



DATE OF DETERMINATION	10 June 2021
PANEL MEMBERS	Jan Murrell (Chair), Roberta Ryan, Deborah Laidlaw, Brian McDonald
APOLOGIES	Carl Scully, Rosana Tyler, Victor Macri
DECLARATIONS OF INTEREST	Sue Francis declared a conflict of interest and did not participate in the Panel for this matter. Sue had prior involvement in the site in 2017, and more recently in terms of the zoning and desired capacity of development for the site for the landowner, who, whilst she can't confirm, she believes to be unchanged. Whilst she has had no involvement in any DA on the site, Sue considers it prudent to declare a conflict in this case to maintain the integrity of the Panel.

Public meeting held by videoconference on 10 June 2021, opened at 11am and closed at 1.05pm.

MATTER DETERMINED

PPSSEC-65 – Inner West – DA/2020/0578 at 2-18 Station Street, Marrickville – Demolition of existing structures and construction of a mixed use development comprising a boarding house and a commercial tenancy (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 and the matters observed at site inspections listed at item 8 in Schedule 1.

Application to vary development standards

The written requests from the applicant, made under cl 4.6(3) of the Marrickville Local Environmental Plan 2011, to vary clause 4.3 (Height of Buildings) and clause 4.4 (Floor space ratio), claim that:

- a) compliance with cl. 4.6 is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard.

The Panel, however, is of the opinion:

- a) the applicant's written requests do not adequately satisfy the matters required to be addressed under clause 4.6(3) of the LEP; and
- b) the development is not in the public interest because it fails to meet: the objectives of the standards; and the objectives for development in the B2 zone.

The Panel has determined the clause 4.6 written requests are not worthy of approval and the development application must be refused.

Development application

Further the Panel determined to refuse the development application on a merits assessment pursuant to section 4.15 and 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel's reasons for refusal are as outlined in the Council Officer's assessment report with changes, as incorporated below:

1. The request for variation of the Height of buildings development standard within clause 4.3 of the *Marrickville Local Environmental Plan 2011* pursuant to clause 4.6 of the *Marrickville Local Environmental Plan 2011* (for a variation of 23.88%) does not provide sufficient environmental planning grounds to justify the variation and is not considered to be in the public interest having regard to the objectives of the zone and standard.
2. The application for variation to the Floor space ratio development standard within clause 4.4 of the *Marrickville Local Environmental Plan 2011* pursuant to clause 4.6 of the *Marrickville Local Environmental Plan 2011* (for a variation submitted as 55.6% but assessed as 91.9%) does not provide sufficient environmental planning grounds to justify the variation and is not considered to be in the public interest having regard to the objectives of the zone and standard.
3. The proposed development presents visual bulk that is out of scale with the surrounding locality and with what can be constructed on the surrounding sites under the current planning controls. The proposed development does not provide sufficient transition from the highest part of the development to the nearby low-density residential zone.
4. The architectural design of the building would not be in harmony with the established or desired future character of the area. The proposal is therefore not compatible with the character of the area having regard to clause 30A of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.
5. The proposal does not provide a high standard of design in the private and public domain, having regard to the aim contained within clause 1.2(2)(h) of the *Marrickville Local Environmental Plan 2011*, and the urban design principles and control C1 within part 2.1.1 of *Marrickville Development Control Plan 2011*.
6. The application fails to demonstrate that the site satisfies the requirements of clause 7 of *State Environmental Planning Policy No 55—Remediation of Land*.
7. The site is not suitable for a development of this bulk and scale noting the issues with loading and waste collection, having regard to section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
8. The collection of waste will occur in the public domain, blocking Station Street and access to Marrickville Station. The proposed section of Station Street for waste collection is a 'no stopping' zone. The proposed development is, therefore, not in the public interest having regard to section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.
9. The car parking proposed is deficient given the intensity of the development when assessed in accordance with the *Marrickville Development Control Plan 2011*. The proposed development is inconsistent with the site-specific development controls C72, C73 and C74 within part 9.40.2 of *Marrickville Development Control Plan 2011* and is inconsistent with the relevant *desired future character statement*.
10. The proposed *private open space for the manager rooms is of low amenity* due to its location and size. The development is inconsistent with control C6 in part 4.3.3.4 of *Marrickville Development Control Plan 2011*.

CONCLUSION

- The Panel considers the proposal to be an over development of the site and does not reflect or enhance the desired character of the area. The building does not attempt to provide a transition in either height, bulk or architectural presentation as anticipated by the DCP Masterplan for Area MA 40.7. The Panel notes that there is an opportunity for increased density on the site, but the proposal is well beyond the capacity of the site in an environmental planning context.
- The Panel notes that the current controls over height and floor space ratio are proposed to be maintained under the exhibited draft Inner West Local Environmental Plan 2020.

- The Panel agrees with the interpretation of the proposed development's FSR as assessed by Council. Even if the alternative (applicant's) calculation were applied (which itself results in a significant exceedance of the FSR development standard), it is the case that the proposal's floorspace has been configured in a manner that increases its apparent bulk and which fails on merit.
- The Panel considers that the proposal fails to provide a suitable transition within the site to the lower density development in the immediate vicinity.
- The proposal has not demonstrated that the operational requirements of the development are able to be satisfactorily accommodated given the design and the constraints of the site. For example, the waste management proposed, without the benefit of a loading dock, would lead to operational issues for such a large boarding house.

The Panel further advises that in the event it had been minded to grant consent, it would first need to be satisfied that the site is suitable for development would have deferred the matter to allow the Applicant to satisfy this prerequisite. This is not a matter capable of being dealt with by condition or a deferred commencement. As such the necessary investigations and reports should now be undertaken prior to any new development application being lodged.

CONDITIONS

Not applicable.

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:

- Excessive bulk
- Lack of transition
- Excessive FSR
- Lack of Parking
- Additional traffic
- Overshadowing
- Privacy impacts
- Streetscape impacts
- Lack of compatibility with the character of the area
- Impact on stability of the Illawarra Road Bridge
- Lack of sufficient managers
- No assurance the development will be used for affordable housing
- Lack of housing diversity
- Overcrowding of the development / COVID safety
- Increased anti-social behaviour
- Increased acoustic impacts
- Wind tunnel effect
- Heritage report is for a different development
- Unsafe density in a flood zone
- How will sufficient infrastructure be provided?
- Poor architectural design and colours

The Panel has considered the concerns raised by the community, both orally and written and notes many of these are addressed in the assessment report.

PANEL MEMBERS	
 Jan Murrell (Chair)	 Roberta Ryan
 Brian McDonald	 Deborah Laidlaw

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSEC-65 – Inner West – DA/2020/-578
2	PROPOSED DEVELOPMENT	Demolition of existing structures and construction of a mixed use development comprising a boarding house and a commercial tenancy.
3	STREET ADDRESS	2-18 Station Street, Marrickville
4	APPLICANT/OWNER	Joseph Ghosn / Station Street Marrickville Pty Limited
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 (Affordable Rental Housing) 2009 ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ○ State Environmental Planning Policy (Infrastructure) 2007 ○ Marrickville Local Environmental Plan 2011 • Draft Environment SEPP • Draft Design and Place SEPP • Draft Inner West Local Environmental Plan 2020 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Marrickville Development Control Plan 2011 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Clause 92 • 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: 17 May 2021 • Clause 4.6 variation request floor space ratio • Clause 4.6 variation request height • Applicant submission, dated: 28 May 2021 • Written submissions during public exhibition: 35 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Karen Soo, Lisa Skeri, Heather Davie on behalf of ‘Save Marrickville’ community group ○ Council assessment officer – Glen Hugo, Luke Murtas ○ On behalf of the applicant – Joseph Ghosn, Phillip North, Ben Midgley, Nicholas Nasser, Dominic Solisi • Total number of unique submissions received by way of objection: 31
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 25 February 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Roberta Ryan, Jan Murrell, Rosana Tyler ○ <u>Council assessment staff</u>: Luke Murtas, Glen Hugo

		<ul style="list-style-type: none"> • Panel members visited the site independently, prior to 10 June 2021. • Final briefing to discuss council's recommendation: 10 June 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Jan Murrell (Chair), Roberta Ryan, Deborah Laidlaw, Brian McDonald ○ <u>Council assessment staff</u>: Glen Hugo, Luke Murtas, Joe Bertacco
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Attached to Council's assessment report