

<b>DATE OF DETERMINATION</b>	12 May 2021
<b>PANEL MEMBERS</b>	Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Ross Walker, David White
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

Public meeting held by teleconference on 12 May 2021, opened at 10.05am and closed at 11.50am.

#### **MATTER DETERMINED**

PPSSNH-122 – Hornsby – DA509/2020 at 423-521 Old Northern Road Castle Hill for the development of a new “Innovation Hub” at Oakhill College (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 Hornsby Local Environmental Plan 2013 (LEP), that has demonstrated that:

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

the Panel is satisfied that:

- a) the applicant’s written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl4.3 (height of building) of the LEP and the objectives for development in the R2 Low Density Residential zone; and
- c) the concurrence of the Secretary has been obtained.

#### **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 for the reasons outlined below and in Council’s two Assessment Reports.

Following the Panel’s March deferral of the Development Application, the Applicant submitted a revised written request to contravene the height of building development standard contained within Clause 4.3 of the Hornsby Local Environmental Plan 2013 (HLEP). The revised request captures the result of a more detailed study into the roof plant shown as “indicative” on the previously submitted plans.

The maximum height of the proposed development is 18.764m to the top of the plant (shown on the architectural plans), which is a maximum non-compliance of 10.26m. The building itself is approximately

16.95m at the northern end, which has a non-compliance of 8.45m. The southern end of the proposal has a non-compliance of 3.471m. When compared to the previously submitted written request, the Applicant sought consent for an additional 2.113m of building height. The additional building height is not the result of design changes to the building and is the result of further detail provided for the proposed roof plant.

The Panel concurs with Council that the height variation can be accepted for the following reasons:

- The proposed building height is largely comparable to the bulk and scale of several existing structures on site, including the De La Salle building which is located immediately to the west of the proposed innovation hub building;
- The proposed building appropriately controlled potential amenity impacts arising from its height to the adjoining residential development to the north;
- The height and setbacks of the proposed building are largely similar to the controls contained within Schedule 2 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 which allows the construction of a 22 metre building 10 metres from the side boundary;
- The proposed roof plant would be centrally located within the roof form and would have negligible additional amenity impacts to the surrounding built and natural environments; and
- Amenity impacts arising from the additional building height in the form of privacy, overshadowing and acoustics were negligible or otherwise adequately controlled including horizontal privacy louvers on the northern elevation, additional landscaping and restriction of access to the northern verandah area.

For the reasons above, the Panel concurs with Council that the written request to contravene the height of building standard adequately demonstrates that the objectives of the height of buildings development standard contained within Clause 4.3 of the HLEP are achieved, notwithstanding non-compliance with the standard and the exceedance of the height of buildings development standard can be supported in this instance.

The Panel considered the Development Application in two public meetings in March and May. The proposal involves the demolition of two education buildings and construction of an “Innovation Hub” building within an existing educational establishment known as Oakhill College. The proposal and Council’s Assessment Report, recommending approval, were extensively considered during the March public meeting.

At the March meeting, the Panel resolved to defer consideration of the application in order for the Applicant to submit additional information as outlined below:

1. Revised Clause 4.6 written request;
2. Review of plans to indicate the verandah on the northern edge of the building is either non-trafficable or a landscaped planted roof;
3. Revision of plans to show the horizontal shelf angles on the windows on the northern edge of the building to be increased to a height of 1.6m from FFL to protect the privacy of residential properties to the north;
4. Revision of plans to include roof plant details;
5. Visual impact analysis of the new building from surrounding streets;
6. Revised Landscape Plan along the northern boundary of the site to reduce the width of the access way, increase the width of the garden bed, increase canopy tree planting and ensure maximum screening of the built form;
7. Consideration of options which may increase the northern setback of the top level of the building;
8. Revised construction conditions to include a monthly tree health report to Council; and
9. Revised conditions to ensure the building’s internal lights are extinguished by 10pm daily.

The above reasons for deferral were addressed by the Applicant and further assessed by Council during March and April and Council’s Supplementary Assessment Report considers each of the points in detail. The Panel considered the Supplementary Report at a public meeting in May.

While the Panel concurred with Council that the reasons for deferral were adequately addressed, the Panel resolved to require further amendments to the landscape plan to improve amenity for nearby residents.

The additional changes have been conditioned as set out below and include retention of trees 220, 221 and 222, deletion of the gravel access path and additional canopy trees to integrate the built form of the building into the existing landscaped setting.

In summary, the Panel concurs with Council that the development generally meets the desired outcomes of Council's planning controls and is satisfactory having regard to the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. Additionally:

- The proposed development complies with the requirements of the relevant environmental planning instruments, including the State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017, the Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2013;
- The written request pursuant to Clause 4.6 of the Hornsby Local Environmental Plan 2013 to contravene the height of buildings development standard contained within Clause 4.3 adequately establishes that compliance with the development standard is unnecessary in the circumstances of the development, and that sufficient environmental planning grounds exist to justify the contravention of the development standard;
- The proposed development as amended does not create unreasonable environmental impacts to the adjoining residential development with regard to visual bulk, overshadowing, solar access, traffic, parking, amenity or privacy; and
- The proposal will provide enhancement of the educational facility for the community and approval would be in the public interest.

The Panel unanimously approved the application subject to conditions.

While supporting the unanimous determination, David White felt it important to stress he would personally encourage the school to add further vegetation to mitigate the building bulk when seen from all angles from north east to north west of the proposed building.

## CONDITIONS

The development application was approved subject to the conditions in Council's Supplementary Assessment Report with the following amendments.

- Condition 1A amended to read as follows:  
Amendment of Plans
  - a) To integrate the built form of the building into the existing landscaped setting, canopy trees must be provided along the length of the northern façade of the approved educational building in accordance with the following;
    - i) Canopy trees must be indicated on the approved landscape plans commencing 10 metres west of the building at intervals of no less than 10 metres. Trees must be shown for the entire northern face of the building and be of the species *Lophostemon Confertus* (Queensland Brush Box).
      - a. A minimum of 8 trees is to be provided.
    - ii) The proposed landscape plan must indicate that the trees be established at a semi mature height of 3 metres, and be maintained until they reach a mature height of no less than 12 metres.
    - iii) The canopy trees must be placed at a point equidistant from the boundary and the northern façade of the approved educational building, and be adequately separated from the landscaping proposed adjacent to the northern boundary.
  - b) To permit the introduction of the canopy trees along the boundary, and to allow for the retention of the existing proposed planting adjacent to the northern boundary, as depicted on the approved landscape plans, the gravel access path is to be deleted from the approved plans and be replaced with an extended soft landscaping area.
  - c) These amended plans must be submitted with the application for the Construction Certificate.
- Condition 2 amended to read as follows:

### Removal of Trees

This development consent permits the removal of 39 trees as identified in the tree schedule within the Arboricultural Impact Assessment report, prepared by Truth About Trees, dated 24 June 2020 Version 4, with the exception of the following three trees:

- i. Tree 220, Tree 221 and Tree 222 are not permitted to be removed, as these trees contribute to the existing canopy and landscaped setting of the subject site.

*Note: The removal of any other trees from the site requires separate approval by Council in accordance with Part 1B.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan, 2013.*

- Condition 47 amended to read as follows:

#### Completion of Landscaping



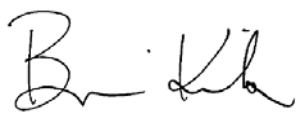


A certificate must be submitted to the PCA by a practicing landscape architect, horticulturalist or person with similar qualifications and experience certifying that all required landscaping works depicted on the approved landscape plans (as well as the amendments to those plans, as detailed in Condition 1A of this consent) have been satisfactorily completed.

*Note: Advice on suitable species for landscaping can be obtained from Council's planting guide 'Indigenous Plants for the Bushland Shire', available at [www.hornsby.nsw.gov.au](http://www.hornsby.nsw.gov.au).*

### 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 meetings. Community issues of concern included noise and privacy impacts, traffic impacts, bulk and scale of building, location of the building close to the school boundary, demolition and construction impacts, heritage impact, environmental impacts from loss of flora on site and the use of Armidale Crescent access for deliveries.

The Panel considers community concerns were adequately addressed in Council's two Assessment Reports, by Applicant and Council responses during the public meetings and by the Conditions of Consent as amended.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Julie Savet Ward
 Brian Kirk	 Ross Walker (OAM)
 David White	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-122 – Hornsby – DA1015/2020
2	PROPOSED DEVELOPMENT	Demolition of two educational buildings and construction of an “innovation hub” educational building within an existing educational establishment.
3	STREET ADDRESS	423-521 Old Northern Road, Castle Hill
4	APPLICANT/OWNER	Trustees of the De La Salle Brothers Australia
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017</li> <li>○ State Environmental Planning Policy No. 55 Remediation of Land</li> <li>○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>○ State Environmental Planning Policy (Infrastructure) 2007</li> <li>○ Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River</li> <li>○ Biodiversity Conservation Act 2016</li> <li>○ Hornsby Local Environment Plan 2013</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Hornsby Development Control Plan 2013</li> <li>○ Section 7.12 Development Contributions Plan</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil</li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Council assessment report: 5 March 2021</li> <li>• Clause 4.6 Variation Request – Height of Building</li> <li>• List any council memo or supplementary report received: 15 March 2021</li> <li>• Applicant submission: 16 March 2021</li> <li>• Council supplementary report: 3 May 2021</li> <li>• Written submissions during public exhibition: 58</li> <li>• Unique submissions received by way of objection: 58</li> <li>• Verbal submissions at the public meeting 17 March 2021: <ul style="list-style-type: none"> <li>○ Members of community – Jayantha Sellahewa, Jan Primrose on behalf of Protecting Your Suburban Environment Inc, Tom Lancaster on behalf of residents of Brosnan Place, Luke Shang, Fiona Herlihy</li> <li>○ Council assessment officer – Ben Jones</li> <li>○ On behalf of the applicant – Andrew Hobbs, Phillip Rossington</li> </ul> </li> <li>• Verbal submissions at the public meeting 12 May 2021: <ul style="list-style-type: none"> <li>○ Members of community - Jan Primrose on behalf of Protecting Your Suburban Environment Inc, Tom Lancaster on behalf of residents of Brosnan Place, Councillor Vince Del Gallego, Luke Shang, Nirmala Sellahewa, Paul Ho, Elsie Cheung, Mark Easton, Kate Chan</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>○ Council assessment officer – Ben Jones</li> <li>○ On behalf of the applicant – Andrew Hobbs,</li> </ul>
8	<b>MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• Briefing: 7 October 2020 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Ross Walker, David White</li> <li>○ <u>Council assessment staff</u>: Ben Jones</li> </ul> </li> <li>• Final briefing to discuss council's recommendation: 17 March 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Ross Walker, David White</li> <li>○ <u>Council assessment staff</u>: Ben Jones</li> </ul> </li> <li>• Final briefing to discuss council's recommendation: 12 April 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Ross Walker, David White</li> </ul> </li> </ul> <p><u>Council assessment staff</u>: Ben Jones, Jane Maze-Riley, Yen Vu, Phillip Rossington</p>
9	<b>COUNCIL RECOMMENDATION</b>	Approval
10	<b>DRAFT CONDITIONS</b>	Attached to the council assessment report