

JRPP Fernleigh Nursing Home at West Ryde

Background for the Request for Legal Advice

The Sydney East JRPP (the Panel) has before it an application for the redevelopment and expansion of the existing Fernleigh Residential Care Facility at West Ryde. The application is made under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) (SEPPSL). The existing Residential Care Facility (RCF) has about 70 beds; the application for the redeveloped RCF is planned for about 140 beds. The location of the RCF is about 520m from the nearest shops and public transport. All members of the Panel agree that the access to the nearest transport and shops is unsuitable because it is too long, too steep and too highly-trafficked.

Clause 26(1) of SEPPSL states that:

A consent authority must not consent to a development application made pursuant to this Chapter, unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with subclause (2) to

- (a) Shops, bank service providers and other retail and commercial services that residents may reasonably require, and*
- (b) Community services and recreational facilities, and*
- (c) The practice of a general practitioner.*

Clause 26(2) then goes on to describe the maximum length and grade of acceptable access to the above facilities. There is some uncertainty about whether the length and grade of access is a prohibition or a development standard; however, for the purpose of the Panel's deliberations, this is irrelevant because the Panel considers that the access to facilities from the site is unacceptable and would not vary the development standard even if it had the power to do so.

During the public meeting arranged to consider the application, the applicant (a large and well-known provider of residential care facilities) made the submission that, of the 70 odd residents now on the site, not one is able to access services outside the site independently because of physical and/or mental frailty. Moreover, any future residents admitted to the facility would be in a similar physical or mental state and would require high-care, otherwise they would not be assessed as eligible for a residential care facility. Any services reasonably required by residents have to be brought to the site. The applicant submitted that the requirement in clause 26(b), written into the SEPPSL more than ten years ago, has no relevance to a RCF as it operates today.

While the Panel finds that the above submission makes practical sense, it is unable to decide whether or not it is correct in law, given that a reference to subclause (2) is included in subclause 26(1).

The Question of Law on which Advice is sought

Can a consent authority reach the satisfaction required by subclause 26(1) of SEPPSL without the location of a residential care facility meeting the requirements of subclause 26(2), provided it receives written evidence that

- (a) The residents of a residential care facility are (or will be) high-care and therefore unable to access services independently outside the site, and

(b) Services reasonably required by the residents will be brought to the site.

John Roseth

Chair

Sydney East Joint Regional Planning Panel