjoining nursing home which is not in keeping with that development and adjoining development;
 - g. Part 4C.2.6 & Part 4C.7 – Site Coverage: The development has a site coverage of 50% whilst the controls permit a maximum of 40% which contributes to the overdevelopment of the site;
 - h. Part 4C.2.7 – Landscaped Area and Deep Soil Planting: The development provides less than the minimum landscaped area and deep soil landscaped area which contributes to the overdevelopment of the site;
 - i. Part 4C.2.8 – Private and Communal Open Space: The development provides less than the minimum communal open space which contributes to the overdevelopment of the site;
 - j. Part 4C.5.1 – Unit Mix: The development does not comply with the unit mix – providing a total of 38% studio and one bedroom apartments;
 - k. Part 4C.5.3 – Building Depth: The development exceeds the maximum building depth of 18m – providing 24m at one point;
 - l. Part 4C.5.8 – Solar Access: The development does not comply with the solar access requirements;

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- m. Part 4C.5.10 – Building separation: The development does not comply with the 12m building separation from the East Block to the nursing home;
- n. Part 4C.7 – Large Development Sites (2000m²): The development does not provide townhouses along the front street and a residential flat building to the rear. The development joins the townhouse form to the residential flat building form; and
- o. Part 8.4 – Botany Character Precinct: The development is not consistent with the character objectives relating to the form, massing, scale and streetscape, solar access and view controls for the Precinct.

6. The proposal is not suitable for the site which is surrounded by land zoned R2 Low Density Residential - Section 79C(1)(c) of the EP&A Act 1979;

7. The development is contrary to the public interest - Section 79C(1)(e) of the EP&A Act 1979.

Conditions: The development application was approved subject to the conditions in the council's supplementary report dated 20 November 2014.

Panel members:

 <p>John Roseth (chair)</p>	 <p>David Furlong</p>	 <p>Sue Francis</p>
 <p>Ben Keneally</p>	 <p>Peter Fitzgerald</p>	

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SCHEDULE 1

1	JRPP Reference – LGA- Council Reference: 2014SYE036 City of Botany Bay DA 14/40
2	<p>Proposed development: Integrated Development Application for the construction of a residential flat building at 15-19 Edgehill Avenue Botany, in the following manner:</p> <ul style="list-style-type: none"> • Demolition of all structures on site. • Site excavation and remediation. • Construction of three residential flat buildings as follows: <ul style="list-style-type: none"> ○ Three (3) storey building containing 9 townhouses. ○ Four (4) storey building containing 29 units. ○ Part three (3) and six (6) storey building containing 51 units. • Total of 89 units. • Total floor space ratio of 1.5:1 and a maximum building height of 20 metres. • Two basement parking levels to accommodate 162 vehicles.
3	Street address: 15-19 Edgehill Avenue, Botany
4	Applicant/Owner: National Project Consultants Pty Ltd / South Sydney Juniors Rugby League Club Ltd
5	Type of Regional development: Development with a Capital Investment Value of more than \$20M
6	<p>Relevant mandatory considerations</p> <ul style="list-style-type: none"> • Environmental Planning & Assessment Act 1979, Part 4 – Development Assessment • 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 • Botany Development Control Plan 2013 • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality. • The suitability of the site for the development. • Any submissions made in accordance with the EPA Act or EPA Regulation. • The public interest.
7	<p>Material considered by the panel:</p> <p>Council Assessment Report Dated: 7 November 2014</p> <p>Written submissions during first public exhibition: 15 individual submissions and 427 form letters</p> <p>Written submissions during second public exhibition: 5 individual submissions and 126 form letters</p> <p>Supplementary Council Assessment Report dated 18 November 2014</p> <p>Amended proposed Conditions of Consent forwarded by Council on 20 November 2014</p> <p>Verbal submissions at the panel meeting: Against- Melissa Darke; Edward Burke; Jo Jansyn; Tammy Wilson; Chris Wilson; Jack Macreadie; Sarah Drury; Darren Taliana; Anne Fenton; Mark Illich; Gerry Cunney; Beatriz Scattini and Gareth Cowan on behalf of Margaret Faunze; On behalf of the applicant- Craig Kelly</p>
8	Meetings and site inspections by the panel: Briefing Meeting on 15 May 2014; site inspections by John Roeth, David Furlong and Sue Francis on 20 November 2014.
9	Council recommendation: Approval
10	Draft conditions: Version of the Conditions of Consent forwarded by Council on 20 November 2014