

SYDNEY EAST JOINT REGIONAL PLANNING PANEL

Meeting held at Pittwater Council on Wednesday 2 December 2015 at 3:00 pm

Panel Members: David Furlong (chair), Sue Francis, Julie Savet Ward, Julie Hegarty

Apologies: Jacqueline Townsend - Declarations of Interest: None

Determination and Statement of Reasons

2014SYE113 - Pittwater Council - N0322/14 - Demolition of existing building and construction of a 92 bedroom residential aged care facility at 2-4 Jenkins Street & 1679 Pittwater Road, Mona Vale as described in Schedule 1.

Date of determination: 2 December 2015

Decision:

The panel determined to refuse the development application as described in Schedule 1 pursuant to Section 80 of the *Environmental Planning and Assessment Act 1979*.

Panel consideration:

The panel considered: the matters listed at item 6 as addressed in the Council Assessment Report, the material listed at item 7 and the material presented at meetings listed at item 8 in Schedule 1.

Reasons for the panel decision:

The Panel accepts the recommendation of the supplementary report to refuse the application for the following reasons

The supplementary report accepts that the physical design of the proposal is improved in a number of areas, but that several issues remain outstanding. The recommendation for refusal is based on two reasons. Firstly, the non compliance with Clause 26 of the State Environmental Planning Policy Seniors Living (SEPPSL) in relation to access to services. Secondly, the further non compliance with the building height standards within Clause 40 of the State Environmental Planning Policy Seniors Living (SEPPSL) and the impacts that result from those non compliances. The Panel accepts these reasons, and further notes that breaches of the building height standards within Clause 40 have not been adequately justified under Clause 4.6 of the Pittwater LEP.

In relation to cl 26, the Panel notes that the distance requirement of 400m is measured from the site and that while there is one bus stop within 400m of the site there is not another for the return journey with a safe access to the site. In recent times the panel has considered a number of similar applications where this issue has arisen. In total the panel has been presented with six legal opinions on this matter, including one sought by Council in relation to the subject DA.

The opinions are inconsistent with each other. The Panel has considered whether or not the requirements of cl 26 are more likely to be development standards rather than prohibitions, however a Court has not yet determined this question and the legal opinions differ 50 / 50. At this stage the Panel has not been persuaded that it is in a position to vary that requirement.

The Panel has considered whether cl 26 may be satisfied if the services and facilities required are provided on the site. This is because the applicant submits that the residents in the facility are too frail to access services outside the site. Despite the fact that the Panel considers this a beneficial development, it has concluded that the requirement of cl 26(2), that services and facilities are "located at a distance of not more than 400m from the site" means that they cannot be located on the site.

In the alternative, if the Panel is wrong and the provision of services on the site meets the requirements of cl 26, then ALL the services mentioned in cl 26(1) need to be provided, and this is clearly not the case. The inability of the application to satisfy cl 26 means that the Panel, as much as it considers the proposal to be in the public interest, has no power to approve it.

The confusion of the terms of the SEPPSL, as evidenced by the range and difference in the various legal opinions, clearly indicates the need to review the Policy in order to bring it up to date with the currently available electronic means of providing retail and banking services.


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Conditions: The development application was refused subject to the reasons for refusal contained in the Council Assessment Report

Panel members:



David Furlong (chair)



Sue Francis



Julie Savet Ward



Julie Hegarty

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SCHEDULE 1

1	JRPP Reference – LGA- Council Reference: 2014SYE113 - Pittwater Council - N0322/14
2	Proposed development: Demolition of existing building and construction of a 92 bedroom residential aged care facility
3	Street address: 2-4 Jenkins Street & 1679 Pittwater Road, Mona Vale
4	Applicant: Urbis Pty Ltd Owner: Aquarius Health Pty Ltd
5	Type of Regional development: General development with a Capital Investment Value of more than \$20 million
6	Relevant mandatory considerations <ul style="list-style-type: none"> • SEPP (HSPD) • SEPP (Infrastructure) • Pittwater Local Environmental Plan 2014 • Pittwater 21 Development Control Plan • The Roads Act 1993 • Environmental Planning and Assessment Regulations 2000 • 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	Material considered by the panel: Council Assessment Report Dated: 15 September 2015 and Supplementary Report Dated: 24 November 2015 Written submissions during public exhibition: 19 Verbal submissions at the panel meeting: On behalf of the applicant- Peter Strudwick, Sean Bilton & Susan Hill
8	Meetings and site inspections by the panel: Briefing Meeting on 19 November 2014 and Panel Meeting 29 September 2015
9	Council recommendation: Refusal
10	Draft conditions: N/A