

JOINT REGIONAL PLANNING PANEL (Sydney East Region)

JRPP No	2014SYE130
DA Number	LDA 2014/0419
Local Government Area	City of Ryde
Proposed Development	Demolition of all existing buildings and structures and the construction of a 131 bed residential aged care facility
Street Address	8-14 Sherbrooke Road and 78-82 Mons Avenue, West Ryde
Applicant/Owner	Opal Specialist Aged Care
Number of Submissions	43 submissions to the plans as lodged – all objections 35 submissions to the amended plans – all objections
Regional development criteria	General Development with a CIV over \$20 Million
List of relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning & Assessment Regulation 2000 • Environmental Planning and Assessment Act 1979 • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy No. 55 – Remediation of Land • Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 • Ryde Local Environmental Plan 2014 • City of Ryde Development Control Plan 2014 • Section 94 Development Contributions Plan 2007
Recommendation	For the Panel's determination
List all documents submitted with report for the Panel's consideration	<p>Attachment 1 – Previous report to the JRPP meeting held on 20 August 2015.</p> <p>Attachment 2 – Memorandum of Advice prepared by Jacinta Reid.</p> <p>Attachment 3 – Submission from Opal Specialist</p>

	Aged Care dated 28 September 2015. Attachment 4 – Council’s legal advice prepared by Dr Steven Berveling. Attachment 5 – Draft conditions of consent.
Report by	Sandra Bailey, Team Leader Major Developments
Date	19 October 2015

Assessment Report and Recommendation

BACKGROUND

The development application was considered by the Joint Regional Planning Panel at its meeting held on 20 August 2015. A copy of the Council’s original report has been attached to this report. (See attachment 1). At this meeting the Panel resolved as follows:

- 1) The majority of the Panel (John Roseth, David Furlong and Tim Moore, with Craig Chung and Sarkis Yedelian voting for refusal) resolves to defer the determination of the application in order:
 - a) To obtain legal advice on its power to find that Clause 26(1) of SEPP SL is satisfied, and
 - b) To allow the applicant the opportunity to submit amended drawings.

- 2) The majority of the Panel notes that clause 26(1) requires it to be satisfied, by written evidence submitted by the applicant, that the residents of the residential care facility in the application will have access to shops, bank service providers and other retail and commercial services that residents may reasonable require, community and recreation facilities and a general medical practitioner. The question on which the Panel seeks legal advice is whether it may be so satisfied on the basis that these services with all be available on the site as the residents are unable to access them outside by reason of their diminished physical or mental state. If the answer to this question is yes, the Panel would need to be satisfied that the residents of this particular facility are all classified as high care patients and to receive written evidence on the type of services to be provided.

- 3) The majority of the Panel requests the applicant to submit, by 18 September 2015, amended drawings which respond to the following concerns expressed in the assessment report:
 - a) The deletion of level 3 of the wing to Mons Avenue:

- b) The three void spaces to Sherbrooke Road to have dimensions of 6m wide by 5m deep with no structures, such as terraces, in them;
 - c) Significantly increase the area of deep landscaping in the void spaces and generally to Sherbrooke Road by reducing hard surfaces.
- 4) The above changes **MUST** not involve any increase in other parts of the proposed building.
- 5) The majority of the Panel requests the assessment officer to provide, by 16 October 2015, a supplementary report on whether the applicant has complied with the above requirements and to provide without prejudice conditions.
- 6) If the legal advice sought by the Panel confirms that it may be satisfied in relation to clause 26(1), and following the receipt of the supplementary report, the Panel will determine the application, for the sake of transparency, at a further public meeting.
- 7) The majority of the Panel has considered the submissions of objectors, which were all of a high standard. The Panel believes that the required changes in the design of the proposal respond to many of the concerns expressed during the public meeting. As concerns the issue of traffic, the Panel notes that the council's engineer has agreed that the traffic impact of the proposal is acceptable.
- 8) Finally, in coming to this decision, the Panel has placed major weight on the social benefit of providing a residential care facility.
- 9) Craig Chung and Sarkis Yedelian voted to refuse the application on the grounds mentioned in the assessment report.

LEGAL ADVICE

In respect to part 2 of the above resolution, the Panel sought its own legal advice in respect to Clause 26 of SEPP SL. This advice has been included as Attachment 2 to this report. As a consequence of this advice, the applicant has provided information in respect of services and facilities to be provided on site. (See attachment 3). The applicant has also submitted amended plans that are in accordance with the Panel's recommendation.

Council also sought its own legal advice in respect to clause 26 of SEPP SL. (See attachment 4). This advice has concluded that the requirements in clause 26(1) of SEPP SL for access (as defined) to certain facilities and services is not a development standard but acts as a prohibition if its requirements are not satisfied. The requirements affect the

permissibility of a proposed development pursuant to SEPP SL regardless of whether all the facilities and services referred to in clause 26(1) are proposed to be accommodated in that development on site.

For this reason, Council still maintains the view that the development application should be refused for the following reasons:

- (1) The application is not satisfactory for the purposes of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the use of the site for a residential care facility is prohibited by virtue of the proposal not being able to satisfy clause 26 (Location and access to facilities) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
- (2) The application is not satisfactory for the purposes of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the submission pursuant to clause 4.6 of Ryde Local Environmental Plan 2012 is not well founded relative to variations sought to the following provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004:
 - (i) Clause 40(4) - Height in zones where residential flat buildings are not permitted.
- (3) The application is not satisfactory for the purposes of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as site planning and built form outcomes do not meet the provisions of clause 33 (Neighbourhood amenity and streetscape) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
- (4) The application is not satisfactory for the purposes of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 as it is not in the public interest.

RECOMMENDATION

That LDA2014/419 is submitted to the JRPP for its determination. If the Panel are of the mind to approve the development application, appropriate draft conditions of consent have been included in Attachment 5 as requested by the Panel.

Report prepared by:

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Report approved by:

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