

DETERMINATION AND STATEMENT OF REASONS
SYDNEY NORTH PLANNING PANEL

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| DATE OF DETERMINATION | 17 December 2020 |
| PANEL MEMBERS | Peter Debnam (Chair), Brian Kirk, Sue Francis, David White, Ross Walker |
| APOLOGIES | None |
| DECLARATIONS OF INTEREST | None |

Public meeting held by teleconference on 17 December 2020, opened at 2:05pm and closed at 2.30pm.

MATTER DETERMINED

2018SNH033 – Hornsby – DA235/2018 at 461-473 Pacific Highway, Asquith for a Seniors Living development (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.

Application to vary development standards

Following consideration of written requests from the Applicant, made under cl 4.6 (3) of the Hornsby Local Environmental Plan 2013 (LEP), that has demonstrated that:

- compliance with cl. 4.3 (maximum height of building) and Clause 26 of SEPP Seniors (Access to Facilities) is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standards

the Panel is satisfied that:

- the applicant's written requests adequately address the matters required to be addressed under cl 4.6 (3) of the LEP; and
- the development is in the public interest because it is consistent with the objectives of cl. 4.3 (height of building) of the LEP and Clause 26 of the SEPP Seniors (Access to Facilities) and the objectives for development in the R3 Medium Density zone; and
- the concurrence of the Secretary has been assumed.

Development application

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.

REASONS FOR THE DECISION

The Panel determined to uphold the Clause 4.6 variations to Building Height and Access to Facilities and approve the application for the reasons outlined below and in Council's Assessment Report.

The Applicant's Clause 4.6 Written Request to vary the maximum building height development standard is well founded and the proposal demonstrates sufficient environmental planning grounds to justify contravening the height of buildings development standard. The site is located within a transitional zone with 5 storey buildings to the south and 2 storey + attic level buildings to the north. The development has predominantly been designed to conform to existing site conditions with reduced top floor setbacks to the townhouse buildings to the north. Providing a compliant 2 storey building with a larger building envelope would result in additional tree loss and loss of landscaping. Additionally, the roof form of the RACF building

has been designed in response to Council feedback and the pitched roof form of the southern part has been purposely made higher to provide a separate building identity.

Additionally, the Applicant's Clause 4.6 Written Request to vary the Access to Facilities Development Standard is well founded and demonstrates sufficient environmental planning grounds to justify contravening the development standard. The Applicant has demonstrated that the proposal meets the location and access requirements of Clause 26 of SEPP Seniors with the exception of the suitable access pathway to the bus stop on the southern side of Mills Avenue. The sealed footpath is to be reconstructed in association with a neighbouring development. If the footpath has not been delivered prior to occupation of the Applicant's facility, the Applicant will provide a private bus service for residents to access the local facilities and services at Hornsby Town Centre until such time as the footpath is completed. Overall, the Panel concurs with Council that strict compliance with the development standard is unreasonable and would result in the significant loss of accommodation for seniors within the locality.

The DA involves the demolition of existing dwellings and structures, construction of a 3 storey residential aged care facility comprising 17 beds and a 3 storey residential building containing 11 independent living units with basement car parking. The Panel considered the DA during two meetings – in February and December 2020.

The Panel noted at the February meeting that the application at that time was an overdevelopment of the site by virtue of excessive Gross Floor Area (GFA), building footprint, loss of significant trees, poor and unresolved access and parking, a lack of transition from the higher density zone to the south and the 'townhouse' zone to the north. Further, the Panel was not in a position to approve the application in the absence of Clause 4.6 variation requests in respect of height, Clause 26 (accessibility) and the development standards contained in Schedule 3.

Having discussed the matter extensively with Council staff and the Applicant during the February public meeting, the Panel deferred determination to resolve the following planning and design issues:

- Compliance with or provision of written request to vary, all relevant development standards in both the State Environmental Planning Policy (Seniors) and Hornsby Local Planning Plan;
- Site landscaping including the retention of as many indigenous trees as possible, including avoiding encroachment into the TPZs for the trees to be retained, on both the site and those on adjoining council land;
- Basement design, size and parking configuration and parking numbers;
- Staff numbers (full time equivalent) and carparking need / demand;
- Vehicular access and Roads and Maritime (TfNSW) concurrence;
- Accessibility both within the site and external to services and facilities;
- Assessment of site hydraulics and stormwater drainage and required easements alongside their impact on trees both on site and on council land
- Assessment of the hydrology of the site and its effect on adjoining public land;
- Setbacks to be increased (particularly front set back)
- Scale of development should transition in context with adjoining development to the north and to the south
- Confirmation and evidence of Social Housing Provider status.

During the period February to December, Council and the Applicant worked co-operatively to satisfactorily resolve the majority of concerns identified in the Panel's February Deferral. And in December, the TfNSW approval, under Section 138 of the Roads Act 1993, was received for approval to construct a single new vehicular access point from Pacific Highway.

The remaining point of concern related to the 2.4 metre vertical clearance to enter the basement level housing waste facilities and loading areas for commercial operations which does not comply with the minimum 3.5m vertical clearance requirement of Australian Standard AS2890.2 for a commercial vehicle. However, Council acknowledges and the Panel agrees that Council is not obligated to collect the RACF waste under the Local Government Act noting it is classified as a nursing home (commercial premises). The

site can be readily serviced by a private waste contractor vehicle, which can access the basement with reduced clearance. The Applicant will service the site with a delivery vehicle with a maximum height of 2.3m, which can readily access the basement.

In summary, the Panel concurs with Council that having been comprehensively assessed against relevant planning controls and having resolved concerns identified in the February Deferral, the amended proposal has provided greater consideration for the desired future character of the area. Additionally, the proposal will provide for the housing needs of an ageing population and contribute to the orderly and economic use of the land whilst providing a variety of housing types within a transitional residential area. Consequently, the Panel believes approval of the DA is in the public interest.

CONDITIONS

The DA was approved subject to the conditions in Council's Without Prejudice Draft Conditions V2 16 December 2020 with the following amendments:

- New condition 26(l)(v) to read as follows:
Waste collection for the RACF must be undertaken by a private contractor within the basement of the development.
- Condition 26k) amended to read as follows:
The ground level bin service area (including turning area and site entry/exit) to be used by waste collection vehicles, must be designed in compliance with Australian Standard AS2890.2-2002 Parking Facilities Part 2: Off-street Commercial Vehicle Facilities for Council's waste collection vehicle.
Note: AS2890.2-2002 includes a maximum gradient of 1:8 for reverse travel, a minimum vertical clearance of 4.5 m, and minimum loading dock/service bay dimensions of 3.5 m x 12.5 m. These dimensions do not include wall thickness, support columns, ventilation shafts etc which must be added. AS2890.2-2002 also requires that when a loading dock/service bay is of minimum width a driver needs to be able to place the body of the vehicle or trailer into its final alignment at the point of entry into the bay.
- Condition 26l)i) amended to read as follows:
Council's waste collection vehicle is able to enter the site in a forward direction, adequately manoeuvre into position within 5m of the ground floor bin holding areas, load bins and exit the site in a forward direction.
- Condition 52b) amended to read as follows:
Confirming that the waste collection vehicle turning area within the front setback complies with Australian Standard AS2890.1 – 2004 and AS20890.2 – 2002 for Council's waste collection vehicle.
- Condition 86(i) amended to read as follows:
A survey of the finished access way (including ramp, waste collection vehicle turning area, loading bay and site entry/exit) to be used by the waste collection vehicle for the ILU must be carried out by a registered surveyor and submitted to the principal certifying authority. The survey is to include dimensions, gradients and vertical clearance. Written confirmation must be submitted to the Principal certifying authority from a qualified Traffic Engineer, that this survey confirms the finished access way within the waste collection vehicle turning path was designed and constructed in compliance with Australian Standard AS2890.2-2002 Parking Facilities Part 2: Off-street Commercial Vehicle Facilities for Council's waste collection vehicle.
- Deletion of deferred commencement condition. Conditions to be renumbered accordingly.

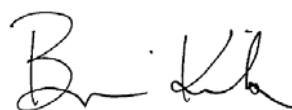
CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition. No community members attended the public meeting. The Panel notes issues of concern included setbacks, height and scale, privacy, car parking, loss of trees impact on flora and fauna. The Panel considers concerns raised by the community have been adequately addressed in Council's Assessment Report.

PANEL MEMBERS



Peter Debnam (Chair)



Brian Kirk



Sue Francis



Ross Walker (OAM)



David White

| SCHEDULE 1 | | |
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| 1 | PANEL REF – LGA – DA NO. | 2018SNH033 – Hornsby – DA235/2018 |
| 2 | PROPOSED DEVELOPMENT | Demolition of existing dwellings and structures, construction of a 3 storey residential aged care facility comprising 100 beds and 3 storey residential building containing 13 independent living units with basement car parking. |
| 3 | STREET ADDRESS | Nos. 461-473 Pacific Highway Asquith |
| 4 | APPLICANT/OWNER | Chinese Australian Services Society Ltd c/o Urbis Pty Ltd |
| 5 | TYPE OF REGIONAL DEVELOPMENT | General development over \$30 million |
| 6 | RELEVANT MANDATORY CONSIDERATIONS | <ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 ○ State Environmental Planning Policy (Infrastructure) 2007 ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ○ State Environmental Planning Policy No. 55 – Remediation of Land ○ State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development ○ Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River ○ Hornsby Local Environmental Plan 2013 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Hornsby Development Control Plan 2013 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil • Coastal zone management plan: Nil • 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 | <ul style="list-style-type: none"> • Council assessment report: 29 January 2020 • Conditions without prejudice: 7 February 2020 • Applicant submission: 7 February 2020 • Council supplementary report: 4 December 2020 • Applicant submission: 15 December 2020 • Conditions without prejudice: 16 December 2020 • Written submissions during public exhibition: 15 • Verbal submissions at the public meeting 11 February 2020: <ul style="list-style-type: none"> ○ In objection – Jan Primrose ○ Council assessment officer – Rodney Pickles, Stephen Dobbs ○ On behalf of the applicant – Dorothy Hung, Jacqui Parker • Verbal submissions at the public meeting 17 December 2020: <ul style="list-style-type: none"> ○ Council assessment officer – Rodney Pickles, Stephen Dobbs ○ On behalf of the applicant – Jacqui Parker |
| 8 | MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL | <ul style="list-style-type: none"> • Briefing & Site inspection: 11 February 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Sue Francis, David White, Ross Walker |

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| | | <ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Stephen Dobbs ● Final briefing to discuss council's recommendation, 11 February 2020, 11am. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Sue Francis, David White, Ross Walker ○ <u>Council assessment staff</u>: Stephen Dobbs ● Final briefing to discuss council's recommendation, 17 December 2020, 1.30pm. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Sue Francis, David White, Ross Walker <p><u>Council assessment staff</u>: Stephen Dobbs, Rodney Pickles</p> |
| 9 | COUNCIL RECOMMENDATION | Refusal |
| 10 | DRAFT CONDITIONS | Attached to the council assessment report |