

<b>DATE OF DETERMINATION</b>	21 April 2021
<b>PANEL MEMBERS</b>	Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Deborah Sutherland, Eugene Sarich
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

Public meeting held by teleconference on 21 April 2021, opened at 10.02am and closed at 11.40am.

#### **MATTER DETERMINED**

PPSSNH-140 – Lane Cove – DA113/20 at 4 Northwood Road, Lane Cove for a residential aged care facility (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 Lane Cove Local Environmental Plan 2009 (LEP), that has demonstrated that:

- a) compliance with cl.6.9(2)(a) (maximum 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 cl.6.9(2)(a) (maximum height of building) of the LEP and the objectives for development in the B4 Mixed 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*.

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 Assessment and Supplementary Reports.

The proposed development incorporates demolition, tree removal and site works followed by construction of a part 3 storey – part 5 storey mixed-use development including a 143 bed residential aged care facility (RACF) and commercial premises with basement parking and associated landscaping, retaining walls and public domain improvements. The site is zoned B4 Mixed Use under the Lane Cove LEP and commercial premises and seniors housing are permissible uses with consent in the B4 zone.

While the majority of the building mass remains below or in line with the maximum height standard identified in Clause 6.9(2)(a), the maximum height of the proposed development is RL 68.65 which is a variation of 2.4 metres. The portions of the building that contravene the height standard are limited to the building's parapet, roof top services and the lift and stair overruns.

The proposed height exceedance would not exist if the development application relied on the Seniors SEPP with the height measured to the ceiling of the uppermost floor and not including any roof top structures including the parapet, services or lift/stair overruns. However, given Clause 40(4) of the Seniors SEPP does not apply to this site (because RFBs are permissible in the B4 zone) the relevant controls contained in Clause 6.9 of the Lane Cove LEP apply and the height is measured using the LCLEP definition, which requires plant equipment and lift overruns to be included.

The portions of the building that exceed the LEP height standard do not comprise habitable space. The services and lift/stair overrun (which exceed the standard to the greatest extent) have been located centrally on the roof to minimise visual impact from the public domain and the parapet has been reduced in height.

The Panel concurs with the Applicant that to achieve full compliance with the LEP's development standard for height, the floor-to-floor heights would need to be lowered, which would compromise the design and amenity of the resultant development. The Applicant's written request has demonstrated there are no environmental impacts as a consequence of this contravention of the maximum building height standard and that there are sufficient environmental planning grounds to justify the variation. The Panel concurs that the development as a whole satisfies the objectives of the B4 Mixed Use zone, is in the public interest and strict adherence to the height standard would be unreasonable and unnecessary.

The Panel had previously considered the proposal in December 2020 and at that time decided to defer the Application to allow Council and the Applicant to further resolve issues of concern. While Council's recommendation at that time was for refusal, the Panel believed the proposal had merit and warranted deferral to resolve the remaining concerns as set out below:

1. Building Height – Applicant's Clause 4.6 Written Request, especially Environmental Planning Grounds, needs further work to distil the argument in support of a variation of the height standard. At this stage, the Panel is not convinced that a parapet fits the definition of an architectural roof feature;
2. Built Form – Resolve setbacks to Northwood Road in accordance with the objectives of the DCP to create a pedestrian friendly, cyclist friendly, vibrant and active neighbourhood including a 3m setback for ground and first floors and a further setback for the third floor to moderate the appearance of building mass from the pedestrian level. As a guide, the third floor setback should be not less than 3m in order to provide a meaningful step-back to allow the building to be read as being predominantly two storeys from the public domain. The site is visually prominent and while the architecture is considered highly commendable in its own right, the development would better respond to its local context and desired future character if the third storey was setback;
3. Council's Reasons for Refusal 3 to 10 - Further Information is to be provided by Applicant and resolved in discussions with Council.

Between the December Deferral and the 21<sup>st</sup> April public meeting, the Applicant and Council met to progress the above issues and by early April had reached agreement on all issues with the exception of: setback of the upper level to Northwood Road; compliance with the 10m bushland buffer; and retention of Tree T10.

The 21<sup>st</sup> April public meeting largely focused on those three remaining issues as well as hearing from members of the community regarding more general planning and traffic issues. The Panel considered extensive contributions from the Applicant and Council on the three issues then adjourned to consider the matter.

On balance, the Panel concurred with Council that Tree T10 should be retained and conditions of approval have been amended to require building design changes to ensure the retention of the tree.

In relation to setback of the third floor of the development along Northwood Road, the Panel acknowledged that after the December public meeting, the Panel considered the third level setback at the December 2020 public meeting and formed the view that strict adherence to the 8m numerical setback control in the DCP should not be required, provided the design incorporated a meaningful step-back of at least 3m to provide relief to the primary façade to Northwood Road. The Applicant has amended the building design to setback the third floor by 3m and consequently the Panel accepts the amended design is supportable and meets the intent of the control.

In relation to the 10m bushland buffer, the Panel concurred with the Applicant that the latest amended design is adequate given the Applicant's commitment to landscaping, tree replacement and bushland management around the entire site including revegetation of more than 200 square metres of the north eastern corner of the site currently occupied by a building.

In summary, the Panel considered the proposal has been extensively assessed and that approval of the development would make a worthwhile contribution to the Lane Cove community and be in the public interest. The Panel unanimously approved the proposal subject to retention of Tree T10 and the amended conditions detailed below.

## CONDITIONS

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

- Condition 1 amended to read as follows:  
*Modification of Details of the Development*  
*The approved plans and Construction Certificate plans and specification must detail the following amendments:*
  - a) *Native turpentine trees T1, T2, T10 and T11 are to be retained.*
  - b) *All levels of the proposed development shall be amended to ensure the retention of Tree T10.*
  - c) *Details of the planter boxes and plantings to the Level 5 roof area along the Longueville/Northwood Road frontage as depicted in the perspective drawings shall be provided on the landscape plans and shown on the architectural plans.*
- Condition 39 amended to read as follows:  
*Outdoor Lighting*  
*All outside lighting must be appropriately baffled to minimise light pollution into the bushland area and neighbouring properties.*  
  
*Outdoor lighting is to be dimmed or turned off by certain hours to allow nocturnal fauna to graze. An appropriately qualified ecologist is to be consulted to determine requirements. Evidence of compliance to be submitted to the PCA, prior to any occupation or use of the building.*
- Condition 80(6) amended to read as follows:  
*As per submitted plan, there is no slope between pit 2/01 and pit 2/03 and inadequate slope in upstream of pit 1/01. There is no slope between pit 2/05 to GPT. By considering future pipe blockage and bush growth, the proposed retaining wall along the rear fence line is to be extended above the high side by 150mm to direct surface flow into the pit. External areas to drain at min 1% towards pits in all directions. This is to ensure clear flow path towards GPT.*
- Deletion of Condition 114(vii).



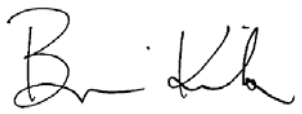


- New condition to read as follows:

*Enclosure of Fire Hydrant*

*Prior to the issue of a Construction Certificate, the Certifying Authority is to be provided with plans indicating that all fire hydrant and sprinkler booster valves and the like are enclosed in accordance with the requirements of AS 2419.1 2005.*

#### **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 two public meetings. Issues of concern included building height, bulk & scale, setbacks, streetscape, bushland buffer, threatened species, traffic and parking. The Panel considers concerns raised by the community have been adequately addressed in Council's Assessment and Supplementary Reports, in Applicant and Council responses during the public meetings and in the conditions as amended.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Julie Savet Ward
 Brian Kirk	 Eugene Sarich
 Deborah Sutherland	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-140 – Lane Cove – DA113/20
2	PROPOSED DEVELOPMENT	Mixed-use development including a 143-bed residential care facility and commercial premises including a medical centre premises, and basement parking.
3	STREET ADDRESS	4-18 Northwood Road & 274-274A Longueville Road, Lane Cove
4	APPLICANT/OWNER	Applicant: City Plan (Contact: Elyse Kenny) Owner: Pathways Property Group Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 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 (Housing for Seniors or People with a disability) 2004</li> <li>○ State Environmental Planning Policy No.55 – Remediation of Land</li> <li>○ State Environmental Planning Policy (Infrastructure) 2007</li> <li>○ State Environmental Planning Policy (Building Sustainability Index) 2004</li> <li>○ State Environmental Planning Policy (Vegetation in non-rural areas) 2017</li> <li>○ State Environmental Planning Policy No.19 Bushland in Urban Area</li> <li>○ Lane Cove Local Environmental Plan 2009</li> </ul> </li> <li>• Draft environmental planning instruments: Draft Housing Diversity SEPP</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Lane Cove Development Control Plan 2010</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: 7 December 2020</li> <li>• Clause 4.6 Variation Request Height of Building</li> <li>• Council memo (conditions): 10 Dec 2020</li> <li>• Council memo (additional information): 11 December 2020</li> <li>• Applicant memo: 16 December 2020</li> <li>• Council supplementary report: 9 April 2021</li> <li>• Applicant memo: 13 April 2021</li> <li>• Applicant memo: 20 April 2021</li> <li>• Written submissions during public exhibition: 256</li> <li>• Number of unique submissions received by way of objection: 256</li> <li>• Verbal submissions at the public meeting 16 December 2020: <ul style="list-style-type: none"> <li>○ Community members: Margaret Curley, Jacky Barker, Jennifer Schneller (on behalf of Northwood Action Group), Michael Guthrie, Jennifer Schneller, Ajaya Jayarao, Ron Geddon (on behalf of Longueville Residents Association), David Gleeson</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>○ Council assessment officer – Phillipa Frecklington (consultant planner for council), Rajiv Shankar, Henry Burnett</li> <li>○ On behalf of the applicant – Juliet Grant, Graeme Skerritt Markham Ralph, Tim Fitzhardinge, Katy Svalbe, Matthew McCarthy</li> <li>● Verbal submissions at the public meeting 21 April 2021: <ul style="list-style-type: none"> <li>○ Community members:</li> <li>○ Council assessment officer – Phillipa Frecklington (consultant planner for council)</li> <li>○ On behalf of the applicant – Juliet Grant, Markham Ralph, Mikael Peck</li> </ul> </li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>● Briefing: 18 November 2020 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Eugene Sarich, Deborah Sutherland</li> <li>○ <u>Council assessment staff</u>: Phillipa Frecklington, Rajiv Shankar, Henry Burnett</li> </ul> </li> <li>● Final briefing to discuss council's recommendation: 16 December 2020 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Eugene Sarich, Deborah Sutherland</li> <li>○ <u>Council assessment staff</u>: Phillipa Frecklington (consultant planner for council), Rajiv Shankar</li> </ul> </li> <li>● Briefing: 24 March 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Eugene Sarich, Deborah Sutherland</li> <li>○ <u>Council assessment staff</u>: Phillipa Frecklington (consultant planner for council), Rajiv Shankar, Henry Burnett, Greg Samardzic</li> <li>○ <u>Applicant</u>: Graem Skerrit, Juliet Grand, Elyse Kenny, Markam Ralph, Katy Svalbe, Tim Fitzhardinge, Matthew McCarthy, Andrew Tetlow</li> </ul> </li> <li>● Final briefing to discuss council's recommendation: 21 April 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Eugene Sarich, Deborah Sutherland</li> <li>○ <u>Council assessment staff</u>: Phillipa Frecklington (consultant planner for council), Rajiv Shankar</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Attached to the council assessment report