

DETERMINATION AND STATEMENT OF REASONS

SYDNEY EASTERN CITY PLANNING PANEL

DATE OF DETERMINATION	5 April 2022
DATE OF PANEL DECISION	4 April 2022
DATE OF PANEL MEETING	28 March 2022
PANEL MEMBERS	Jan Murrell (Acting Chair), Brian Kirk, Stephen Davies, Joanne McCafferty and Bill Burst
APOLOGIES	Carl Scully
DECLARATIONS OF INTEREST	None

Public meeting held by videoconference on 28 March 2022, opened at 10.10am and closed at 10:50am.

MATTER DETERMINED

PPSSEC-117 – Randwick - DA/642/2020 at 11-19 Frenchmans Rd, Randwick (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.

This application has been determined under the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SHSEPP), which is now repealed but was in operation at the time of lodgement of the application. State Environmental Planning Policy (Housing) 2021 (Housing SEPP) has replaced the SHSEPP and includes saving provisions requiring that applications made, but not determined, before the commencement of the Housing SEPP, must be determined as if the Housing SEPP had not commenced. Notwithstanding, the Council have provided an assessment of the application under the provisions of the Housing SEPP.

Applications to vary development standards

The applicant has submitted a number of written requests made under cl 4.6 (3) of the Randwick Local Environmental Plan 2012 (RLEP).

The Panel considers the applicant's written requests to vary the maximum height permitted under cl. 4.3 of the RLEP and the maximum gradient along access pathways set out in cl. 26 (2) of the SHSEPP are prerequisites to the granting of development consent.

With regard to the applicant's request to vary the maximum Floor Space Ratio (FSR) set out in cl. 4.4 of the RLEP, the Panel is satisfied that the proposed FSR, while exceeding the maximum permitted under the RLEP, will be lower than the maximum permitted under the SHSEPP allowing for the bonus provisions under cl. 45 of the SHSEPP and is acceptable. The Panel also considers the applicant's written request under cl. 4.6 to vary cl. 4.4 of the RLEP. While not necessary nonetheless, the Panel has considered the applicant's written request out of abundant caution.

Similarly, with regard to the applicant's request to vary the landscaped area control set out in cl. 48(c) of the SHSEPP, the Panel notes that this is a standard that, if satisfied, cannot be used to refuse development consent. This landscaped area control is therefore a discretionary standard. At the same time, the Panel considers the applicant's cl. 4.6 written request to vary cl. 48(c) of the SHSEPP is not required. However, once again the Panel has considered the applicant's written request out of abundant caution.

Following consideration of written requests from the applicant, made under cl 4.6 (3) of the Randwick Local Environmental Plan 2012 (RLEP), the Panel is satisfied it has been demonstrated that:

1.

- a) Strict compliance with;
 - cl. 4.3 *Height of Buildings* of the RLEP,
 - cl. 4.4 *Floor Space Ratio* of the RLEP,
 - cl. 26 *Location and Access to Facilities* of the SHSEPP, and
 - cl. 48(c) *Landscaped Area* of the SHSEPPis unreasonable or unnecessary in the circumstances; and
- b) There are sufficient environmental planning grounds to justify contravening the development standards.

The Panel is also satisfied that:

- a) The applicant's written requests adequately address the matters required to be addressed under cl 4.6 (3) of the RLEP; and
- b) The development is in the public interest because it is consistent with the stated aims of the RLEP set out in cl. 1.2, the objectives of cl. 4.3 of the RLEP and the objectives for development in the R3 Medium Density Residential zone; and
- c) 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*, subject to the conditions as recommended and the changes identified below.

The decision was **unanimous**.

REASONS FOR THE DECISION

The Panel determined to uphold the Clause 4.6 variations to building height, FSR, pathway gradient and landscaped area; and approve the application for the reasons outlined in the Council Officer's assessment report.

The Panel considers the amended application provides for a nursing home to meet current standards and with the removal of the top storey on the McLennan Street portion of the building, together with the increased setbacks and landscaped setting, the development warrants approval. The number of beds of the existing outdated facility has been decreased from 98 to 83 with 2 ILUs that are to be affordable housing. Furthermore, the amended plans resolve the relationship between the terrace to the east and the subject site and when viewed from Frenchmans Road.

The height variation is located to mitigate any adverse environmental effects in terms of overshadowing and bulk in particular to McLennan Street. Similarly, the proposal satisfies the objectives of key development standards and is consistent with the design principles set out in the (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP).

The Panel notes that the development has been designed to limit access to McLennan Street for emergency purposes only. Furthermore, a plan of management is to be implemented to ensure the residential amenity of this street is maintained to a reasonable level.

CONDITIONS

The development application is approved subject to the conditions in the Council Officer's assessment report with the following amendments:

- Condition 2(a) is deleted.
Panel Reason: The Panel is satisfied there is limited opportunity for overlooking the adjoining properties.
- Condition 2(b) is amended to read as follows:

The approved plans and documents must be amended in accordance with the following privacy requirements:

- i. The following windows are to be provided with translucent, obscured, frosted or sandblasted glazing to a height of 1.4m above finished floor level. The windows up to 1.4m in height are also to be fixed glazing:*
 - *Northern windows to rooms/beds 8 and 9 at the First Floor level;*
 - *Northern windows to rooms/beds 8 and 9 at the Second Floor level;*
 - *Northern windows to rooms/beds 8 and 9 at the Third Floor level.*
- ii. The following windows are to be provided with translucent, obscured, frosted or sandblasted glazing to a height of 1.4m above finished floor level. The windows up to 1.4m in height are also to be fixed glazing. OR alternatively, have external vertical louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings, to a height of 1.4m:*
 - *Northern windows to rooms/beds 18, 20, 21 and 22 at the First Floor level;*
 - *Northern windows to rooms/beds 10, 12, 13 and 14 at the Second Floor level;*
 - *Northern windows to rooms/beds 6, 7 and 8 at the Third Floor level.*
- iii. The balustrade of the Juliette balconies on the western elevation to rooms 10, 11 and 12 at the First Floor level are to be translucent, obscured, frosted or sandblasted glazing.*

Panel Reason: privacy treatment of windows is amended to enhance the internal amenity of resident's rooms while at the same time to ensure privacy for adjoining properties is reasonably maintained. In addition, landscaping includes canopy trees and hedges that will provide increased amenity for neighbouring properties and the nursing home residents.

- Condition 2(c) is to be deleted.

Panel Reason: The Panel is satisfied that there is limited opportunity for overlooking the adjacent property.

- The Panel has deleted Condition 4 that required 10% of the rooms to be classified as affordable housing.

Panel Reason: The Panel accepts that the nursing home rooms do not constitute a dwelling and on a merit's assessment the imposition of this condition for an existing facility is unreasonable. Furthermore, the mechanism to implement such a provision is not feasible and unmanageable given the Commonwealth responsibilities and regulations for nursing homes.

- Conditions 5-7 are amended accordingly.

Panel Reason: The Panel is satisfied that the provision of the only two independent living units (ILUs) for affordable housing is an appropriate contribution in the circumstances.

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 at its two public meetings: 2 December 2021 (Cameron Ireland and Jessica Kurosaki.) and 28/03/2022 (Cameron Ireland, Adam Beasley and Brian Dunn).

There were 23 written submissions to the original plans and 3 submissions to the amended plans.





The Panel notes that issues of concern included:

- Height
- Bulk and scale
- Side setbacks
- Overshadowing
- Construction impacts, dilapidation
- Inconsistent with desired future character

- Traffic, access and parking issues
- Privacy impacts

The Panel considers that relevant issues and concerns raised by the community in written submissions and at the public meetings have been adequately addressed by the amended plans, and in the Council Officer's assessment report with recommended conditions, and as amended by the Panel above.

This includes: Limiting access to McClellan Street for emergency purposes only; reducing the McClellan Street component by one storey and an additional level of car parking; copies of dilapidation reports provided to relevant neighbours; measures to mitigate privacy concerns including increased boundary setbacks with landscaping and window treatments; a construction management plan and a Plan of Management for the operation of the facility.

PANEL MEMBERS	
 Jan Murrell (Chair)	 Brian Kirk
 Stephen Davies	 Bill Burst
Joanne McCafferty Endorsed by email dated 4 April 2022	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSEC-117 – Randwick – DA/642/2020
2	PROPOSED DEVELOPMENT	Demolition of existing structures including the existing aged care facility, construction of a 4 storey building over two basement levels for the purposes of seniors housing with ancillary uses, comprising 83 beds (79 rooms) and 2 x 1 bedroom independent living units, rooftop terrace, basement car parking for 18 vehicles, lot consolidation, landscaping and associated works (variation to building height of RLEP 2012).
3	STREET ADDRESS	11 – 19 Frenchmans Road, Randwick Lot 10 in DP 845575 (11 – 15 Frenchmans Road) Lot 3 in DP 13779 (17 Frenchmans Road) Lot 4 I DP 13779 (19 Frenchmans Road)
4	APPLICANT/OWNER	Applicant: Higgins Planning Owner: Frenchmans Lodge Properties 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 or People with a Disability) 2004 (SHSEPP) State Environmental Planning Policy No. 55 – Remediation of Land State Environmental Planning Policy (Infrastructure) 2007 Randwick Local Environmental Plan 2012 (RLEP) Draft environmental planning instruments: State Environmental Planning Policy (Housing) 2021 (Housing SEPP) Development control plans: Randwick Comprehensive Development Control Plan 2013 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> 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: 19 November 2021 Clause 4.6 variation request – cl. 4.3 height of buildings under RLEP Clause 4.6 variation request – cl 26 SHSEPP – ramp access gradient

		<ul style="list-style-type: none"> ○ Clause 4.6 variation request – cl 48 and 50 SHSEPP – landscape area ○ Council memo or supplementary report received: 18 March 2022 ○ Written submissions during public exhibition: 26 ○ Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Brian Dunn, Adam Beasley, Cameron Ireland ○ Council assessment officer – Angela Manahan, Frank Ko ○ On behalf of the applicant – Marian Higgins, Nick Winberg ○ Total number of unique submissions received by way of objection: 21
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<p>Briefing: 8 July 2021</p> <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Jan Murrell, Roberta Ryan, Christie Hamilton, Murray Matson ○ <u>Council assessment staff</u>: Sohail Faridy, Frank Ko <p>Final briefing to discuss council's recommendation: 2 December 2021</p> <ul style="list-style-type: none"> ○ <u>Panel members</u>: Jan Murrell (Chair), Stephen Davies, Brian Kirk, Christie Hamilton, Murray Matson ○ <u>Council assessment staff</u>: Sohail Faridy <p>Public determination meeting: 2 December 2021</p> <ul style="list-style-type: none"> ○ The Panel deferred its decision at the meeting. See the published Record of Deferral, dated 8 December 2021, for the Panel's reasons. <p>Briefing: 3 February 2022</p> <ul style="list-style-type: none"> ○ <u>Panel members</u>: Jan Murrell (A/Chair), Brian Kirk, Stephen Davies, Joanne McCafferty, Bill Burst ○ <u>Council assessment staff</u>: Sohail Faridy, Frank Ko ○ <u>Applicant</u>: Marian Higgins, Nick Winberg <p>Site inspection: 15 March 2022</p> <ul style="list-style-type: none"> ○ <u>Panel members</u>: Jan Murrell (Chair), Stephen Davies, Brian Kirk, Joanne McCafferty, Bill Burst ○ <u>Applicant</u>: Marian Higgins, Nick Winberg <p>Final briefing to discuss council's recommendation: 28 March 2022</p> <ul style="list-style-type: none"> ○ <u>Panel members</u>: Jan Murrell (Chair), Stephen Davies, Brian Kirk, Joanne McCafferty, Bill Burst ○ <u>Council assessment staff</u>: Angela Manahan ○ <u>Applicant</u>: Marian Higgins, Nick Winberg
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report