

DATE OF DETERMINATION	10 November 2023
DATE OF PANEL DECISION	10 November 2023
DATE OF PANEL MEETING	08 November 2023
PANEL MEMBERS	Peter Debnam (Chair), Brian Kirk, Sue Francis, Sue Weatherley, Mark McCrindle
APOLOGIES	Nicole Gurran
DECLARATIONS OF INTEREST	Nil

Papers circulated electronically on 31 October 2023.

MATTER DETERMINED

PPSSNH-394 - DA/483/2023 - HORNSBY – Lot 1370 DP 1063007, No. 423-521 Old Northern Road Castle Hill, Construction of a three-storey administration building.

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 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 of the Hornsby Local Environmental Plan 2013 (HLEP), that has demonstrated that:

- a) compliance with cl. 4.3 (2) (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 HLEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 of the HLEP and the objectives for development in the R2 Low 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*.

The Panel's decision was unanimous.

REASONS FOR DECISION

The Panel approved the development application for the reasons below and in Council's Assessment Report.

The key issue of the proposed development is the non-compliance with the maximum building height as prescribed in Clause 4.3 of the HLEP. The maximum permissible height for the subject site is 8.5m and the proposal would have a maximum building height of 14.81m, exceeding the development standard by 6.31m.

To address the height variation, the applicant submitted a written Clause 4.6 request and the Panel concurs with Council that the written request adequately establishes that compliance with the development standard is unnecessary and unreasonable in the circumstances of the case and that sufficient environmental planning grounds have been demonstrated to justify the contravention. The Panel notes the proposed building height is comparable to the bulk and scale of several existing structures on site, including the De La Salle building and the Adrian Building immediately to the south of the proposed Commons Building. The overall site area of the 'De La Salle' estate is approximately 18.2 hectares, and the proposed building would be centrally located and would not give rise to any unacceptable environmental or amenity impacts to surrounding development in relation to views, overshadowing, solar access, noise and visual privacy.

The Panel notes there has been extensive consultation between the Applicant and Council since the DA was lodged earlier this year and the proposed plans and supporting information have twice been amended to clarify the proposal and improve the design.

The Panel further notes the proposal is Integrated Development pursuant to Section 4.46 of the EP&A Act, being on bushfire prone land and being for a sensitive use (educational establishment) and therefore requiring concurrence from NSW Rural Fire Service (RFS). The NSW RFS issued General Terms of Approval under Division 4.8, and a Bush Fire Safety Authority, under section 100B of the Rural Fires Act 1997, subject to conditions. The RFS also noted as '*General Advice – Consent Authority to Note*', that:

"The NSW RFS recognises the approach adopted in the National Construction Code 2022 (NCC 2022) for determining and certifying evidence of suitability for materials, construction and designs.

Prescriptive compliance with Specification 43 (sections S43C3, S43C4, S43C5, S43C6, S43C7, S43C8, S43C9, S43C12 and S43C13) is specified. Performance-based solutions proposed in lieu of compliance with the prescriptive provisions of Specification 43 (sections S43C3, S43C4, S43C5, S43C6, S43C7, S43C8, S43C9, S43C12 and S43C13 of NCC 2022) need to be assessed in accordance with the NCC 2022 by the Certifying Authority."

The Panel requires that this be added to the Notice of Determination

It is also noted the proposed development complies with the requirements of the relevant environmental planning instruments, including the State Environmental Planning Policy (Transport & Infrastructure) 2021, the Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2013.


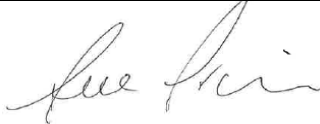
In summary, the Panel concurs with Council that the proposal has been properly assessed against relevant planning controls, is permissible on the site, will enhance educational facilities and it is in the community interest that the proposal be approved.

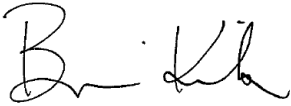


CONDITIONS

The development application was approved subject to the conditions in Council's Assessment Report with the amendment of Condition 36 to confirm planting of 16 trees as proposed by the Applicant. The '*General Advice*' from the NSW RFS, referenced above, should be added to the Notice of Determination

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel noted no written submissions were made during public exhibition.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Sue Francis

 Brian Kirk	 Sue Weatherley
 Mark McCrindle	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-394 - DA/483/2023 - HORNSBY
2	PROPOSED DEVELOPMENT	Construction of a three-storey administration building.
3	STREET ADDRESS	Lot 1370 DP 1063007, No. 423-521 Old Northern Road Castle Hill
4	APPLICANT/OWNER	Applicant - Trustees Of De La Salle Brothers Owner - De La Salle Brothers
5	TYPE OF REGIONAL DEVELOPMENT	CIV >\$5m - educational establishments
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 Hornsby Local Environmental Plan 2013 Draft environmental planning instruments: Nil Development control plans: Hornsby Development Control Plan 2013 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Coastal zone management plan: Nil Other relevant plans: 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 with draft conditions of consent. Written submissions during public exhibition: 0

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • 09 August 2023 – Briefing • 08 November 2023 - Final briefing to discuss council's recommendation: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Sue Francis, Sue Weatherley, Mark McCrindle ○ <u>Council assessment staff</u>: Cassandra Williams, George Papworth, Rodney Pickles
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report