



Dear Mr Chairman and Members of the Standing Committee on Environment and Public Affairs

Submission with regard to: Petition No 35 – Metro Central Joint Development Assessment Panel.

(NB: This complaint has not been taken to the Parliamentary Commissioner for Administrative Investigations.)

The decision of the Metro Central JDAP on 10 March 2014 to approve a high-density apartment block (three-storey, 84-dwelling, 6 housing-block long, unbroken at any point) on an R40-coded site at 94 Kitchener Road in Alfred Cove / Myaree, a low-density, R20-zoned suburb, has seriously rocked our community. We believe the decision was deeply flawed and makes a mockery of all relevant planning requirements, and their objective of “proper and orderly planning”. As the process proceeded, we also became concerned that our case was symptomatic of a broader, system-wide problem. The JDAP system consists of decision-making panels which are clearly unelected by, unrepresentative of, and unaccountable to the people. As such, we consider them fundamentally undemocratic. Their high level of autonomy and lack of transparency does nothing to engender public trust in the system.

The following facts about our case indicate to us that the JDAP system requires, at the very least, a major overhaul.

- In 2012, 94 Kitchener Rd was rezoned from R20 to R40. The City of Melville explicitly rejected the application from the developers to have it rezoned to R60/R80, stating that anything higher than R40 would seriously impact on the amenity of the area. The Local Planning Scheme’s Statement of Intent indicates the site is R40.
- The City of Melville’s Planning Office, in its Responsible Authority Report (RAR) to the JDAP in March 2014, recommended refusal of the application on the grounds that the building height was still more than two metres in excess of the 9 metre maximum imposed under the Scheme, and that the proposed plot ratio, at 1.28, was still more than double the maximum of 0.6 for the R40 zoning, as per Table 4 of the Residential Design Codes.
- At a Special Meeting on 24 February 2014, the City of Melville’s elected Councillors voted unanimously to support the RAR’s recommendation to refuse the proposal.
- During consultations in 2013, the Council had already received 111 letters from residents opposing the proposal, plus two petitions totalling more than 1000 signatures. These were all in protest against two earlier proposals, both of which were also non-compliant regarding height (13.5 metres) and plot ratio (1.359).
- Since March 2013, the community’s concerns have publically been represented by a Community Action Group, *Striker Balance!*, which presented at the initial JDAP meeting on 9 September 2013, and again on 10 March 2014. The arguments about excessive height and plot ratio were presented on both occasions, as were their impact on the amenity of the locality – traffic congestion, safety for children and eldercare residents, noise, visitor parking.
- At the first JDAP meeting on 9 September 2013, the JDAP unanimously refused the application.
- The developer, Tuscom, appealed the decision and the matter went into mediation through the State Administrative Tribunal (SAT). The community, in particular local residents and neighbours of the development site, are considered to be “not an interested party” by SAT, and so all further representation of the people’s views was completely shut out of this mediation process.
- After 6 months of behind-closed-doors mediation, the SAT referred the matter back to JDAP in February 2014. The “new” development presented to the community had not changed in its essential non-compliances – height and plot ratio – which are two key determinants of bulk and scale. Since the latest proposal was still grossly non-compliant in both areas, the City’s Planning Office advised that further consultation was not required.

- *Striker Balance!* again presented to JDAP on these issues, but the JDAP decided to exercise discretionary powers to bypass the usual planning requirements, AND Design Principle 6.1.1 of the R-Codes, which states: “Development of the building is at a bulk and scale indicated in the local planning scheme and is consistent with the existing or future desired built form of the locality”. As a result, the JDAP voted 4-1 in favour of the development proposal.
- In doing so, the JDAP overrode all the normal planning requirements (in both the Local Planning Scheme and the Residential Design Codes) not just for R40, but also those for R50, R60, R80, and, in the case of plot ratio, even R100. With only one other R code remaining (R160), in our view, that is not a variation; that is an obliteration, and we ask: Why?
- No explanation was given at the meeting, nor since provided in the meeting’s minutes. Why?
- *Striker Balance!* wrote in April 2014 to the Planning Minister, explaining our concerns and asking him to look into what had occurred and, in his capacity as Minister responsible for State Planning, to take action to have the decision overturned. The Minister responded saying that “due process had been followed”, and that he could do nothing.
- On 16 May 2014, *Striker Balance!* also wrote to Mr Charles Johnson, the JDAP presiding Member, who is the only person legally allowed to comment publically on his JDAP’s decisions, requesting an explanation, arguing that the deliberate exercising of powers by his panel to enable such an extraordinary variation must have extraordinary reasons to back it up. We have received no reply.

Our major contention is that, if “due process” can lead to such a complete disregard for both basic planning requirements and the clear intent of the Local Planning Scheme, can show apparent contempt for the views of our local government’s Planning Office, plus the unanimous opinion of our elected representatives (our Councillors), and can dismiss the torrent of opposition from our local community, and can do all this without fear of being accountable to anyone, even the Minister, then what constitutes “due process” here urgently needs serious investigation. It is hardly surprising to read in the Department of Planning’s Review of the JDAP system (September 2013) that, on average, 95% of industry respondents gave the system full marks, while less than 10% of local governments did. It is a system that clearly favours developers and their profit margins, to the long-term detriment of communities. And, at the moment, it appears to be able to do so with impunity. Once again, we ask: Why?

It is important to state that we, as a community, and our particular action group, are not anti-development. On the contrary, we have all been looking forward to the development of the site at 94 Kitchener Road for some time. However, that development has to be in line with community expectations, with regard to the locality, and in line with “proper and orderly planning” guidelines. What has been approved quite clearly meets none of these criteria.

We are aware that, under the updated Residential Design Codes endorsed last August, applicants may choose to seek a variation from the “Deemed-to-Comply” requirements (as set out principally in Table 4 of the codes plus the Local Scheme’s requirements). They may seek this variation through the Design Principles pathway, which allows for some discretion to be exercised by the decision-maker. However, it is highly questionable that these Design Principles should in fact be interpreted in such a way as to completely subvert the purpose of the Deemed-to-Comply pathway. That is tantamount to having two sides of a system that are effectively incompatible with each other.

We agree with City of Melville Councillor Nicholas Pazolli, who argues that a more appropriate interpretation is that the level of discretion allowed under the Multiunit Housing Code (MUHC) should be constrained between the parameters specified in Table 4 for the applicable R Coding and those specified for the next highest R Coding category. That is, in our case, variation would be limited to somewhere between R40 and R50. To vary any higher is to move the site in question into another R-zoning, which is contrary to the intent of the Local Planning Scheme.

We accept that discretionary powers should exist, since there may, at times, be good reason for granting variations. However, if these go unregulated, so that variations can be so grossly out of kilter with normal expectations, as has happened in this case, then there is a serious loophole in the system making it highly vulnerable to abuse. What incentive would any developer ever have in going down the Deemed to Comply path, if they can make greater profits via the Design Principles route, where the unbridled use of discretionary powers is demonstrably available? Add in the fact that no one involved is publically held to account, and you effectively create an environment where the system and its intent of “proper and orderly planning” can be seriously distorted, subverted and corrupted.

Thus, we feel the community has just cause in requesting a parliamentary enquiry into how the Kitchener Road proposal moved from outright rejection to becoming completely palatable to those who wielded the authority to reject it, despite the fact that two key non-compliances remained. We hope you understand why our community is outraged at the disdain we have been subjected to in this case, and at the lack of accountability and transparency of the JDAP system generally, both during the mediation and post-final-decision stages.

We thank you very much for reading our submission. As you will understand, there is a significant amount of information to try to condense into just two pages, so we have attached more detailed information for you to consider if you are able to. We have also attached video footage of the Public Meeting held on 27 May 2014 and other relevant events so that you can see the depth of level of anger and upset in the community caused by this decision, plus video footage of the extreme traffic problems that will occur in our locality from visitor parking if this non-compliant development goes ahead.

We have also attached a media file, showing press articles and published letters to do with our community's struggle over the last 16 months to oppose this development and fight this decision.

Finally, we (Marina and Geoff) would also like to request the opportunity to address the Committee in person, to provide the details of this case more fully and to respond to questions.

Whether or not the Committee sees fit to grant us that opportunity, please understand that our deeply unsettled community (with the support of more than 3600 petitioners) very much looks to this Committee to do everything within its power to bring about a full and transparent inquiry into the JDAP decision regarding 94 Kitchener Road, and to recommend that the decision be reviewed.

We also respectfully request that the Committee support our call for a full, public and independent inquiry into the JDAP system more generally, and its dangerously systemic shortcomings which, if allowed to go unchecked, will undoubtedly bring grief to other communities in future.

Yours faithfully


Geoff Pearson

Marina Hansen

On behalf of *Striker Balance!* Community Action Group for the residents of Myree / Alfred Cove / Melville

5 June 2014

Enclosures: USB Stick containing:

- Video footage of Public Meeting (27 May 2014), Public Protest March (30 March 2014) and Traffic Congestion Exercise (1 June 2014)
- Media File
- 16-month Chronology of Events – 94 Kitchener Road
- Local Planning Scheme Statement of Intent for ML2 (94 Kitchener Road) and ML1 (the rest of Myree and Alfred Cove)
- Photographs of the locality
- Approved Development Plans
- City of Melville RAR Report, February 2013
- DAPs Review – Key Statistics
- DAPs Review Report
- PowerPoint of Public Meeting Presentation
- Letter to JDAP Presiding Member, Mr Charles Johnson (16 May 2014)