

DETERMINATION AND STATEMENT OF REASONS

SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DETERMINATION	Tuesday, 15 December 2020
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, Susan Budd and Ben Gilholme
APOLOGIES	Nicole Gurran, George Griess and Darcy Lound
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 15 December 2020, opened at 10:10am and closed at 11:34am.

MATTER DETERMINED

2019WCI031 – Campbelltown City Council – 1227/2019/DA-M at Nos 12, 14 and 16 Francis Street and No. 121 Minto Road, Minto – Demolition of existing structures and construction of a multi dwelling (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.

Development application

The panel determined to refuse the development application pursuant to section 4.16 of the Environmental Planning and Assessment Act 1979.

The decision was unanimous.

REASONS FOR THE DECISION

Principal issue of safe pedestrian access to bus stops

The panel determined to refuse the application because the Panel was not satisfied that the mandatory accessible access criteria arising from clause 10(2) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (the Affordable Rental Housing SEPP) had been met.

The Affordable Rental Housing SEPP provides for floor space incentives for villa, townhouse and residential flat building development projects in accessible locations, if the projects include affordable rental housing.

The clause reads relevantly:

10(2) this Division does not apply to development on land in the Sydney region unless all or part of the development is within an accessible area.

One means of satisfying that requirement is for the land concerned to be situated within “400 metres walking distance of a bus stop used by a regular bus service ...” with hourly servicing.

While the site is located within the stipulated maximum distance of 400 metres walking distance from a bus-stop in the definition of ‘accessible area’, “walking distance” is specifically defined in the instrument as follows:

“walking distance means the shortest distance between 2 points measured along a route that may be safely walked by a pedestrian using, as far as reasonably practicable, public footpaths and pedestrian crossings.” (emphasis added)

While the Applicant has submitted evidence of a pedestrian pathway of less than 400 m to a suitable bus stop, the Panel could not accept that the pathway could be “safely” walked, particularly by children or the less able. That is principally because the route identified would require a pedestrian to cross Minto Road (where vehicles presently drive at speed) without a pedestrian crossing or signalised intersection.

The Applicant’s reply to that inadequacy provided principally by correspondence from Varga Traffic Planning fairly accepted the deficiency in pedestrian infrastructure, proposing that “pedestrian refuge islands be provided in both Burford Street and in Ohlfen Road to assist pedestrians when crossing the road”, however, no designs for that infrastructure have been included with the Applicant’s proposal. The critical issue of a safe pedestrian crossing of Minto Road was not addressed in the Varga correspondence.

The response from the Applicant’s town planner pointed to future unspecified work by the Council associated with a road widening of Minto Road at some unknown time in the future. Critically the advice stated:

*“The current condition of the pedestrian infrastructure along Minto Road will require upgrades between Burford Street and the identified bus stops to achieve the required accessibility as detailed in the Amended Architectural Plans and Traffic Response provided as attachments to this letter. **The applicant is happy to provide temporary upgrades to the pedestrian infrastructure to support the proposal until such time Minto Road is widened. This is considered to be reasonable and can be suitably conditioned.**”*

No detail was provided of the infrastructure that would be implemented to provide a safe equitable crossing of Minto Road.

The Panel was of the view that these issues were not suitable to be resolved by condition. The Application itself must demonstrate that the accessibility requirements of the SEPP can be met.

The Panel is of the view that the mandatory threshold requirement under clause 10(2) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 that the application demonstrate safe accessible access to public transport had not been met to the Panel’s satisfaction, and the application must therefore be refused.

Outstanding information

The Council report advanced a number of reasons for refusal of the development application which included a long list of requested additional information (which was contended to be outstanding) to allow the Council to assess critical matters, and aspects of the development which would need to be amended to address Council concerns.

The Panel accepted that at least some of the matters raised by the Council had substance. It appeared to the Panel that many of those matters could be resolved by a deferred commencement condition, providing further opportunity for the Applicant to provide the outstanding information, or by minor amendments to the design.

As one example, the development as proposed would see the basement excavation encroach significantly into the root zone of trees standing on adjoining land including trees the Council had assessed to have ‘high’ significance ratings -including a street tree in the Council road reserve fronting Francis Street (T1), and another tree located close to the boundary of a neighbouring property (T10). While the Applicant contended at the determination meeting that the impact could be acceptably mitigated by amendments to the basement carpark, those changes had not been made despite the fact the DA had been pending for 20 months since 4 April 2019. The Panel was of the view that the development as proposed would have unacceptable impacts on trees T1 and T10.

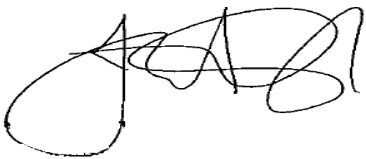


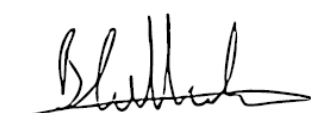
Another issue raised was the applicant's failure to provide material said by the Council to be essential to demonstrate compliance with the applicable guidelines for assessment of the potential for contamination under SEPP 55.

While the Panel may have considered allowing the Applicant a further opportunity to resolve such matters (despite the Council's expressed frustration at the delays), the failure of the application to meet the threshold requirement of providing safe accessible access meant that there was no utility in allowing further time to resolve those matters.

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 panel. The panel notes that issues of concern included:

- Preliminary site investigation and supporting contamination information does not satisfy clause 7(2) of State Environmental Planning Policy No. 55 – Remediation of Land.
- The application fails to provide details of pedestrian infrastructure to ensure that a pedestrian can safely walk from the site to the nominated bus stops as required by the definition of "assessable area" in accordance with clause 10(2) of State Environmental Planning Policy (Affordable Rental Housing) 2009.
- Details of pedestrian infrastructure not provided
- Development is not consistent with the character of the low-density residential area and does not satisfy clause 16A of State Environmental Planning Policy (Affordable Rental Housing) 2009.
- Waste management plan is not comprehensive.
- Crime Prevention Through Environmental Design concerns in relation to the use of the internal access ways as a public pedestrian thoroughfare.
- Insufficient drainage concept plan.
- The application fails to provide a longitudinal section at the critical location of the driveway.
- Adverse impact on existing mature trees adjoining the site.
- Insufficient information to address the impact of the development on the intersection performance of Burford Street and Minto Road

PANEL MEMBERS	
 Justin Doyle (Chair)	 Louise Camenzuli
 Susan Budd	 Ben Gilholme

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2019WCI031 – Campbelltown – 1227/2019/DA-M
2	PROPOSED DEVELOPMENT	Demolition of existing structures and construction of a multi dwelling development consisting of 23 dwellings, basement car parking and stormwater and landscaping works
3	STREET ADDRESS	Nos 12, 14 and 16 Francis Street and No. 121 Minto Road, Minto
4	APPLICANT/OWNER	Applicant: Urbanlink Architects Pty Ltd Owner: Michelle Mounir Ibrahim and Nancy Shawky Awadallah Ibrahim
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 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 (Affordable Rental Housing) 2009 ○ State Environmental Planning Policy (Infrastructure) 2007 ○ State Environmental Planning Policy (Sydney Region Growth Centres) 2006 ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ○ Campbelltown Local Environmental Plan 2015 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Campbelltown (Sustainable City) Development Control Plan 2015 • 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: 2 December 2020 • Material associated with the application supplied by the Department of Planning portal • Additional information received: 15 December 2020 • Correspondence from the Planning Hub dated 12 November 2020 and from Varga Traffic Planning dated 11 November 2020 and 13 July 2020. • Written submissions during public exhibition: 118 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Patricia Grocholsky, Peter Grocholsky, Michael Delmage, Anoulack Chanthivong MP, David Strauchan and Marion Hall ○ Council assessment officer – David Smith ○ On behalf of the applicant – Ziad Boumelhem • Total number of unique submissions received by way of objection: 55

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: Tuesday, 13 August 2019 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald, Carcy Lound and George Griess ○ <u>Council assessment staff</u>: Emma Page and David Smith • Final briefing to discuss council's recommendation: Monday, 23 November 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Louise Camenzuli and Ben Gilhome ○ <u>Council assessment staff</u>: Rad Balgojevic and David Smith
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A