

DETERMINATION AND STATEMENT OF REASONS
SYDNEY NORTH PLANNING PANEL

DATE OF DETERMINATION	10 June 2025
DATE OF PANEL DECISION	6 June 2025
DATE OF PANEL MEETING	4 June 2025
PANEL MEMBERS	Peter Debnam (Chair), Brian Kirk, Sue Francis, Graham Brown, Annelise Tuor
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 4 June 2025, opened at 2pm and closed at 2.52pm.

MATTER DETERMINED

PPSSNH-453 – Northern Beaches – DA2023/1757 at Lot 20 DP 109801 Forest Way Frenchs Forest – Demolition works and major alterations and additions to Forestway Shopping Centre, including retail uses, swim school, gym, new carpark and access, road infrastructure works (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 listed at item 8 in Schedule 1.

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 approve the application for the reasons outlined below and in Council's Assessment Report.

The current development application was lodged in late 2023, discussed extensively with Council, TfNSW and in meetings with the Panel and was the subject of three separate notifications to the community. As a result of those ongoing consultations, significant changes were made to the original proposal, including the deletion of the right-hand turn into Forest Way, as required by TfNSW, the reinstatement of the signalised crossing and consequent deletion of the proposed pedestrian bridge over Forest Way (footbridge). Ultimately Council assessed the amended proposal, which included significant new public domain works, as acceptable.

Council also proposed a condition to require the applicant to design and construct the new footbridge over Forest Way, which originally formed part of the application. The Applicant opposed the condition and it was discussed at length with Council and Applicant during the public meeting. Council argued the footbridge would facilitate enhanced access across Forest Way with the proposed intensification of the shopping centre while the Applicant argued any need for the footbridge was not as a direct result of the proposed development. The Applicant also noted TfNSW, which has responsibility for Forest Way, did not require construction of the footbridge while retaining the on-grade pedestrian crossing.

The Panel acknowledged that the footbridge over Forrest Way would be a significant public benefit however the question remained whether the Applicant should bear the full cost of the footbridge,

estimated at \$8-10 million. Guidance on this question is gained from the widely accepted *Newbury Test* as set out in *Guide to writing conditions of consent, Department of Planning, Housing and Infrastructure, August 2024 (p 9)*. The *Newbury Test* states that a condition is invalid if it does not satisfy all three tests identified in the test.

The Panel was satisfied that the condition requiring the construction of the footbridge did not satisfy at least one of the *Newbury Tests*, being the condition does not “fairly and reasonably relate to the development that is the subject of the development application”. The information provided by the Council and the Applicant on this condition did not establish that the development has sufficient nexus between the scope of the development (being alterations and additions) and the full cost of design and construction of the footbridge.

On this basis, the imposition of the condition requiring the design and construction of the footbridge would be invalid and should be removed from the consent.

In summary, the Panel believes the application has been properly assessed against relevant planning controls and while acknowledging some community concerns in relation to increased traffic on local roads, the Panel noted any increased traffic will be managed by new traffic management measures and improved road infrastructure, vehicular access and pedestrian access. The Panel further noted the proposal would deliver enhanced built form and streetscape to Forest Way, Russell Avenue and Grace Avenue, improved site landscaping and retention of significant canopy trees.

Overall, the Panel believes the proposed development will deliver significant public benefits, in terms of a modernised shopping centre and improved bus facilities for users of the shopping centre and the residents of the area generally. The development will better serve the community and enhance the character and visual amenity of the locality and warranted approval.

CONDITIONS

The Development Application was approved subject to the conditions in Council’s Assessment Report, as amended by Council’s Supplementary Memo (3 June 2025) and Additional Information to the Panel (4 June 2025), with the following amendments:

- Condition 25.1 is to require vehicles to enter and exit the loading dock in a forward direction
- Condition 41 is to identify the tree numbers of trees to be retained
- Condition 39 and 96 are to be deleted as the Panel determined there is no nexus requiring provision of a footbridge, as discussed above.


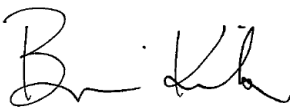

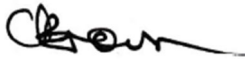
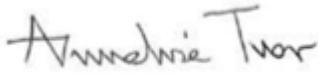
Final conditions, incorporating above, were uploaded to the NSW Planning Portal on 5 June 2025. The applicant confirmed, in the meeting, that they were satisfied with the conditions as amended.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from one resident who addressed the Panel. The Panel notes that issues of concern included:

- Traffic management on Forest Way
- Traffic impacts on local roads
- Pedestrian safety
- Pedestrian bridge over Forest Way
- Residential amenity impacts (noise and loading dock)
- Planning Agreement/Land dedication
- Front setbacks to Russel Avenue and Grace Avenue
- Tree retention and landscaping
- Frenchs Forest Strategy/Hospital Precinct Structure Plan

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting. The Panel notes that in addressing these issues, appropriate conditions have been imposed.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Brian Kirk
 Sue Francis	 Graham Brown
 Annelise Tuor	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-453 – Northern Beaches – DA2023/1757
2	PROPOSED DEVELOPMENT	Demolition works and major alterations and additions to Forestway Shopping Centre, including retail uses, swim school, gym, new carpark and access, road infrastructure works
3	STREET ADDRESS	Lot 20 DP 1209801, Forest Way, Frenchs Forest
4	APPLICANT/OWNER	The Trustee for Forestway SC Investment Trust/ Forestway SC Pty Ltd ATF Forestway SC Investment Trust
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 (Sustainable Buildings) 2022 ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ○ State Environmental Planning Policy (Industry and Employment) 2021 ○ State Environmental Planning Policy (Resilience and Hazards) 2021 ○ Warringah Local Environmental Plan 2011 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Warringah Development Control Plan 2011 • Planning agreements: Nil • Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> • 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: 21 May 2025 • Council Supplementary Memo and Attachment (Final version): 3 June 2025 • Council additional advice to the Panel: uploaded to the Portal 4 June 2025 • Written submissions during public exhibition: 19 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Peter Williams ○ Council assessment officer – Steven Findlay ○ On behalf of the applicant – Anthony El-Hazzouri, Tom Steal
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Preliminary Briefing: 3 April 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Nicole Gurran, Brian Kirk ○ <u>Council assessment staff</u>: Alexander Keller, Peter Robinson, Gareth David ○ <u>Applicant representatives</u>: Jonathon Wood, Tom Steal, Don Challoner, Anthony El-Hazzouri, Liam Isaksen ○ <u>Department staff</u>: Adam Iskander, Suzie Jattan • Council and Applicant Briefing: 16 December 2024

		<ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Nicole Gurran, Graham Brown, Annelise Tuor ○ <u>Applicant representatives</u>: Emily Han, Anthony El-Hazzouri ○ <u>Council assessment staff</u>: Adam Croft, Steven Findlay ○ <u>Department staff</u>: Lillian Charlesworth, Jade Buckman <ul style="list-style-type: none"> ● Final briefing to discuss council's recommendation: 4 June 2025 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Sue Francis, Graham Brown, Annelise Tuor ○ <u>Council assessment staff</u>: Steven Findlay, Peter Robinson, Phillip Devon ○ <u>Department staff</u>: Lillian Charlesworth, Jade Buckman <ul style="list-style-type: none"> ● Public meeting: 4 June 2025 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Sue Francis, Graham Brown, Annelise Tuor ○ <u>Applicant representatives</u>: Anthony El-Hazzouri, Yanpei Li, Emily Han, Liam Isaksen, Amy Dowse, Tom Steal, Ellen Sun, Adam Byrnes, Donal Challonor ○ <u>Council assessment staff</u>: Steven Findlay, Peter Robinson, Phillip Devon ○ <u>Department staff</u>: Lillian Charlesworth, Jade Buckman
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	<p>Attached to Council's Assessment Report, as amended by Council's Supplementary Memo (3 June 2025) and Additional Information to the Panel (4 June 2025).</p> <p>Note: Final approved conditions were uploaded to the NSW Planning Portal on 5 June 2025.</p>