

DETERMINATION AND STATEMENT OF REASONS
SYDNEY EASTERN CITY PLANNING PANEL

DATE OF DETERMINATION	2 November 2017
PANEL MEMBERS	John Roseth (Chair), Sue Francis, Ed McDougall and Michael Nagi
APOLOGIES	Maria Atkinson
DECLARATIONS OF INTEREST	None

Public meeting held at Christie Conference Centre on Thursday, 2 November 2017, opened at 10:30 am and closed at 12:05 pm.

MATTER DETERMINED

2016SYE048 – Bayside - DA-2016/343 AT 398-412 Princes Highway, Rockdale (AS DESCRIBED IN SCHEDULE 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at the meeting and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel unanimously accepted the planning assessment report's recommendation to approve the application described in Schedule 1 pursuant to section 80 of the *Environmental Planning and Assessment Act 1979*. However, the majority of the Panel (Sue Francis, Michael Nagi and Ed McDougall) voted to impose three additional conditions in order to delete the top floor, to increase the floor to floor height and to provide additional screened communal open space on the roof. John Roseth would have approved the application without those three conditions.

In the majority's opinion, the cl 4.6 variation of the height as sought is not well founded in the circumstances of the site where the proposal has reduced the setbacks required both by the Apartment Design Guide (ADG) and the Rockdale Development Control Plan 2011 (DCP), particularly to the east where the site is adjacent to a lower density zone (R2) where the ADG seeks an additional 3m setback adjacent to zone boundaries. Moreover, the proposal has an undersupply of communal open space and inadequate floor to floor height. In the absence of a FSR control, other controls such as height and setbacks assume a greater role than where the FSR control exists.

John Roseth voted against imposing the additional three conditions. In his opinion, there are several circumstances that suggest that the height variation is reasonable:

- The council has not strictly enforced the height control in other nearby development applications;
- The three apartments on the top floor protect the communal open space on the roof from noise and fumes from Princes Highway;
- The height of the proposal, with the inclusion of the top floor apartments, will appear similar to the proposal approved at 376-386 Princes Highway.

In addition, John Roseth has given major weight to the fact that the applicant has negotiated with council's assessment officer for a long time and provided a solution which, in the opinion of that officer, was acceptable. On the issue of floor to floor height, John Roseth agrees that the floor to height distance of 3m is undesirably tight; however, in the absence of air conditioning, it is just possible to provide a 2.7 floor to ceiling height with it.

CONDITIONS

The development application was approved subject to the conditions in the Council Assessment Report with the following conditions to be added:

Prior to issue of the Construction Certificate, amended plans must be submitted to, and approved by, the Director of City Futures of Bayside Council demonstrating compliance with the following:

- Deletion of Units 9.01, 9.02 and 9.03. A balustrade may be provided to the perimeter of the roof top level with a maximum height of 1.0m. The design and materials used must match the building design and materials used for the levels below.
- The rooftop of Level 8 shall be amended to have an area of communal open space that complies with the minimum 25% of the site area as required by the Apartment Design Guide (ADG). (Note: 25% of the site area equates to 251m²).
The communal open space area shall incorporate structural acoustic and visual screening from the Princes Highway, and structural screening and landscape planting that will ensure that wind impacts to the communal open space area are satisfactorily mitigated to ensure that residents will be provided with a good level of amenity and that the space will be usable. The screens must not be located within 2.0m of the perimeter of the roof top level and must not have a height exceeding 2m.
- The floor to ceiling heights of Levels 3 to 8 be amended to be a minimum of 3.1m.

PANEL MEMBERS	
 John Roseth (Chair)	 Sue Francis
 Ed McDougall	 Michael Nagi

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2016SYE048 – Bayside - DA-2016/343
2	PROPOSED DEVELOPMENT	Construction of a nine (9) storey mixed use development comprising four (4) commercial tenancies, sixty (60) residential units and basement parking over three levels, and demolition of the existing buildings.
3	STREET ADDRESS	398-412 Princes Highway Rockdale
4	APPLICANT/OWNER	HWS Property Development Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$20 million
6	RELEVANT MANDATORY CONSIDERATIONS	• State Environmental Planning Policy No 55 – Remediation of Land • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (Major Developments) 2005 • Rockdale Local Environmental Plan 2011 • Rockdale Development Control Plan 2011 • Environmental Planning & Assessment Regulations 2000 – Regs 97A, 98A and 98E • 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 <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	• Council assessment report: 17 October 2017 • Written submissions during public exhibition: one (1) • Verbal submissions at the public meeting: - o On behalf of the applicant – Stephen Wright and Penny Collins
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	• Briefing meeting on 9 June 2016 • Site inspection and briefing meeting on 23 March 2017 • Final briefing meeting to discuss council's recommendation, 2 November 2017, 9:45 am. Attendees: - o <u>Panel members</u>: John Roseth (Chair), Sue Francis, Ed McDougall and Michael Nagi - o <u>Council assessment staff</u>: Pascal Van De Walle, Marta Gonzalez-Valdes and Michael McCabe
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report