

DATE OF DETERMINATION	Tuesday 18 June 2019
PANEL MEMBERS	Abigail Goldberg (Chair), Peter Biscoe, Mark Grayson, Peter Brennan, Marcus Sainsbury
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held at Northern Beaches Council Chambers, 725 Pittwater Road Dee Why, on 18 June 2019, opened at 12.30pm and closed at 2pm.

MATTER DETERMINED

2019SNH028 – Northern Beaches – REV2019/0014 at 5 Skyline Place Frenchs Forest for a Seniors Housing development (as described in Schedule 1).

BACKGROUND

The Panel met on 18 December 2018 to consider the original development application for 5 Skyline Place Frenchs Forest - DA2018/0095. On this date the Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

Following this meeting, the applicant amended the development application (REV2019/0014) in response to matters raised by the Panel, and requested a Decision Review on all aspects of the Panel’s refusal. A Panel made up of different panel members to the original was constituted for the purpose of the Review. The review Panel convened on 18 June 2019.

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 as well as matters observed at the site inspection 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 **unanimous**.

REASONS FOR THE DECISION

Since the development application was refused in December 2018 the applicant has submitted an amended development proposal to address the reasons for refusal. The amendments include:

- Reduction in building height from 9 storeys to 6 storeys
- Increased setback from Frenchs Forest Road, allowing for a deeper landscaped edge and greater retention of the mature tree canopy which currently characterises the precinct
- Greater articulation of the extended building façade by treatment of the building as two halves, with the western half set-back by 8.2 metres.
- Introduction of a ‘notch’ at the upper levels between the two building halves, reinforcing the potential to perceive the building as two parts, and further articulating the building façade
- Greater compliance with the apartment design standards set out in SEPP 65 and the NSW Apartment Design Guide, improving amenity for apartment residents in relation to solar access, cross-ventilation and shorter corridor lengths among other factors

- Increasing the mix of uses in the building along with a reduction in residential floorspace. The ground floor now contains commercial floorspace only while levels 1 and 2 incorporate commercial floorspace in south-facing sections of the building.

The Panel considers that the reasons for refusal of the original development application have been overcome by the amendments and, to a lesser degree, by our construction of planning instruments. The Panel's reasons for approval may be expressed by reference to the previous Panel's reasons as follows.

1. The amended development application is satisfactory with respect to s 4.15 of the *Environmental Planning and Assessment Act 1979* as it is consistent with the provisions of State Environment Planning Policy (Housing for Seniors or Persons with Disability) ("SEPP HSPD"), in particular:
 - (a) It is consistent with the aim of clause 2(c) that it be of good design.
 - (b) It satisfies the requirements of clause 19 regarding the use of seniors housing in commercial zones.
 - (c) In terms of clause 33(a), the amended development application is compatible with the current character of the area, which features as desirable elements landscaped setbacks with mature tree canopies.

Regarding the height of the amended proposal, the Panel notes that the Land and Environment Court recently approved, under existing use rights, the Parkway Hotel redevelopment, located about 175 metres east of the subject site. The Hotel has an approved height of 26.4 metres, which is taller than the proposed amended development at 24.6 metres. The Panel observes that Council stated in its Assessment Report for the Hotel that "the scale, bulk, and height of the building proposed to be a hotel is deemed to be acceptable and assessed as being compatible and consistent with development envisaged for the site (and adjoining and surrounding sites located within the B7 Business Park Zone)". That appears to be inconsistent with the Council's assessment in relation to the subject proposed amended development and consistent with the Panel's approval.

The Panel notes also that the precinct is under transition, and includes the recently completed 8 storey Northern Beaches Hospital. The Panel considers that the amended development application is compatible with the quality and identity of the emerging area.

- (d) The previous Panel reasoned that the proposed development does not comply with the requirements of clause 50 with regard to building height, density and scale and solar access. The review Panel considers that cl 50 does not impose any such requirements. Rather, it prescribes standards that cannot be used to refuse consent. The amended development exceeds those standards with regard to the above matters and therefore it is not forbidden to refuse consent on the basis of those matters. However, the mere fact that they exceed "no refusal" standards is not a reason for refusing consent.
 - (e) In terms of clause 33(c), the amended development application maintains reasonable neighbourhood amenity and appropriate residential character.
 - (f) The amended development application satisfies the infill self-care housing provisions in clause 31, specifically the Seniors Living Policy -Urban Design Guidelines for Infill Development.
2. The amended development application satisfies the principles of SEPP 65.
 3. The amended development application is consistent with the provisions of SEPP 55.

4. The original Panel's reason 4 was that the proposed development is inconsistent with the desired future character established by the objectives of the B7 Business Park zone under the Warringah Local Environment Plan 2011, and in relation to the Warringah Development Control Plan as well as the Sydney North District Plan, which references the importance of the retention of employment zones and uses.

Council provided supplementary information in the form of an amended Addendum, noting that the North District (which includes the Northern Beaches local government area) has the lowest percentage of employment land within the metropolitan area, and that in 2017 there were only 105 hectares of B7 zoned land in the Northern Beaches local government area compared with 1051 hectares across Greater Sydney.

The review Panel considers that such inconsistency is to be expected given that the Warringah LEP prohibits residential development in the B7 zone yet the overriding SEPP (HSPD) permits it and, in the interests of its overall aim of encouraging seniors housing, specifies that its aims will be achieved by "setting aside local planning controls that would prevent the development of" seniors housing "that meets the development criteria and standards specified in this Policy" (SEPP cl 2(2)).

Council submitted that due to the limited supply of employment lands in the Northern Beaches, current local planning reflects the North District Plan which identifies that all industrial and urban services land should be safeguarded from competing pressures, especially residential and mixed uses.

The review Panel acknowledges Council's concerns as well as the original Panel's reason 4. However, the Panel considers that those matters are now offset by the amended development application, which includes floorspace designated for commercial use that is estimated to accommodate 115 jobs. This is a net increase of approximately 100 jobs compared to the estimated existing employment on site.

On balance, the Panel considers that this employment potential supports approval of the proposed amended development.

CONDITIONS

The development application was approved subject to the Council Revised Conditions dated 18 June 2019.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from those wishing to address the panel. The Panel notes that issues of concern included:

- Limited employment lands available in the area
- Objectives of the B7 Business Park land use zone
- Suitability of the site for seniors housing
- Design, including context and neighbourhood character, bulk and scale, density, amenity and aesthetics.

The Panel considers that concerns raised by the community have been addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS



Abigail Goldberg (Chair)



Mark Grayson



Peter Biscoe



Peter Brennan



Marcus Sainsbury

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2019SNH028 – Northern Beaches – REV2019/0014
2	PROPOSED DEVELOPMENT	Review of Determination of Development Application No. DA2018/0995 for subdivision of land into 2 allotments, demolition of existing structures and construction of a mixed use development containing Seniors Housing units and commercial space.
3	STREET ADDRESS	5 Skyline Place Frenchs Forest
4	APPLICANT/OWNER	Platino Properties
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 No. 55 - Remediation of Land ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) ○ State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ○ State Environmental Planning Policy - Infrastructure 2011 ○ State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65) ○ Warringah Local Environmental Plan 2011 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Warringah Development Control Plan 2011 • Draft structure plans <ul style="list-style-type: none"> ○ Draft Northern Beaches Hospital Precinct Structure Plan 2017 • 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: 4 June 2019 • Revised conditions: 14 June 2019 • Applicants written submission: 14 June 2019 • Applicants response to conditions: 18 June 2019 • Council addendum: 18 June 2019 (submitted at meeting) • Council Revised Conditions received: 18 June 2019 • Applicant written submission presented to Panel at meeting 18 June 2019 • Written submissions during public exhibition: 4 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Object – Thoe Zotos ○ On behalf of the applicant – Jacinta Reid, Matthew Pullinger, Daniel Keary ○ Council Manager Development Assessment– Steve Findlay
8	MEETINGS AND SITE INSPECTIONS BY THE	<ul style="list-style-type: none"> • Site inspection: 18 June 2019

	PANEL/PAPERS CIRCULATED ELECTRONICALLY	<ul style="list-style-type: none"> • Final briefing to discuss council’s recommendation, 18 June 2019 at 11am. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Abigail Goldberg (Chair), Peter Biscoe, Mark Grayson, Peter Brennan, Marcus Sainsbury ○ <u>Council assessment staff</u>: Lashta Haidari, Steve Findlay (Manager), Kathryn Fadeev
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Attached to the council assessment report.