

DATE OF DETERMINATION	27 May 2020
PANEL MEMBERS	Sue Francis (Chair), Stuart McDonald, Stephen Davies, Brian McDonald, Deborah Laidlaw
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held via Microsoft Teams on 27 May 2020, opened at 10.40am and closed at 12.15pm.

MATTER DEFERRED

PPS-2019ECI001 – Inner West - DA201800505 - 2B West Street Lewisham (as described in Schedule 1)

REASONS FOR DEFERRAL

The Panel accepts that the proposal may have merit but before the Panel can be satisfied as to details of the proposal there are matters which require clarification, consideration, and possible plan amendment. Accordingly, the Panel agreed to defer the determination of the matter until the following matters are addressed and further considered:

- **Current Plan set required**

It became apparent during the Panel's consideration of the matter that the plans provided by the Council on the Planning Portal for circulation to the Panel are not those referenced in the assessment report and the draft conditions being sought to be determined. Plans DA 500, DA 600, SK 311,312 and 320-328 have been omitted from the schedule in the draft conditions. The Panel therefore requires from the Council the most current full set of plans sought to be determined to be provided; such plans to incorporate any of the matters required to be included from items mentioned below the subject of this deferral.

A schedule of amendments is also required to be provided so that the Panel can understand what has changed from the plans provided to the Panel compared to those considered in the assessment report and as a consequence of this deferral.

- **Site Contamination under SEPP55**

Before a consent authority determines a development application Cl 7 of the SEPP states that it must be satisfied that: -

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The applicant's Detailed Site Investigation identifies contamination within the site but does not unequivocally confirm that the site **is** or **will** be suitable for the proposed development, rather that it **may** be suitable. The conclusions of the report and its recommendations are not sufficiently certain or definitive to enable the Panel to be satisfied as to clause 7(1) SEPP 55 and specifically,

that the site is suitable, or will be suitable for residential development providing that identified remediation actions are undertaken, with those matters being able to be conditioned. This needs to be clarified by the relevant expert together with details of the remediation works/remediation action plan, if required. In this respect, it will either be necessary to undertake further on-site testing, or a condition of consent drafted to facilitate the identified remediation actions/works.

- **Capacity of the waste storage and handling areas**

The Panel understands from the meeting that there may need to be some design changes to allow waste to be moved in and out of the ground floor handling area. These design changes are to be provided on amended plans

- **CI41 of SEPPSL and Schedule 3/Clause 26 Location and access to facilities**

Clause 41 and Schedule 3 of SEPPSL states that: -

A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of a hostel or self-contained dwelling unless the proposed development complies with the standards specified in Schedule 3 for such development.

In the absence of consideration and assessment, firstly by the Council, and secondly by the Panel of all these matters in Schedule 3 the Panel cannot be satisfied that compliance is (or can be) achieved. Therefore, the Panel requires Council to undertake a detailed assessment of these matters. Where compliance is not achieved then amended plans/details need to be provided by the applicant to achieve compliance. Of particular concern is the issue of all parking achieving AS 2890 as stated in standard (5) and the possible consequential necessity to reduce the car parking provision accordingly and change the basement layout; wheelchair access as required by standard (1) and circulation through all internal doorways as required by standard (6). Please note that this list is not exhaustive and other matters in Schedule 3 need detailed consideration by Council and possibly amended plans from the applicant.

In relation to clause 26, where the applicable provision requires the consent authority to be satisfied on the basis of written evidence, then that written evidence must be provided and assessed as part of the subject DA including the availability of public transport access to services and accessibility from the development to that public transport. It is not sufficient to rely on the circumstance that this evidence has been previously submitted to, or assessed under, a different planning process. Noting the advice provided at the meeting, the supplementary assessment report is to confirm that the appropriate written material has been submitted and assessed as part of this DA in satisfaction of clause 26.

- **SEPP Infrastructure - Sydney Trains Concurrence**

The DA requires the concurrence of Sydney Trains. The 'B' conditions from Sydney Trains in their 30 April 2020 letter of concurrence have not been included in the draft set of conditions prepared by the Council. Further, certain conditions would result in design changes which may have implications on the amenity and assessment of the proposal. Notably, conditions B10 and B11. These relate to material changes to the building as it fronts the rail corridor so as to address the electrolysis risk (B10) and B11 which relates to design changes such as enclosed balconies and barriers to avoid projectiles hitting the rail racks. It may be that these design changes have implications for ADG cross ventilation. Accordingly, these conditions not only need to be added as conditions of consent but need to be assessed by Council (and the applicant) to determine what changes are needed to the design and then those changes need to be assessed.

- **Landscape Provision**

CI 48 and 50 of SEPPSL identify deemed to satisfy provisions for site landscape areas of 25sqm per RACF bed and 35sqm per dwelling in an ILU. On this basis the Council's report noted that 3600sqm

is required for the RACF and 4095sqm for the ILU. The report then indicates that 4373sqm is provided. Having regard to the SEPPSL some 7695sqm represents the deemed to satisfy threshold and so it is open for the Panel to refuse the application should it consider the landscape area provision unsatisfactory. Accordingly, the Council is to provide a detailed assessment as to why the provision of only 4373sqm is acceptable in this particular case.

- **SEPP Vegetation - Retention of Trees**

The Council assessment report does not provide clarity as to why the removal of the trees identified in draft condition 19 is acceptable when the assessment report itself indicates that several of the trees proposed by the applicant to be removed should, in the opinion of the Council's Tree Management Officer, be retained. The Panel therefore requires a report from Council's arborist/Tree management officer as to the appropriateness of the tree removal proposed.

- **Works to the former Ann Walsh Building and Novitiate.**






The Panel does not have sufficient information to properly understand the justification for the extent of internal and external changes to the heritage buildings. The Council's heritage referral report(s) have not been included in the briefing documents. The Panel does not have the benefit of updated heritage impact statements reflecting the current amendments to the proposed development.

- **Storage for ILUs**

Evidence of compliance with Part 4G of the Apartment Design Guide should be provided. The plans do not clearly indicate storage in the basements. If storage is not supplied in the basements the ADG requires all storage, not 50% within the units.

The above matters are to be considered by Council in conjunction with the applicant and a supplementary report prepared together with amended plans, if required. When this information has been received, the Panel will hold another public determination meeting to consider the application. The Panel requests that any amended plans or information be provided as soon as possible but preferably by the end June 2020. After which Council is requested to provide their report to the Panel within 4 weeks.

The decision to defer the matter was unanimous

PANEL MEMBERS	
 Sue Francis (Chair)	 Stuart McDonald
 Stephen Davies	 Brian McDonald
 Deborah Laidlaw	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPS-2019ECI001 – Inner West - DA201800505
2	PROPOSED DEVELOPMENT	Alterations and additions to the Anne Walsh and Novitiate buildings to change the use to Independent Living Units, demolish an existing Aged Care Hostel and construct a Residential Aged Care Facility and Independent Living Units.
3	STREET ADDRESS	2B West Street Lewisham
4	APPLICANT/OWNER	Catholic Healthcare Limited c/- Mecone NSW 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 No 55—Remediation of Land State Environmental Planning Policy No. 64 - Advertising and Signage (SEPP 64) State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure 2007) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 State Environmental Planning Policy (Vegetation in Non-Rural Areas) (Vegetation SEPP) Marrickville Local Environment Plan 2011 Site Compatibility Certificate Draft State Environmental Planning Policy (Environment) Draft Marrickville Local Environmental Plan 2011 (Amendment 4) Draft Inner West Local Environmental Plan 2020 Environmental Planning and Assessment Regulations 2000 clauses 92, 93 and 94 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Marrickville Development Control Plan 2011 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: 4 May 2020 Written submissions during public exhibition: 87 Verbal submissions at the public meeting:

		<ul style="list-style-type: none"> ○ Kath Reynolds on behalf of Save Petersham Park Community Group, Sarah Roebuck, Lynn Cohen ○ Council assessment officer – Glen Hugo, Luke Murtas ○ On behalf of the applicant – Kate Bartlett, David Brandon-Cooper, Damian Barker, Rhys Hazell
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 7 March 2019 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully, Sue Francis, John Roseth, Vic Macri, Sam Iskandar ○ <u>Council assessment staff</u>: Luke Murtas, Glen Hugo • Briefing: 17 April 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Sue Francis (Chair), Stuart McDonald, Stephen Davies, Brian McDonald, Deborah Laidlaw ○ <u>Council assessment staff</u>: Luke Murtas, Chirag Bhavan • Site inspection: Due to Coronavirus precautions, the Panel visited the site independently, prior to 27 May 2020. • Final briefing to discuss council's recommendation, 27 May 2020, 10am. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Sue Francis (Chair), Stuart McDonald, Stephen Davies, Brian McDonald, Deborah Laidlaw ○ <u>Council assessment staff</u>: Glen Hugo, Luke Murtas
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report