

<b>DATE OF DETERMINATION</b>	6 March 2019
<b>PANEL MEMBERS</b>	Mary-Lynne Taylor (Acting Chair), Paul Mitchell, Peter Brennan and Cr Sameer Pandey
<b>APOLOGIES</b>	Nil
<b>DECLARATIONS OF INTEREST</b>	Nil

Public meeting held at Rydalmere Operations Centre, City of Parramatta Council on 6 March 2019, opened at 4.34pm and closed at 5.04pm.

#### **MATTER DETERMINED**

Panel Ref – 2017SWC007– LGA – City of Parramatta – DA1281/2016 at Lot 30 in DP 1106209 and Lots 6, 7, 8 & 9 in DP22506, 12 Station Road & 4-10 Wentworth Avenue, Toongabbie (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 meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

#### **Request to vary height of buildings standard**

The Panel upholds the applicant's request to vary to height of building standard in Clause 40(4) of the Seniors SEPP (2004), finding the request satisfactory. The applicant's submission demonstrates that compliance with the height of buildings standard is unnecessary because the objectives of the standard will be achieved despite the non-compliance (see submission section 4.3.1). The submission also demonstrates that there are sufficient environmental planning grounds to justify the variation (see submission section 4.4).

Further, the Panel believes the variation is in the public interest. The proposed development will be consistent with the objectives of the height of buildings standard and objectives for development in the applicable zones.

#### **Background**

Having regard to conflicting expert advice provided by the Council and the Applicant, the Panel requested a report from an independent flooding expert in relation to the impacts of flooding on the development. The Council and the Applicant agreed on a suitable expert and terms of reference. The expert provided an 'Independent Review of Flood Risks' report dated 5 July 2018 and concluded in a Review Finding:

“Having regard only to flood risks, including the risks posed by isolation of the proposed development during floods, the reviewer supports the Application. This support is contingent upon conditions being provided (if required) to ensure the facility is self-sufficient for the period of any isolation.”

### **Decision**

The Panel approves the application for the following reasons:

1. The site of the proposed development is suitable for the intended use. It is an area of low flood hazard, low ecological and cultural value, is adjoined by development of a compatible scale and is centrally located with respect to services and amenities.
2. The proposed development adequately satisfies relevant Planning instruments particularly State Environmental Planning Policy SEPP 55 – Remediation of Land and SEPP (Housing for Seniors and People with a Disability).

The proposal adequately satisfies the applicable objectives and provisions of Parramatta Local Environmental Plan 2011 and Parramatta Development Control Plan 2011.

3. The flood risk at the site is low and well within levels of risk normally considered acceptable by the community. The probability of occurrence of a flood event at the site in any one year is approximately one in 10 million (see Molino Stewart report 28 February 2018). This compares to accepted standards for risks to buildings from earthquakes and cyclones of 1 in 1,000 – 2,000 in anyone year (see Independent Flood Review paragraph 8, 12 and 13).
4. The Panel is satisfied that a shelter in place flood hazard management strategy is appropriate noting, in particular, that this strategy is superior to alternative options – either evacuation or senior people living in their own homes (ref - Independent Flood Review paragraphs 18-20).
5. The proposal will be socially beneficial by providing seniors housing in a well-designed and conveniently located facility.
6. The proposal is compatible with its context and protects the riparian corridor along Girraween Creek. It is of a scale and height that is compatible with neighbouring development.
7. The proposal will have no material adverse effects on the natural or built environments including the capacity of local infrastructure. In particular, the Panel is satisfied that the small volume of fill required for the development will not materially exacerbate flood levels or hazards elsewhere in the floodplain (see Independent Flood Review Paragraphs 26, 33).

### **CONDITIONS**

The development application was approved subject to the draft without prejudice conditions provided by council with the following amendments.

### **Deferred Commencement**

**PAANSC          Non-standard - Deferred Commencement**

1. Pursuant to the provisions of Section 4.16(3) of the Environmental Planning and Assessment Act 1979, the development application be granted a Deferred Commencement Consent subject to the completion of the following:

- a) An Emergency Response Plan for the residential care facility shall be prepared and submitted to Council prior to commencement of operations. This Flood Emergency Response Plan is to be independently reviewed by an experienced flood engineer and approved by Council prior to an occupation certificate being issued.

**Reason:** To ensure that the land has an Emergency Response Plan and is suitable for its proposed use.

b) City of Parramatta Council and NSW State Emergency Service approves the flood emergency plan for occupants, staff, visitors and personnel. (**Deleted**)

**Condition 29 (a) is modified to read as follows –**

2. The following must be adhered to:

- a) In order not to divert or obstruct floodwaters, nor lose flood storage, no filling shall occur on land below the flood Planning Level of RL 29.51m AHD. Amend to **RL 29.11m AHD**.

**Condition 29 (e) and (f) is modified to read as follows –**

(e) The Flood Emergency Response Plan must include proper provisions for safe water supply, appropriate sanitation and sewage treatment facilities, uninterruptible power, telecommunications and other necessary resources to support all occupants during flooding and the flooding aftermath for at least 72 hours and if necessary a longer period. These facilities must be available at short notice and be on perpetual standby.

(f) An effective flood warning system must be installed and operated 24 hours a day for the duration of the site as an aged care facility. Details including a management and operational plan must be submitted for the approval of the Principle Certifying Authority prior to release of the Occupation Certificate.

**Condition 58 is modified to read as follows –**

**PB0034          Broadband access for major dev. 100> dwellgs/units**

58. Prior to the issue of any Occupation Certificate, the developer is to provide evidence that satisfactory arrangements have been made with the National Broadband NBN Co if available and implemented at no cost to Council for the provision of broadband access to the development.

**Note:** For more information contact NBN Co.;

Development Liaison Team:

Call      1800 881 816;




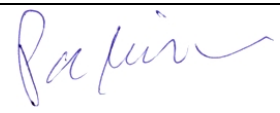
Email:   newdevelopments@nbnco.com.au;

Web:    [www.nbnco.com.au/NewDevelopments](http://www.nbnco.com.au/NewDevelopments).

**Reason:**    To ensure that appropriate provision has been made to accommodate broadband access to the development.

### CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel notes that they were no written submissions made during public exhibition.

PANEL MEMBERS	
 Mary-Lynne Taylor (Acting Chair)	 Sameer Pandey
 Peter Brennan	 Paul Mitchell

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	Panel Ref – 2017SWC007– LGA – City of Parramatta – DA1281/2016
2	PROPOSED DEVELOPMENT	Demolition works, amalgamation of lots and re-subdivision for construction of a 124 bed Residential Care Facility (RCF) at the ‘Toongabbie Sports Club’, provision of vehicular access, landscaping, signage and ancillary stormwater and civil works (Nominated Integrated Development under the Water Management Act 2000).
3	STREET ADDRESS	Lot 30 in DP 1106209 and Lots 6, 7, 8 & 9 in DP22506, 12 Station Road & 4-10 Wentworth Avenue, Toongabbie
4	APPLICANT/OWNER	Applicant – Opal Aged Care Owner – Toongabbie Sports & Bowling Club Limited
5	TYPE OF REGIONAL DEVELOPMENT	Clause 2 of Schedule 7 of the Environmental Planning Policy (State and Regional Development) 2011, the development has a capital investment value of more than \$30million.
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"><li>• Environmental planning instruments:<ul style="list-style-type: none"><li>○ State Environmental Planning Policy No. 55 – Remediation of Land</li><li>○ State Environmental Planning Policy No. 64 – Advertising and Signage</li><li>○ State Environmental Planning Policy (Infrastructure) 2007</li><li>○ State Environmental Planning Policy (Housing for Seniors or</li></ul></li></ul>

		<p>People with a Disability) 2004</p> <ul style="list-style-type: none"> <li>○ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</li> <li>○ State Environmental Planning Policy (State and Regional Development) 2011</li> <li>○ Deemed State Environmental Planning Policy (Sydney Harbour Catchment) 2005</li> <li>○ Water Management Act 2000</li> <li>○ Floodplain Risk Management Policy (Version 2, approved 27 October 2014)</li> <li>○ Parramatta Local Environmental Plan 2011</li> </ul> <ul style="list-style-type: none"> <li>● Draft environmental planning instruments: Nil</li> <li>● Development control plans: <ul style="list-style-type: none"> <li>○ Parramatta Development Control Plan 2011</li> </ul> </li> <li>● Planning agreements: Nil</li> <li>● Provisions of the Environmental Planning and Assessment Regulation 2000</li> <li>● Coastal zone management plan: Nil</li> <li>● The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>● The suitability of the site for the development</li> <li>● Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>● The public interest, including the principles of ecologically sustainable development</li> </ul>
7	<b>MATERIAL CONSIDERED BY THE PANEL</b>	<ul style="list-style-type: none"> <li>● Original assessment planning report (for 6 December 2017 SWCPP meeting)</li> <li>● Attachment 1 – responses to draft without prejudice conditions of consent</li> <li>● 1st Addendum report (for 7 March 2017 SCCPP meeting)</li> <li>● 2nd Addendum report (for 1 August 2018 SCCPP meeting)</li> <li>● 3rd Addendum report (for 19 December 2018 SCCPP meeting)</li> <li>● 4th Addendum report (for 6 March 2019 SCCPP meeting)</li> <li>● Architectural Plans;</li> <li>● Clause 4.6 variation – Height of Building;</li> <li>● Stormwater Plans;</li> <li>● Landscape Plans;</li> <li>● NSW State Emergency Services statement;</li> <li>● Independent Flood Risk Assessment Report; and</li> <li>● Supplementary planning response letter</li> </ul> <ul style="list-style-type: none"> <li>● Written submissions during public exhibition: 0</li> </ul>

		<ul style="list-style-type: none"> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ Support – Nil</li> <li>○ Object – Nil</li> <li>○ Council assessment officer – Mark Leotta, Wendy Wang and Paul Clark</li> <li>○ On behalf of the applicant – Dan Brindle, Mark Lederer, Steven Molino, Terry Harvey, Andrew Francis, Lara Calder, Aaron Lakeman and Greg Zieschang</li> <li>○ Mr Drew Bewsher addressed the Panel as an independent expert.</li> </ul> </li> </ul>
8	<b>MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• Briefing – 1 March 2017</li> <li>• Site Inspection and Public meeting – 6 December 2017</li> <li>• Public meeting – 7 March 2018</li> <li>• Public meeting – 1 August 2018</li> <li>• Public meeting – 5 September 2018</li> <li>• Public meeting – 19 December 2018</li> <li>• Public meeting – 6 March 2019</li> <li>• Final briefing to discuss council's recommendation, 6 March 2019, 3.30pm to 4.00pm.</li> <li>• Attendees: <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Mary-Lynne Taylor (Acting Chair), Peter Brennan, Paul Mitchell and Sameer Pandey</li> <li>○ <u>Council assessment staff</u>: Mark Leotta, Wendy Wang and Paul Clark</li> </ul> </li> </ul>
9	<b>COUNCIL RECOMMENDATION</b>	Refusal
10	<b>DRAFT CONDITIONS</b>	Submitted as draft without prejudice conditions