

DATE OF DETERMINATION	20 December 2021
PANEL MEMBERS	Susan Budd (Chair), Sue Francis, Bilal El-Hayek
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 20 December 2021.

MATTER DETERMINED

PPSSSH-77 – Canterbury-Bankstown – RE-503/2018/1 – 41 Broadarrow Road, Narwee 2209 for Division 8.2 Review of Determination of refusal of DA-503/2018 for the demolition of existing structures and construction of an 8-storey shop-top-housing development comprising 62 residential apartments, restaurants, and a commercial tenancy above four levels of basement parking

PANEL CONSIDERATION AND DECISION

This is a section 8.2 Review of an application refused by the Panel in December 2020. The matter is also the subject of a Land and Environment Court appeal.

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 a written request from the applicant, made under cl 4.6 (3) of the Canterbury Local Environmental Plan 2012 (LEP), that has demonstrated that:

- a) compliance with cl. 4.3 Height of Buildings 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 LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 (Height of Buildings) of the LEP and the objectives for development in the B2 Local Centre zone; and
- c) the concurrence of the Secretary has been assumed.

Development application

The Panel determined to confirm the refusal of the development application pursuant to section 8.4 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to uphold the Clause 4.6 variation to building height and confirm the refusal of the development application for the reasons outlined in the council assessment report and as below:

1. The Panel is not satisfied that the requirements of SEPP 55 have been adequately addressed. The application seeks approval for the development of a top shop housing development above 4 levels of basement parking on the site of an existing petrol station, and adjacent to a major rail corridor. The preliminary contamination assessment identifies significant data gaps and provides no certainty as to the nature and full extent of contamination on the site and consequential implications for remediation strategy/ project cost, and potential impacts on adjoining land, including the rail corridor. The Panel notes that the Detailed Site Investigation report requested by Council (most recently in its Request for Information dated 2 September 2021) has not been provided.
2. The Panel is satisfied that the application the subject of the review is substantially the same development as that determined by the Sydney South Planning Panel on 21 December 2020.
3. While the Panel accepts that the built form of the proposed development and impacts are generally acceptable, the following issues have not been satisfactorily resolved.
 - (i) Internal amenity issues relating to natural cross ventilation and apartment layout. The proposed development is not consistent with State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (2002 EPI 530) with respect to:
 - a. Part 4B Natural Ventilation in that the proposed development conflicts with achieving suitable natural ventilation and maintaining acoustic privacy for apartments in close proximity to the rail corridor.
 - b. Part 4D Apartment Size and Layout in that apartments L01-06 and L02-06 are studio apartments but have a floor area which is larger than a 1 bedroom unit apartment and do not have a minimum cross through width of 2.5m resulting in snorkel apartments.
 - (ii) The design of the driveway to the commercial loading and unloading area does not demonstrate that safe access can be provided, and the proposed width does not meet relevant requirements of AS2890.2:2018.


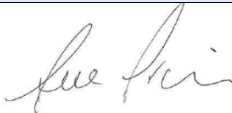

The Panel is of the view, however, that these matters (i) and (ii) above are capable of resolution through design changes/conditions of consent.

CONDITIONS

Not applicable

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel notes that no written submissions were made during public exhibition and therefore no issues of concern were raised.

PANEL MEMBERS	
 Susan Budd (Chair)	 Sue Francis
 Bilal El-Hayek	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSSH-77 - CANTERBURY BANKSTOWN – RE-503/2018/1
2	PROPOSED DEVELOPMENT	Division 8.2 Review of Determination of refusal of DA-503/2018 for the demolition of existing structures and construction of an 8-storey shop-top-housing development comprising 62 residential apartments, restaurants, and a commercial tenancy above four levels of basement parking.
3	STREET ADDRESS	41 Broadarrow Road, Narwee 2209
4	APPLICANT/OWNER	Mrs Loulla Costas / Mr Con Costas and Mrs Loulla Costas
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: • Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment. • State Environmental Planning Policy 55 – Contaminated Land (SEPP 55) • State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65) • State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX) • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 • State Environmental Planning Policy (State and Regional Development) 2011 • Canterbury Local Environmental Plan 2012 (CLEP 2012) • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Canterbury Development Control Plan 2012 (CDCP 2012) • 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: 7 December 2021 • Clause 4.6 application to vary development standard- Clause 4.3 Height of Buildings of CLEP 2012 7 December 2021 • Architectural Plans 7 December 2021 • Written submissions during public exhibition: 0 • Total number of unique submissions received by way of objection: 0
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 12 August 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Clare Brown (Chair), Sue Francis, Susan Budd, ○ <u>Council assessment staff</u>: Mine Kocak ○ <u>DPIE</u>: Leanne Harris, Michelle Burns • Site inspection: Panel members visited the site individually on different days due to Covid-19 precautions.

		<ul style="list-style-type: none"> • Final briefing to discuss council's recommendation: 16 December 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Susan Budd (Chair), Sue Francis, Bilal El-Hayek ○ <u>Council assessment staff</u>: Kaitlin McCaffery, Bob Steedman, Rosemarie Barretto, George Webb, George Gouvatsos ○ <u>DPIE</u>: Leanne Harris, Holly McCann
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Draft conditions not provided given recommendation for refusal