

DETERMINATION AND STATEMENT OF REASONS

SOUTHERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	Thursday, 30 June 2022
DATE OF PANEL DECISION	Thursday, 30 June 2022
DATE OF PANEL MEETING	Monday, 20 June 2022
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran, Peter Harle, Karress Rhodes
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 9 June 2022.

MATTER DETERMINED

PPSSWC-173 – Liverpool – DA-42/2021 at 173 Elizabeth Drive and 18 Woodlands Road, Liverpool Lot 3 DP 651870 and Lot E DP 36731 – Proposed demolition of existing buildings and structures, construction and operation of 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 listed at item 8 in Schedule 1.

Development application

The Panel determined to refuse 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 refuse the application for the reasons outlined in the Council Assessment Report and discussed below.

This DA for a seniors housing development involving 116 room residential care facility in a three-storey building over a basement, was made under State Environmental planning Policy (Housing for Seniors or People with a Disability) 2004 on 13 January 2021.

Since then, it has already been reported to the Council's Design Excellence Panel (DEP) on 3 occasions the most recent on 10 March 2022 where significant issues were identified as still unresolved.

In response the Applicant submitted updated material on 18 & 19 of May 2022 which was loaded on the planning portal on 22 May 2022.

The report by Council's Assessment staff to the Panel's meeting convened on 20 June 2022 recommended refusal of the DA for a number of reasons including:

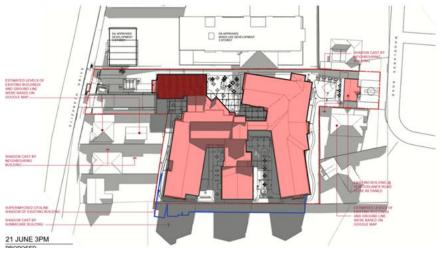
 The proposed development does not comply with the Housing SEPP development standards including CI 33 Neighbourhood Amenity and Streetscape; cl 34 Visual and acoustic privacy; cl 35 Solar Access and Design for Climate; 36 Stormwater; 40 Minimum sizes and building height and CI 48 Parking;

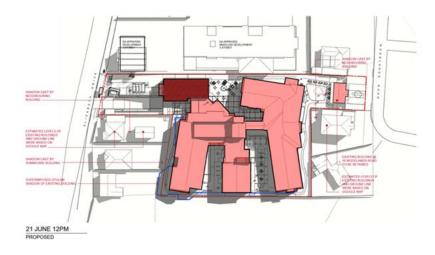
- The development application (should) be refused as the proposed development does not comply
 with the development standard for maximum building height in Clause 40 of State Environmental
 Planning Policy (Housing for Seniors or People with a Disability) 2004. The proposed variation is not
 justified having regard to the matters in clause 4.6(3) and (4) of LLEP 2008.
- The proposed development is inconsistent with the objectives of the R3 Medium Density Residential zone as per the Liverpool Local Environmental Plan 2008 as the development does not ensure that a high level of residential amenity is achieved and maintained pursuant to Section 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
- Insufficient information has been submitted with the proposed development that demonstrates consistency with the provisions of State Environmental Planning Policy (Transport and Infrastructure) 2021, 2.118 Development with frontage to classified road, 2.119 Impact of road noise or vibration on non-road development and 2.121 Traffic Generating development, pursuant to Section 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979;
- Inconsistent and insufficient information has been submitted to allow Council to carry out a full assessment of the application. In this regard, an inadequate response has been received to Council's requests for additional information pursuant to Section 4.15(1)(a)(iv), 4.15(1)(b) and 4.15(1)(d) of the Environmental Planning and Assessment Act 1979.
- The proposed development is not considered to be acceptable having regard to the concerns raised from internal referrals within Council, pursuant to the provisions of Clause 4.15(1)(d) of the Environmental Planning and Assessment Act 1979.

The Panel accepts the Council staff's advice that the DA cannot be approved at present for those reasons.

One matter of particular concern is solar access to the proposed outdoor spaces as reflected in the following submitted with the latest material:







It is notable that the shadow diagrams include a drawing of the 5 storey building approved to the immediate west, but do not depict its shadows. It seems inevitable that the shadows from the adjoining building will overshadow the western courtyard of the proposal for much of the time between 9 am and 3pm although an assessment of that shadow is not possible with the diagrams provided.

That issue is critical because Council's DEP had identified the amenity within that Courtyard as an important issue. That is because the Courtyard seems to be proposed as the main potential source of outdoor amenity (noting that it is proposed to be covered by a pergola to protect it from privacy impacts). In response the Applicant's consultants had responded:

"The Western Courtyard is provided with a variety of spaces, and depth in plan that allows residents to enjoy midday sun in winter, and shade in summer."

An alternative to refusal was discussed at the meeting whereby the Applicant's latest iteration of the plans would be submitted back to the DEP for a fourth time. From discussions at the meeting it seemed to be conceded that a further amendment of the plans following that referral is inevitable.

The Panel is less concerned by the overall non-compliance with height on this constrained site if the non-compliant height can be situated such as not to unduly impact on the adjoining detached dwellings. A clause 4.6 request may well be supported in that regard. However, overall design requires attention for the reasons outlined in the Council's DEP report.

The Panel assumes that the issues remaining with TfNSW and associated with the potential for contamination on the site can be resolved, although that is yet to occur.

In the above circumstances, the Panel sees no alternative but to refuse the DA as it presently stands.

Notably, s 8.2(1)(a) of the EP&A Act allows for the review of a DA refused by a regional panel. It is open for the Applicant to amend its plans to respond to the DEP's comments in a more considered way and submit them together with such a review application, which the Panel would expect to be referred back to the DEP for further comment.

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 Panel. The Panel notes that issues of concern included: Two (2) submissions were received that raised the following concerns:

- Issues on relocation of existing bus stop
- Historical carparking use of the site and suitability of seniors housing on the site

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report.

PANEL MEMBERS		
Justia Rada (Chair)	Louise Camenzuli	
Justin Doyle (Chair)		
Nicola Curran	Reter Harle	
Nicole Gurran	Peter Harle	
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Karress Rhodes		

	SCHEDULE 1			
1	PANEL REF – LGA – DA NO.	PPSSWC-173 – Liverpool – DA-42/2021		
2	PROPOSED DEVELOPMENT	Proposed demolition of existing buildings and structures, construction and operation of a seniors housing development involving 116 room residential care facility in a three-storey building over a basement, together with associated facilities, access, and landscaping under State Environmental planning Policy (Housing for Seniors or People with a Disability) 2004		
3	STREET ADDRESS	173 Elizabeth Drive and 18 Woodlands Road, Liverpool Lot 3 DP 651870 and Lot E DP 36731		
4	APPLICANT/OWNER	Applicant: Higgins Planning Pty Ltd Owner: Wohl Investments Pty Ltd		
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million		
6	RELEVANT MANDATORY CONSIDERATIONS	 Environmental planning instruments: SEPP (Resilience and Hazards) 2021 SEPP (Transport and Infrastructure) 2021 Seniors SEPP (Housing) 2021 Seniors SEPP (Housing) 2021 SEPP (Biodiversity and Conversation) 2021 Liverpool Local Environmental Plan 2008 Draft environmental planning instruments: Nil Development control plans: Liverpool Development Control Plan 2008 Part 1 – General Controls for all Development Planning agreements: Nil Provisions of the Environmental Planning and Assessment Regulation 2000: Consideration of the provisions of the Building Code of Australia and National Construction Code (NCC) 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 Environmental Planning and Assessment Act 1979 or regulations The public interest, including the principles of ecologically sustainable development 		
7	MATERIAL CONSIDERED BY THE PANEL	 Council Assessment Report: 27 May 2022 The applicant has provided an assessment under Clause 4.6 to vary the maximum height limit under Clause 4.3 of the LLEP 2008 Written submissions during public exhibition: 2 		
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	 Briefing: 30 August 2021 Panel members: Justin Doyle (Chair) Council assessment staff: Emmanuel Torres DPE: Alexandra Hafner and George Dojas Briefing: 18 October 2021 Panel members: Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran, Wendy Waller and Peter Harle Council assessment staff: Emmanuel Torres, William Attard, Brenton Toms Briefing: 23 May 2022 Panel members: Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran, Karress Rhodes and Peter Harle 		

		 Council assessment staff: Michael Oliveiro, Emmanuel Torres, Brenton Toms DPE: George Dojas & Jeremy Martin Final briefing to discuss council's recommendation: 20 June 2022 Panel members: Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran, Karress Rhodes and Peter Harle Council assessment staff: Emmanuel Torres, Michael Oliveiro, Patrick Curmi, William Attard Applicant representatives: Marian Higgins, Nick Winberg
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A