



**DETERMINATION AND STATEMENT OF REASONS**  
SYDNEY NORTH PLANNING PANEL

|                                 |                                                                                                   |
|---------------------------------|---------------------------------------------------------------------------------------------------|
| <b>DATE OF DETERMINATION</b>    | Wednesday 12 December 2018                                                                        |
| <b>PANEL MEMBERS</b>            | Peter Debnam (Chair), John Roseth, Sue Francis, Sam Ngai, Cedric Spencer                          |
| <b>APOLOGIES</b>                | None                                                                                              |
| <b>DECLARATIONS OF INTEREST</b> | Sue Francis declared a conflict of interest as her firm wrote the BCA report for the application. |

Public meeting held at Christie Conference Centre, 100 Walker Street North Sydney on 12 December 2018, opened at 11.50am and closed at 2.45pm.

**MATTER DETERMINED**

2017SNH084 – Ku-ring-gai – DA0610/17 at 810 - 818 Pacific Highway, Gordon (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.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was 4:1 in favour, against the decision was Sue Francis.

**REASONS FOR THE DECISION**

While the majority of the Panel (Peter Debnam, John Roseth, Cedric Spencer and Sam Ngai) understands the reasons for the recommendation of the assessment report to refuse the application, on balance, the majority considers that the merits of this application outweigh its shortcomings. The majority placed major weight on the public benefit of attracting additional retail activity, choice and investment to the Gordon Centre in a location that has both strategic and site-specific merit for increased employment.

The majority notes that the three major reasons for the recommendation to refuse identified by the assessment officer during the meeting were the height exceedance, the lack of an active frontage and the non-compliance with the Ku-ring-gai Development Control Plan requirement for a 15m setback from Pacific Highway. The height exceedance was the main reason for the split decision, as Sue Francis did not consider that the cl 4.6 justified the breach of height (see Sue Francis' reasons below).

The majority of the Panel considers that the cl 4.6 submission to vary the height of the building provides sufficient environmental planning grounds to justify the variation. In coming to this conclusion, the Panel relies on the written submission before it as well as on the responses of the applicant to its questions during the public meeting.

The majority notes that while cl 4.6 is activated by a written submission by the applicant, a consent authority is not restricted to considering only that submission in coming to a conclusion. In this case, the majority notes the applicant's statement that the site has a steep fall towards the west, that a supermarket

requires a large flat floor plate and that it is desirable to have the level of this floor as close as possible to the street level at the point of entry.

The majority also notes that the application complies with the maximum FSR for the site and that the height non-compliance has resulted in a narrower building and a larger green buffer to the north, which assists in increasing the visibility of the heritage item. While there is no automatic right to the maximum permissible FSR, generally there is a reasonable expectation on the part of most applicants to reach it.

Having regard to all the circumstances of the case, the written submissions including that under cl 4.6, as well as the applicant's responses during the public meeting, the majority concludes that the application meets the objectives of the height standard as well as of the zone and that the strict enforcement of the height standard is not necessary and that the height variation allows a better planning outcome.

As concerns to the council's second major reason for refusal, that of a lack of activated façade, the majority considers that the application achieves an acceptable level of activation, at least along the Pacific Highway, given that shopfronts along the steep section of Dumaresqu Street are difficult to achieve. This reason does not justify refusal.

Turning to the non-compliance with the 15m from Pacific Highway required by the DCP, the majority believes that this has been compensated by the large green buffer between the proposed building and the Council Chambers.

The Panel notes that the council's reasons for refusal include the impact on traffic on local streets. The Panel notes that the proposal has concurrence by the RMS. The Panel considers that the traffic concerns do not justify refusal of the application and that the local Traffic Committee will be able to deal with any problems arising out of this development in the local streets.

Sue Francis would refuse the proposal on the grounds of exceedance in height and failure to comply with setback requirements in the Development Control Plan. Reasons for refusal as follows:

The proposed development, in the first instance, seeks a clause 4.6 variation in respect of height, the variation being more than one level of residential accommodation. Having reviewed the written variation submitted by the applicant, Sue Francis is of the view that the clause 4.6 variation has failed to provide sufficient environmental planning grounds to justify the variation sought and therefore the proposal must fail since;

- Mere compliance with the FSR is not sufficient justification; it is expected
- Putting an additional supermarket in the centre is not a matter for consideration under the Act
- The increased height does not benefit the heritage item, rather the increased height and lack of highway setback is detrimental to the visual presentation and view of the heritage item 'in the round'
- The increased height is not consistent with the Ku-ring-gai Local Environmental Plan and the desired future character in relation to the heights in the centre
- The provision of more housing in the centre is not site specific and not a matter, as identified in the matter Four2Five, that can justify a variation

The proposal as varied would not satisfy the objectives of the standard and are therefore is not in the public interest.

Notwithstanding the above, Sue Francis considers that the failure of the proposal to adhere to the 15m setback to the Pacific Highway is a fundamental consideration to the acceptability of the proposal and in this respect, she agrees with council assessment report as to the impact of the failure of achieving this setback. The increased buffer to the heritage and the elevated landscaping does not compensate for the





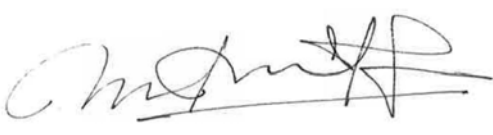
reduced setback to the highway and the non-compliance with this setback will compromise achieving the similar required setback on the northern side of the heritage item.

Beyond these two key issues, Sue Francis agrees with the council assessment report in respect of concerns with traffic impact, failure to activate the Pacific Highway and Dumaesq Street and amenity concerns regarding the proposed units. However, she accepts that these concerns may be able to be addressed through conditions or amended plans and future traffic actions of Council and/or the RMS.

The proposal as varied does not satisfy the objectives of the height standard and is therefore not in the public interest.

#### CONDITIONS

The development application was approved subject to the conditions in the Council Assessment Report and amended conditions submitted 11 December 2018.

| PANEL MEMBERS                                                                                             |                                                                                                   |
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| <br>Peter Debnam (Chair) | <br>John Roseth |
| <br>Sue Francis         | <br>Sam Ngai   |
| <br>Cedric Spencer     |                                                                                                   |

| SCHEDULE 1 |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| 1          | PANEL REF – LGA – DA NO.          | 2017SNH084 – Ku-ring-gai – DA0610/17                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 2          | PROPOSED DEVELOPMENT              | Demolition of existing structures and construction of a mixed use development comprised of shop top housing containing 56 apartments, use of ground floor commercial space as an Aldi supermarket and small retail suite, basement parking, signage and associated works.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 3          | STREET ADDRESS                    | 810-818 Pacific Highway, Gordon NSW 2072                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 4          | APPLICANT OWNER                   | RPS Group / Pacific Highway Gordon P/L & Ku-ring-gai Council                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 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 No.55 – Remediation of Land</li> <li>○ State Environmental Planning Policy No.64 – Advertising &amp; Signage</li> <li>○ State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development</li> <li>○ State Environmental Planning Policy (Infrastructure) 2007</li> <li>○ State Environmental Planning Policy (BASIX)</li> <li>○ Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)</li> <li>○ Ku-ring-gai Local Environmental Plan (Local Centres) 2012</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Ku-ring-gai Local Centres Development Control Plan</li> <li>○ Ku-ring-gai Contributions Plan 2010</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Clause 92(1)(B)</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: 29 August 2018</li> <li>• Council supplementary report: 13 November 2018</li> <li>• Council memo (revised conditions): 11 December 2018</li> <li>• Written submissions during public exhibition: 8</li> <li>• Verbal submissions at the public meeting 12 September 2018: <ul style="list-style-type: none"> <li>○ Object – Brett Maynard (GTA Consultants) on behalf of Charter Hall</li> <li>○ On behalf of the applicant – Claire Muir, Jon Kennedy, Hayden Calvey</li> </ul> </li> <li>• Verbal submissions at the public meeting 12 December 2018: <ul style="list-style-type: none"> <li>○ Object – Nigel Stratford</li> <li>○ On behalf of the applicant – Jordan Dubbelmen, Mina Suh, Rowan Gietz, Hayden Calvey</li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

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| 8  | <b>MEETINGS AND SITE INSPECTIONS BY THE PANEL</b> | <ul style="list-style-type: none"> <li>• Site inspection and briefing: 11 April 2018</li> <li>• Final briefing to discuss council's recommendation, Wednesday 12 September 2018 at 11.45am. Attendees: <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Peter Debnam (Chair), John Roseth, Sue Francis, Cedric Spencer, Sam Ngai</li> <li>○ <u>Council assessment staff</u>: Jonathan Goodwill, Corrie Swanepoel, Kerry Gordon, Joseph Piccoli, Brian O'Connell, Adam Richardson, Kerry Hunter, Roybn Askew</li> </ul> </li> <li>• Final briefing to discuss council's recommendation, Wednesday 12 December 2018 at 9.45am. Attendees: <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Peter Debnam (Chair), John Roseth, Sue Francis, Cedric Spencer, Sam Ngai</li> <li>○ <u>Council assessment staff</u>: Corrie Swanepoel, Joseph Piccoli, Adam Richardson, Kerry Hunter, Robyn Askew, Kate Higgins, Scott McInnes, Kerry Frair, Trudi Coutts, Tempe Beaven, Ross Guerrera, Michael Zanordo, Michael Miocic</li> </ul> </li> </ul> |
| 9  | <b>COUNCIL RECOMMENDATION</b>                     | Refusal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 10 | <b>DRAFT CONDITIONS</b>                           | Attached to the council assessment report                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |