

DETERMINATION AND STATEMENT OF REASONS

SYDNEY NORTH PLANNING PANEL

DATE OF DETERMINATION	19 August 2020
PANEL MEMBERS	Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Cheryl Szatow
APOLOGIES	None
DECLARATIONS OF INTEREST	Martin Smith declared a non-pecuniary conflict as he felt his position as a Ku-ring-gai Councillor may be perceived as a conflict.

Public meeting held by public teleconference on 19 August 2020, opened at 10.06am and closed at 11.15am.

MATTER DETERMINED

2018SNH076 – Ku-ring-gai – DA0570 at 259 and 265-271 Pacific Highway, Lindfield for a mixed use residential 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 a development standard

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Ku-ring-gai Local Environmental Plan (Local Centres) 2012 (LEP), that has demonstrated that:

- compliance with cl.4.3 (Height of buildings) is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard

the Panel is satisfied that:

- the applicant's written request adequately addresses 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 buildings) of the LEP and the objectives for development in the R4 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 variation to building height and approve the application.

Steps towards the redevelopment of the site commenced in 2014 when Council changed the classification of the site from community land to operational land and then in 2017 rezoned the site from B2 Local Centre to R4 High Density Residential. As well as LEP amendments with respect to the development standards for

building height and floor space ratio, a Precinct Masterplan (the SJB Masterplan) for the area was developed and the Ku-ring-gai DCP was amended in 2016 to provide detailed objectives and controls associated with the redevelopment of the site.

The current application for construction of a mixed use residential development comprising 130 apartments, neighbourhood shop, basement car parking, associated works and public domain works was lodged in December 2018. In response to community and assessment feedback, the Applicant submitted amended plans in February 2020, which proposed the following changes to the initial plans:

- reduction in yield by the removal of four apartments in the south eastern corner to reduce overshadowing to the adjoining development and reduced extent of excavation;
- increase in the size of the neighbourhood shop and the provision of direct access from the basement to the shop to facilitate loading from the basement and improve serviceability;
- modifications to apartment layouts to improve SEPP 65, ISEPP and ADG compliance, with respect to solar access, ventilation and noise attenuation requirements;
- modifications to buildings and individual apartments to remove encroachments onto the proposed public road; and
- additional landscaping details.

In relation to Clause 4.6, the proposed development breaches the LEP height standard of 23.5m and the Applicant submitted a written request to vary the height standard by 3.3m or 14%. The height limit is breached by parts of the roofs of all buildings with a skylight on Building D providing the maximum breach at a point where the building sits over a depression in the site topography. The height limit is also breached by lift overruns, solar panels, stairwell walls providing access to the roof area, car park exhaust riser and garden walls. The height breaches are hidden from view from the Pacific Highway and arise as a result of the slope of the land towards the rear of the site. The height breaches do not provide additional residential storeys above those contemplated under the Masterplan and associated Planning Proposal.

On the southern boundary, the Applicant has sought to minimise any impacts on the neighbouring residential building and despite height breaches elsewhere on the site, the proposed southern boundary building envelope is generally compliant with planning controls. The applicant has demonstrated that the overall development is appropriate in scale and generally consistent with the objectives of the SJB Masterplan.

The Panel concurs with the Assessment Report that the proposed development now represents an opportunity to redevelop a site with existing community facilities, which are aged and no longer viable. The new development will consolidate seven lots and provide new housing in the Lindfield Town Centre close to the station as part of a development comprising four buildings as well as a through-site link to be dedicated as public road which will contribute to connectivity and amenity in the area. The proposal generally reflects the type of medium to high density development envisaged for the site as part of the Activate Lindfield Program, the SJB Masterplan and the associated planning proposal.

The Panel accepts that the public domain elements of the proposal, comprising the new road, associated footpaths, landscaping and pocket park, are important features of the proposal which will improve connectivity from the Pacific Highway to the station as well as provide a publicly active forecourt to the development.

The proposed development accords with all relevant State, Regional and Local strategic planning policies and plans and having regard to the provisions of section 4.15 of the Environmental Planning and Assessment Act 1979, the development is considered to be satisfactory subject to conditions. The Panel considers the proposed development to be in the public interest.

Panel member Cheryl Szatow noted that it became apparent during the course of deliberations that the lane referred to in Schedule 1 Item 2 - Proposed Development – as “Tryon Lane”, was a source of some confusion, as Tryon Lane lies to the east of the railway, between Lindfield Avenue and Nelson Road. The proposed development (DA0570/18) is west of the railway and the lane to which the proposed new road will link from Pacific Highway is a continuation of Tryon Place: variously referred to as “lane” in Council’s

GIS and “Tryon Place” elsewhere. To clarify, the said lane is to be referenced in Item 2 as “an existing lane.” Where “Tryon Lane” appears on pages 9,10 and 11 of the Council Assessment Report, it is to be referenced as “the existing lane”.

CONDITIONS

The development application was approved subject to the conditions in the independent assessment report with the following amendments.

- **Deferred Commencement Condition 1.A.(i) amended to read as follows:**
Unless there is an existing Drainage License arrangement between RailCorp/Sydney Trains and Council there shall be no direct stormwater discharge into the rail corridor. In the absence of a License or Deed between RailCorp/Sydney Trains and Council, then Council will be required to enter into License or Deed arrangement with Sydney Trains prior to any connection/discharge into the rail corridor drainage system.
- **Condition 31i) amended to read as follows:**
Further assessment and management/remediation (if warranted) of identified lead and carcinogenic PAH impacts in soil, taking into consideration the detailed design of the proposed development by a suitably qualified NSW EPA accredited consultant;
- Condition 31v) amended to read as follows:
Hazardous materials, including but not limited to asbestos, that may be present in structures on the site, should be appropriately managed/removed and appropriate clearances obtained from a suitably qualified NSW EPA accredited consultant, before demolition of those structures. This will assist in mitigating potential for future land contamination to occur during demolition, which can happen if hazardous materials are not managed appropriately;
- Condition 31vii) amended to read as follows:
The Certifier shall ensure that a suitably qualified NSW EPA accredited consultant confirms that any works involved with site remediation is Category 2 development, within the meaning of State Environmental Planning Policy No. 55 and does not require a separate development consent;
- **New Condition titled Green Travel Plan to read as follows**
A Green Travel Plan with the objective to reduce the reliance on private vehicles shall be prepared. The Plan must incorporate strategies for encouraging the following activities by future residents of the development:
 - (i) The use of public transport in preference to the use of motor vehicles;*
 - (ii) The use of car share schemes, making use of the car share spaces within the development and ensuring that there is access to the designated spaces at all times;*
 - (iii) The use of active transport including walking and bicycle usage, in preference to the use of motor vehicles, whenever possible.*

The Green Travel Plan shall be prepared in accordance with best practice demonstrated by leading Sydney Metropolitan Councils (i.e. City of Sydney), the NSW Premier’s Guide for Active Living and relevant guidelines relating to Sustainable Transport development by the NSW Department of Transport and shall be provided to the Council for its approval prior to the issue of an Occupation Certificate.

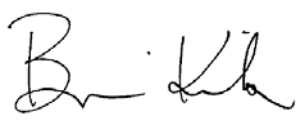
Reason: *To ensure sustainable transport outcomes.*

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the public meeting. Community issues of concern included loss of

privacy, height, bulk and scale, overshadowing, character of the area, construction impacts, trees, set backs, landscaping, heritage, community facilities, green space and public interest

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report, by Applicant and Assessor responses during the meeting and by the conditions as amended.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Julie Savet Ward
 Brian Kirk	 Cheryl Szatow

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018SNH076 – Ku-ring-gai – DA0570/18
2	PROPOSED DEVELOPMENT	Demolition of existing structures and construction of a mixed use residential development comprising with 130 apartments, a neighbourhood shop, basement car parking (153 spaces) with associated works, tree removal and public domain works, including construction of a new road (to be dedicated in future as public road) linking Pacific Highway to an existing lane.
3	STREET ADDRESS	259 and 265-271 Pacific Highway, Lindfield
4	APPLICANT/OWNER	Olsson & Associates Architects Pty Ltd / Ku-ring-gai Council
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	• Environmental planning instruments: - o State Environmental Planning Policy (State & Regional Development) 2011 - o State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development - o State Environmental Planning Policy (Infrastructure) 2007 - o State Environmental Planning Policy (Building Sustainability Index) 2004 - o State Environmental Planning Policy (Affordable Rental Housing) 2009 - o State Environmental Planning Policy No. 55 – Remediation of Land - o State Environmental Planning Policy (Vegetation in Non-Rural Urban Areas) 2017 - o State Environmental Planning Policy XXXX - o Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP) - o Ku-ring-gai Local Environmental Plan (Local Centres) 2012 • Draft environmental planning instruments: Nil - o Draft Remediation of Land State Environmental Planning Policy - o Draft Environment State Environmental Planning Policy • Development control plans: - o Ku-ring-gai Local Centres Development Control Plan - o Ku-ring-gai Contributions Plan 2010 - o Ku-ring-gai Community Participation Plan • 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	• Council assessment report: 6 August 2020 • Clause 4.6 Height of Building Variation Request • Written submissions during public exhibition: 18 • Late written submission: 11 August 2020 • Verbal submissions at the public meeting: - o Community members – Darren Leffler

		- o Council assessment officer – Ursula Lang (consultant planner for council) - o On behalf of the applicant – Andrew Harvey, Conrad Johnston, Russell Ollsen, Brad Philips
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	• Briefing: 6 March 2019 - o <u>Panel members</u>: Peter Debnam (Panel Chair), Sue Francis, John Roseth - o <u>Council assessment staff</u>: Jonathon Goodwill, Simon Pocock, Ursula Lang (consultant planner for council) • Site inspection: 6 March 2019 - o <u>Panel members</u>: Peter Debnam (Panel Chair), Sue Francis, John Roseth - o <u>Council assessment staff</u>: Jonathon Goodwill, Simon Pocock, Ursula Lang (consultant planner for council) • Final briefing to discuss council's recommendation: 19 August 2020 - o <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Cheryl Szatow - o <u>Council assessment staff</u>: Ursula Lang (consultant planner for council), Shaun Garland, Jonathan Goodwill
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report