

DETERMINATION AND STATEMENT OF REASONS

SYDNEY NORTH PLANNING PANEL

DATE OF DETERMINATION	9 September 2020
PANEL MEMBERS	Peter Debnam (Chair), Noni Ruker, Brian Kirk, Kevin Alker, Ken Robinson
APOLOGIES	None
DECLARATIONS OF INTEREST	Julie Savet Ward declared a non-pecuniary interest as relative is a resident at one of the care facilities operated by the Applicant.

Public meeting held by teleconference on 9 September 2020, opened at 10am and closed at 10.50am. Papers circulated electronically on 28 August 2020.

MATTER DETERMINED

PPSSNH-33 – North Sydney – DA306/19 at 54-58A Wycombe Road, Neutral Bay for a Seniors Housing development (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 written requests from the applicant, made under cl 4.6 of the North Sydney Local Environmental Plan 2013 (LEP) to address variations to cl. 40(4)(a), cl.40(4)(b) and cl.40(4)(c) relating to height and location of buildings within State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP), that have demonstrated that:

- compliance with cl. 40(4)(a), cl.40(4)(b) and cl.40(4)(c) is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard

the Panel is satisfied that:

- the applicant's written requests adequately address the matters required to be addressed under cl 4.6 of the LEP; and
- the development is in the public interest because it is consistent with the assumed objectives of the development standards for the height and location of buildings under cl. 40(4)(a), cl.40(4)(b) and cl.40(4)(c) of the SEPP and the objectives for development in the R2 Low Density Residential Zone; and
- 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 3:2 in favour, against the decision were Noni Ruker and Ken Robinson.

REASONS FOR THE DECISION

The majority of the Panel (Peter Debnam, Brian Kirk and Kevin Alker) determined to uphold the Clause 4.6 variation to building height and approve the application for the reasons below.

The site is within a mixed residential area which is zoned R2 Low Density Residential as are areas to the north, south and east which generally contain detached one and two storey dwellings as well as a number

of multi-level apartment buildings. Immediately west of the site is the R4 High Density Residential zone with 2-4 storey apartment buildings.

The Panel notes the existing 25 bed residential care facility on the site was approved by North Sydney Council in 2009. In 2019, State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP Housing for Seniors) was amended to prohibit development under the SEPP within heritage conservation areas in the Greater Sydney Region and North Sydney Council then resolved to seek an exemption from that provision. In the report put to Council, specific mention was made of the subject development application and that without the exemption, the development application could not be accepted. The report also noted the deficiency of aged care beds in the LGA and Council resolved to support the request for exemption. The SEPP was subsequently amended in August 2019 allowing a development application to be made. The subject development application was lodged on 30 September 2019.

At the May meeting the Panel deferred its determination, as the Panel believed the development application had considerable merit and the reasons for refusal were substantially resolvable. In the following months the Applicant met with Council and submitted further information, a revised Clause 4.6 written request and design amendments to address the issues specified in the record of deferral. The Independent Assessor reviewed the information and amended plans and then submitted a Supplementary Assessment Report to the Panel.

The majority of the Panel considers the Applicant responses have satisfactorily resolved the reasons for deferral as below:

- The Applicant submitted a revised Clause 4.6 written Variation Request, which noted the maximum height of the development exceeds the 8 metre height limit by a maximum of 1.28 metres or 15.9% of the numerical value of the standard. The portions of the building that contravene the 8 metre building height limit relate to a small portion (280mm) of a bedroom located at the first floor level in the site's south western corner and portions of the second floor level (varying from 63mm transitioning to 1275mm) including six (6) bedrooms, storerooms, the dining room and lift lobby. The portions of the building breaching the height do not result in detrimental impacts on adjoining or nearby properties in terms of privacy or view loss and do not detract from their amenity. The breaches are predominantly a result of the site's topography and the need to maintain level floor-plates for the operational characteristics of the Residential Aged Care Facility (RACF). Additionally, the elements that breach the height are predominantly within the centre of the site and are setback from the site's boundaries;
- To respond to the surrounding low-density residential environment, the built form is broken down along Wycombe Road, is set behind and around the heritage item and appears as two additional segments interspersed between the existing RACF and the heritage item;
- The proposed development includes extensive landscaping along site boundaries and throughout the site;
- The driveway design was relocated one metre to the east to create a landscape buffer and slightly greater separation between the turntable and the adjacent neighbour;
- The setback to Aubin Street was increased from 2.4m to 3m in some areas and the upper level setback was in part increased to 6.5m. The amended design includes pitched roofs with shallow eaves, use of sandstone and face brickwork, modulation of the Aubin Street façade and window and masonry panel articulation.
- While the proposal increases overshadowing on the eastern wall of 66 Aubin Street, it reduces overshadowing on the rear yard and has no material impact on the living room windows of the property; and

- The rear setback at the ground level (to the boundary with 9 and 11 Thrupp Street) was increased to 3.95m and on the first floor level the setback was increased in part to provide a 4.64m to 6.34m setback. The second floor setback was increased to provide a minimum 6.34m. While the building does not provide a minimum 6m setback to the western boundary on the ground and first floor, the conditions require louvre privacy screens to be attached to windows and balconies on the west elevation.

Overall, the applicant's response to the Deferral presented an improved outcome for neighbours and the community in the view of the majority of the Panel. The majority of the Panel consider the revised proposal to be in the public interest.

Noni Ruker and Ken Robinson disagreed with the majority decision to approve the application for the following reasons:

- The proposal would have adverse impacts on adjacent properties in terms of the use of the proposed driveway and loading/unloading bay (turntable) adjacent to the western boundary. The proposed relocation 1m to the east to allow a planter box to be provided was welcomed, but would not be likely to provide appropriate acoustic control. The applicant did not demonstrate adequately that the relevant noise limits could be satisfied in relation to the residential property to the west.
- Adjustments were made to the proposed southern elevation setback, but changes to the setback and wall height were not regarded as adequate to allow compatibility with the scale of the streetscape and the Kurraba Point Conservation Area. The proposed building height and number of storeys was not reduced and was still seen as unsatisfactory in terms of the relevant clauses of the SEPP Housing for Seniors.

CONDITIONS

The development application was approved subject to the conditions in the Supplementary Assessment Report with the following amendment:

- **Condition c27. Amended to read as follows:**

The landscape plan must be amended, as follows to provide an appropriate landscaped setting:

- 2 x *Callistemon viminalis* (100l) shall be conditioned to be planted along the Aubin Street frontage of 54 Wycombe Road
- The 5 x Ornamental Pear "Frontier" (*Pyrus calleryana*) shown on the Aubin Street frontage of the site are to be replaced by the same number of a suitable evergreen species capable of achieving the same or greater height, width and foliage density.
- Plant species, number and pot sizes shall be shown on all drawings
- The areas of lawn depicted for the narrow garden between 58 and 58a Wycombe Road are not considered likely to be a viable solution in this location, and a more suitable shade tolerant planting option shall be used in this location
- The stormwater and drainage plan, and location of OSD shall be redesigned such that they do not impact the TPZ of any of trees nominated for protection and retention

An amended landscape plan complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure residential amenity)






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. The Panel notes issues of concern included:

- SEPP Housing for Seniors planning controls
- Overdevelopment

- Traffic and parking
- Impacts from 24 hour operation
- Access off Aubin Street
- Height, bulk and scale
- Noise impacts
- Loss of trees/biodiversity
- Heritage impacts
- Construction impacts
- Inadequate rear setback
- Overshadowing impacts

The Panel considers concerns raised by the community have been adequately addressed in the assessment report, by Applicant and Council responses during the public meetings and by the amended conditions.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Noni Ruker
 Brian Kirk	 Kevin Alker
 Ken Robinson	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-1 – North Sydney -DA306/19
2	PROPOSED DEVELOPMENT	Demolition of existing dwelling houses at 54 and 58 Wycombe Road, and expansion of an existing Residential Aged Care Facility at 58A Wycombe Road, providing 87 beds within a three and four storey building over basement carparking for 22 vehicles.
3	STREET ADDRESS	54-58A Wycombe Road, Neutral Bay
4	APPLICANT OWNERS	Applicant – Cranbrook RACF Pty Ltd Owners: 54 Wycombe Road – Wenbing Zhou and Min Luo Owners: 56 Wycombe Road – James Harris, Michael Harris and Anthony Harris Owners: 58 Wycombe Road – Bruce and Elaine Cornell Owners: 58A Wycombe Road – Cranbrook RACF Pty Ltd, directors; Stephen Bauer, Marc Bauer, Campbell Meldrum, Kerry Mann and Phillip Andrews
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 State Environmental Planning Policy No.55 – Remediation of Land State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy (State and Regional Development) 2011 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP) North Local Environmental Plan 2013 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> North Sydney Development Control Plan 2013 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: 6 May 2020 Clause 4.6 Request (SEPP Housing for Seniors) Height Applicants submission: 13 May 2020 Council memo: 15 May 2020 Council supplementary report: 28 August 2020 Applications submission: 4 September 2020 Written submissions during public exhibition: 52 Verbal submissions at the public meeting 20 May 2020: <ul style="list-style-type: none"> Community members – Megan Wildroither, Nick Tame, Julie Smiles, Sarah McDonald, David Saba, Clive Lucas. Council assessment officer – Brett Brown (consultant planner for

		<p>council)</p> <ul style="list-style-type: none"> ○ On behalf of the applicant – Deborah Rogerson, Lotti Wilkson, Tim Rogers, Mark Bofa, Stephen Davies • Verbal submissions at the public meeting 9 September 2020: <ul style="list-style-type: none"> ○ Community members – Megan Wildroither, Nick Tame, Megan Wildroither, David Saba, Kathy Brodie ○ Council assessment officer – Brett Brown (consultant planner for council) ○ On behalf of the applicant –Lotti Wilkson, Campbell Meldrum, Tim Rogers,
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 12 February 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Kevin Alker, Ken Robinson ○ <u>Council assessment staff</u>: Michael Stephens • Final briefing to discuss council's recommendation, 20 May 2020 at 9.30am. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Noni Ruker, Kevin Alker, Ken Robinson ○ <u>Council assessment staff</u>: Michael Stephens, Cherry Kemp, Robyn Pearson, Brett Brown (consultant planner for council) • Final briefing to discuss council's recommendation, 9 September 2020 at 9.30am. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Noni Ruker, Kevin Alker, Ken Robinson ○ <u>Council assessment staff</u>: Michael Stephens, Cherry Kemp, Robyn Pearson, Brett Brown (consultant planner for council)
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Attached to the council assessment report