

DATE OF DETERMINATION	6 September 2021
PANEL MEMBERS	Julie Savet Ward (Chair), Louise Camenzuli, John Brockhoff, Deborah Sutherland, Eugene Sarich
APOLOGIES	None
DECLARATIONS OF INTEREST	<p>Peter Debnam declared a non-pecuniary interest. A charity he previously chaired has direct involvement with Australian Unity. To avoid any perceived conflict Peter stepped aside from all panel discussions.</p> <p>Brian Kirk declared a conflict of interest due to having direct investments with Australian Unity.</p>

Public meeting held by teleconference on 1 September 2021, opened at 5pm and closed at 9.08pm.

MATTER DETERMINED

2017SNH069 – Lane Cove – DA117/2017 at 266 Longueville Road Lane Cove for 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; 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 Lane Cove Local Environmental Plan 2009 (LCLEP), that has demonstrated that:

- a) compliance with cl.4.3 (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 LCLEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl.4.3 (height of building) of the LCLEP and the objectives of the R4 High 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 THE DECISION

The Panel determined to uphold the Clause 4.6 written request to vary the height of building development standard and approve the development application for the reasons in the Independent Assessor's DA Assessment Report (11 July 2018) and Supplementary Report (4 August 2021) and as set out below.

The subject site is zoned R4 High Density Residential under the LCLEP and development for the purposes of seniors housing is permissible with consent. The Panel noted that the land was rezoned by Lane Cove Council from RE1 Public Recreation to R4 High Density Residential in 2015 and then reclassified to operational land under the provisions of the *Local Government Act 1993*. It was clear to the Panel that the policy decision of the Council to change the land use from open space had occurred many years ago and that this was not a matter relevant to the consideration of this development application.

The Panel recognised that the site has a current Site Compatibility Certificate issued under Clause 25(4)(a) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (HSPD SEPP). This Certificate effected an increase in the maximum permissible floor space ratio from 1.1:1 to 1.6:1.

The development application has had a very long history. It came before the Panel on 11 July 2018 and the Panel resolved to defer its decision to seek the following further information:

1. Detailed site investigation under *State Environmental Planning Policy No 55 - Remediation of Land* to demonstrate that the site is suitable for residential development.
2. Independent peer review of the traffic assessments.
3. Assessment of the ecological impact to ensure that the development does not significantly impact flora and fauna on the site and on the adjacent land zoned E2.
4. Assessment of visual impact from the golf course, the ridge line to the east and from Richardson Street West.
5. Plans and supporting information provided to the Department of Planning, Industry and Environment supporting the application for Site Compatibility Certificate dated 6th July 2017.
6. Calculation of the GFA and FSR based upon the HSPD SEPP.

The Panel also requested the Applicant to submit amended plans which:

1. Increase the setback on the southern boundary by at least one metre without any decrease on the northern side, while creating a two-metre landscaped strip towards Timbertops (268-270 Longueville Road, Lane Cove) to provide landscape screening.
2. Based upon the Ecological Assessment, adjust the eastern boundary setback if required.

An amended development application returned to the Panel on 1 September 2021. The Panel agreed with the Independent Assessor that the requested additional information had been provided, the proposed development had been appropriately amended and that the reasons for deferral of determination of the development application had been addressed and resolved, with the exception of the calculation of the gross floor area and floor space ratio. The Panel concurred with the condition 2 requiring the Applicant to provide amended plans which demonstrate that the floor space has been reduced to 1.6:1, but further amended the condition to require the Applicant to provide the amended plans prior to the issue of a construction certificate.

The Panel agreed that the building appropriately presents to Longueville Road as a two storey built form. The area of the development which breaches the height limit is restricted with the highest breaches being in the centre of the building footprint, reducing its visibility and amenity impacts on adjoining properties. The landscape setting of the locality and that proposed on the site will further reduce the visibility of the proposed development.

The impact of the proposed development on the existing traffic and parking situation in the locality was raised as a major issue by numerous written and oral submissions. The Panel noted that the peer review of the Applicant's traffic assessment, once the modelling was updated, confirmed that the traffic generation potential of the proposed development would not result in a reduction in the level of service on the nearby streets and intersections nor unacceptable traffic implications. Further, the traffic assessment factored in forecast changes in traffic.

Potential impacts on the bushland was also an issue raised by numerous written and oral submissions. The Panel noted that Council's ecologists reviewed the Applicant's ecological assessment and concluded that it was satisfactory with additional conditions of consent to ensure the protection and enhancement of the bushland. In particular, a condition of consent has been included for a detailed Biodiversity and Vegetation Management Plan to be prepared to manage vegetation removal pre-construction and to address protection of native vegetation, weed control and rehabilitation of any disturbed areas post-construction. The Panel noted that the proposed built form had been adjusted to retain Trees 92 and 93.

It was noted by the Panel that NSW Rural Fire Service had been appropriately consulted by Council, as required by Clause 27(3) of the HSPD SEPP and that concurrence was not required as the proposed development was not integrated development.

The Panel agreed that the creation of a legal easement through the site, in favour of Timbertops (268-270 Longueville Road), was an appropriate mechanism to secure access.

The significant length of time since the deferral of the application and consideration of all the matters raised by the community required the Panel to request the following prior to making its determination:

- A revised Clause 4.6 written request to vary the height of building development standard, given there had been a change in the objectives of the development standard since the written request had been submitted.
- Consideration from the Independent Assessor on the application's consistency with the proposed new draft SEPP (Housing), given this draft SEPP had been publically exhibited since the application had been lodged with Council.
- Consideration from the Independent Assessor on Planning for Bushfire Protection (2019), which had been introduced since the application had been lodged with Council.

This information was received by the Panel on 3 September and the Panel agreed that it satisfactorily addressed all required matters.

The Panel acknowledged the Independent Assessor's Memo to the Panel (30 August 2021) and agreed that the conditions of consent, with the following amendments, addressed various concerns raised by the community:

- Condition 2.2 to be amended to require that amended plans demonstrating the floor space ratio of 1.6:1 be provided to Council's satisfaction prior to issue of any construction certificate.
- A new condition requiring an operational management plan.
- A new condition requiring the residents of the development to be of the age as required by the HSPD SEPP.
- Condition 60.1 to be amended to change the construction hours to that of a nearby, recently approved seniors housing development.
- A new condition ensuring the provision of a sprinkler system.

The Panel agreed with condition 9 regarding the development contributions, condition 153 regarding the right of carriageway and condition 155.1 regarding the positive covenant and therefore made no amendments to these conditions.

CONDITIONS

The development application was approved subject to the conditions in the Independent Assessor's Memo (30 August 2021) with the following amendments:

- Condition 2.2 amended to read as follows (as noted in the Independent Assessor's memo 3 September 2021):

Prior to the issue of a construction certificate, the applicant shall provide amended plans to the satisfaction of Council which demonstrate how the floorspace has been reduced, which may include:

- *Reducing the actual floorspace within the building;*
 - *Removing 22 spaces from the car park from either or both basement levels and enclosing those areas to be used for service activities; or*
 - *Converting some of the floorspace within the building to non-GFA as per the SEPP.*
- Condition 9 (new condition) to read as follows (as noted in the Independent Assessor's memo 3 September 2021):

The development shall incorporate a fire sprinkler system as required by State Environmental Planning Policy (Housing for Seniors or Persons with a Disability) 2004 and the Building Code of Australia. Full details and specifications shall be submitted to the Principal Certifier prior to issue of a construction certificate.

- Condition 10 (new condition) to read as follows (as noted in the Independent Assessor's memo 3 September 2021):

An operational management plan shall be submitted to and approved by Lane Cove Council which includes, but is not limited to:

- *Compliance with operational conditions of consent;*
 - *Management of noise from plant, delivery and service vehicles and general operations;*
 - *Procedures to reduce the potential for traffic congestion during the afternoon shift change;*
 - *Complaints handling and monitoring; and*
 - *Maintenance of public spaces.*
- Condition 11.4 (was condition 9.4) amended to read as follows:
This contribution is to be paid before the issue of the first occupation certificate or interim occupation certificate in respect of any building to which this consent relates, except as provided by condition 11.3.

- Condition 61.1 (was condition 60.1) amended to read as follows:

All demolition, building construction work, including earthworks, deliveries of building materials to and from the site to be restricted as follows:

Monday to Friday 7:00am to 5:30pm

High noise generating activities, including rock breaking and saw cutting must not be carried out continuously for longer than 3 hours without a 1 hour break.

Saturday 8:00am to 12:00 noon

No excavation, haulage truck movement, rock picking, sawing, jack hammering or pile driving to be undertaken. Failure to fully comply will result in the issue of a break of consent P.I.N.

Sunday & Public Holidays No work to occur.

- Condition 157 (new condition) to read as follows (as noted in the Independent Assessor's memo 3 September 2021):

Documents giving effect to the creation of a restriction as to user on the title of the land in accordance with section 88E of the Conveyancing Act, 1979 limiting the use of any accommodation to seniors or people with a disability only.

- Condition 168 (new condition) to read as follows (as noted in the Independent Assessor’s memo 3 September 2021):



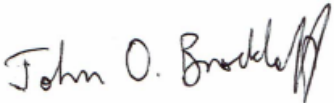


The development shall be occupied only by seniors or people with a disability as defined in State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004.

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 noted that issues of concern included:

- Traffic and parking
- Bulk and scale of built form
- Height of building
- Floor space ratio
- Protection of the bushland and the buffer zone
- Protection of Trees 92 and 93
- Bushfire hazard
- Noise and amenity impacts on residential properties
- Visual impact
- Recent changes to the local road network
- Changes to height of building development standard
- Loss of open space
- Light spill
- Construction noise
- 10% affordable housing
- Pedestrian and traffic safety
- Consideration of climate change
- Cumulative impacts
- Easement across land
- Need for the development.

The Panel considered that concerns raised by the community have been adequately addressed in the assessment reports and the conditions of consent included amended conditions.

PANEL MEMBERS	
 Julie Savet Ward (Chair)	 Louise Camenzuli
 John Brockhoff	 Deborah Sutherland
 Eugene Sarich	

SCHEDULE 1

1	PANEL REF – LGA – DA NO.	2017SNH069 – Lane Cove – DA117/2017
2	PROPOSED DEVELOPMENT	Construction of a seniors housing development comprising 70-bed residential aged care facility, 82 independent living units/self-contained dwellings, with basement car parking for 122 vehicles, new public park and facilities and landscaped through-site link.
3	STREET ADDRESS	266 Longueville Road, Lane Cove
4	APPLICANT/OWNER	Australian Unity Limited / Lane Cove Council
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 - Infrastructure 2011 ○ State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development ○ State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ○ Lane Cove Local Environmental Plan 2009 • Draft environmental planning instruments: Draft State Environmental Planning Policy - Housing • Development control plans: <ul style="list-style-type: none"> ○ Lane Cove Development Control Plan 2009 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</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"> • Independent Assessor’s assessment report: 28 June 2018 • Revised Draft Conditions: 11 July 2018 • Independent Assessor’s supplementary information from RMS: 11 July 2018 • Independent Assessor’s supplementary report: 20 July 2021 • Independent Assessor’s memo and revised conditions: 23 August 2021 • Independent Assessor’s memo and revised conditions: 30 August 2021 • Independent Assessor’s memo review of late submissions: 1 September 2021 • Independent Assessor’s memo: 3 September 2021 • Written submissions during public exhibition: 186 first exhibition, 97 second exhibition, 182 submissions third exhibition following amended application and a petition with 17 names • Late submissions: 13 unique individual submissions, 1 petition with 131 names, 1 petition with 207 names, 1 petition with 65 names, a summary of objections from good.do website and a “Block B presentation” • Total unique submissions received by way of objection: >35

		<ul style="list-style-type: none"> • Verbal submissions at the public meeting 11 July 2018: <ul style="list-style-type: none"> ○ Community members – Brett Brown on behalf of Strata Committee of Timbertops (adjoining residential unit block), Adam Coburn on behalf of Residents of Richardson Street West, Doug Stuart on behalf of the Lane Cove Bushland and Conservation Society, Jennifer Schneller on behalf of Northwood Action Group, Francis Vissel, Darvan Sinnetamby, Ian Pope, Katherine Morris, Paul Robertson, Wayne Pearson, Andrew Zbik, Nick Marsh, Tammy Marshman, Jennifer Schneller, Michael Guthrie, Chris Davis, David Gleeson, Ianthe Pietersz, Stuart Robertson, Kerry Brettell, Linda Eckhold, Neil Forbes. ○ On behalf of the Applicant – Gary Shiels, Lorraine Calder, Brett Lafranchi, Rob Puflett, Chris Palmer • Verbal submissions at the public meeting 1 September 2021: <ul style="list-style-type: none"> ○ Community members – Ron Gedeon on behalf of Longueville Residents Association, Shaunna Forrest on behalf of Lane Cove Bushland and Conservation Society, Merri Southwood on behalf of Greenwich Community Association Inc, Jacqueline Lee on behalf of St Michael’s Primary School, Adrienne Cahalan on behalf of SOS Lane Cove Community Group, Darvan Sinnetamby, Brett Brown on behalf of Timbertops Strata Committee and Owners Corporation, Jennifer Schneller on behalf of Northwood Action Group Inc, Jacqueline Barker, Alan Lenehan, Chris Davis, Michael Guthrie, Nicky Fraser, Ian Pope, Simon Kennedy, Don Murchison, Youssef Abawi, Margaret Conley, Peter Andrews, Stephen Curley, Roger Caine, Lynne McLoughlin, Andrew Zbik, Tammy Marshman, Doug Drysdale, Bridget Kennedy, Wayne Pearson, Jerome Adams, Michael O’Neill, Janet Diep, Sean Burrell, Rachael Sinclair, Francis Vissel, Chantelle O’Donoghue, Adam Coburn, Darvan Sinnetamby on behalf of Michael Izard. ○ Council’s Independent Assessor – Robert Montgomery ○ On behalf of the Applicant – Gary Shiels, Beverly Smith, Robert Puflett
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing & Site inspection: 23 May 2018 <ul style="list-style-type: none"> ○ Panel members: Peter Debnam (Chair), John Roseth, Julie Savet Ward, Deborah Sutherland, Eugene Sarich ○ <u>Council assessment staff</u>: Robert Montgomery (consultant for council), Rajiv Shankar, Michael Mason • Final briefing meeting to discuss Independent Assessor’s recommendation, 11 July 2018 at 4.30pm. Attendees: <ul style="list-style-type: none"> ○ Panel members: Peter Debnam (Chair), John Roseth, Julie Savet Ward, Deborah Sutherland, Eugene Sarich ○ Council assessment staff: Robert Montgomery (consultant for council), Rajiv Shankar, Michael Mason • Final briefing to discuss Independent Assessor’s recommendation: 25 August 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Julie Savet Ward (Chair), Louise Camenzuli, John Brockhoff, Deborah Sutherland, Eugene Sarich ○ <u>Council assessment staff</u>: Robert Montgomery (consultant planner), Rajiv Shankar, Mark Brisby, Henry Burnett • Final briefing to discuss Independent Assessor’s recommendation: 1 September 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Julie Savet Ward (Chair), Louise Camenzuli, John Brockhoff, Deborah Sutherland, Eugene Sarich ○ <u>Council assessment staff</u>: Robert Montgomery (consultant planner), Rajiv Shankar, Mark Brisby, Henry Burnett

9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Independent assessment reports and memos