

DETERMINATION AND STATEMENT OF REASONS
 DECISION REVIEW PANEL OF THE SYDNEY NORTH PLANNING
 PANEL

DATE OF DETERMINATION	30 May 2022
DATE OF PANEL DECISION	26 May 2022
PANEL MEMBERS	Brian Kirk (Chair), Marcia Doheny and Stuart McDonald
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 26 May 2022, opened at 10.00am and closed at 11.45am.

MATTER DETERMINED

PPSSNH-291 / REV2021/0045 / Lot 101 DP 1209504, Northern Beaches, 5 Skyline Place Frenchs Forest, Seniors housing - Review of Determination of Application DA2021/0212 for demolition works and construction of a mixed development, comprising seniors housing, commercial uses, carparking, landscaping and stratum subdivision (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.

Development application

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

The Panel's decision was unanimous.

REASONS FOR DECISION

During the public meeting, the Panel heard submissions, both for and against the application, from members of the public. The Applicant and its experts, including the Applicant's legal representative, provided the Panel with a detailed briefing and the Council was given the opportunity to reply.

The Panel agreed that the proposed development had been appropriately assessed with respect to the objects and relevant sections of the *Environmental Planning and Assessment Act 1979* and accompanying Regulation, as well as the objectives, development standards and prescriptive controls of various state environmental planning policies, the Warringah Local Environmental Plan 2011, and the Warringah Development Control Plan 2011.

Given the chronology of the application, State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, although now repealed, remains applicable. The Panel did not consider that State Environmental Planning Policy (Housing) 2021 should be given considerable weight.

In coming to its decision, the Panel looked carefully at the locational context of the subject site. The Panel acknowledges, and has considered, the existing consent for seniors housing on Lot 2 adjoining to the north. The Panel considers that the proposed development on the subject site (Lot 1) is distinguishable from the consent on Lot 2 for a number of reasons.

Firstly, Lot 2 has its major frontage to Frenchs Forest Road and there is established residential development on the opposite side of the street, directly to the north. As a result, there is a compatible land use facing Frenchs Forest Road.

Secondly, Lot 2 has relatively limited lot boundaries to the east and west within the B7 zone.

Thirdly, Lot 2 is a relatively small site on the northern edge of the B7 zone and has a direct land use and visual relationship with the residential area to the north. Construction is progressing on Lot 2 for 52 seniors housing dwellings, which is significantly less than proposed on Lot 1, the land the subject of this application.

Lot 1 is a much larger site, being approximately 160% larger than Lot 2, embedded within the B7 zone and bordered on three sides by existing business park uses. Future permissible uses on these large adjoining sites include garden centres, hardware and building supplies, self-storage units and warehouse and distribution centres, all or some of which rely on Skyline Place for heavy vehicle access.

Proposed on the much larger Lot 1 is a much greater amount of housing, comprising a total of 108 dwellings. The residential component comprises more than 90% of the overall development on Lot 1. Approval of a predominantly residential development introducing 108 dwellings on Lot 1, being a sensitive land use, embedded more centrally within the centre of the B7 zone, will fundamentally and unfavourably change the existing character of the established B7 zone in the vicinity of the development.

The Panel considered that there is a very high probability that there will be conflict at the interface between the proposed sensitive land use and surrounding existing and future land uses, particularly due to noise, vehicle movements and possible air emissions. These interface issues are caused by insufficient separation and likely conflicting land uses. The Panel recognises that long term exposure to these interface issues can have significant adverse effects on liveability.

The Panel is not only concerned that the future residents of the proposed sensitive land use will be affected by interface issues. The introduction of a sensitive land use on this site in this location will encroach and impact on existing and future permissible land uses that are a source of external impacts, and those land uses may be compromised as a result of conflict.

The Panel concluded that the amended design has significant merit when compared to the design considered by the previous Panel; however, the incompatibility of the proposed high density residential development with surrounding existing and future development is considered by the Panel to be unacceptable.

The Panel amends the original reasons for refusal as follows:

State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004 (SEPP HSPD 2004)

The proposed development is unsatisfactory in respect to Section 4.15 of the EPA Act, as the application is found to be inconsistent with the provisions of SEPP (HSPD) 2004.

(a) The proposed development is inconsistent with Aims of Policy (namely Clause 2 in relation to design and compatibility).

(b) The proposed development is inconsistent with the requirement of Clause 25 (5) (i) & (v) with regards to land use conflict and bulk and scale.

(c) The scale, bulk and height of the proposal is not compatible with the existing and future character of the area and does not contribute to the quality and identity of the area as required by Clause 33 (a) of SEPP (HSPD) 2004.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and Associated Apartment Design Guide (ADG)

The proposed development fails the principles of SEPP 65 insofar as they apply to context & neighbourhood character, built form & scale, density, and amenity.

- (a) The proposed building is not compatible with the context of the site that currently contemplates development that is non-residential and of a scale significantly less than that proposed.
- (b) The development does not provide sufficient landscape, in particular canopy trees, to mitigate the height, bulk and scale of the proposed built form.

Warringah Local Environmental Plan (WLEP 2011)




The development is inconsistent with the provisions of WLEP 2011 as it relates to promoting development that is compatible with neighbouring development in terms of bulk, scale and appearance and use.

Public Interest

The community demand for seniors, affordable and disabled housing in this area does not justify that the site is appropriate for a seniors housing development of this height, bulk and scale. The extent of residential floor space proposed is inconsistent with Draft Northern Beaches Hospital Precinct Structure Plan, which does not change the B7 Business park zone for this area. As well the proposal is inconsistent with the State Government North District Plan, which recognises that business parks "need to be developed, from the outset, as urban places which can transition into higher amenity and vibrant places while maintaining their main role as an employment precinct. Council's retail and employment strategies should provide guidance on the transition of business parks into mixed employment precincts including, where appropriate, ancillary residential developments to support the business park". Consequently, approval of the application would not be in the public interest.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered 11 written submissions made during the public exhibitions. Issues of concern included: Character, Height, Bulk and Scale, Traffic and Parking Impact, Construction related impact and Northern Beaches Hospital Precinct Structure Plan.

PANEL MEMBERS	
 Brian Kirk (Acting Chair)	 Marcia Doheny
 Stuart McDonald	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-291 / REV2021/0045 / Northern Beaches
2	PROPOSED DEVELOPMENT	Seniors housing - Review of Determination of Application DA2021/0212 for demolition works and construction of a mixed development, comprising seniors housing, commercial uses, carparking, landscaping and stratum subdivision
3	STREET ADDRESS	Lot 101 DP 1209504, 5 Skyline Place Frenchs Forest
4	APPLICANT/OWNER	Applicant - Platino Properties Owner - The owners of Strata Plan 49558 George Andrew Revay Ross Jon Munro Graeme Watman Jardin Frenchs Forest Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Clause 8.3 of the EPA Act 1979 requires that the review of determination or decision made by a Sydney district or regional planning panel is also to be conducted by the Panel.

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 (WLEP 2011) • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> • Warringah Development Control Plan 2011 (WDCP) • 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"> • Council Assessment Report: 26 May 2022 • Attachment 1: Original Assessment Report by Council • Attachment 2: Architectural Plans (as amended) • Attachment 3: Applicant's Urban Design Study • Attachment 4: Design and Sustainability Advisory Panel Report • Attachment 5: Draft Conditions of Consent • Platino Properties letter dated 23 May 2022 • Keylan Consulting Pty Ltd submission dated 20 May 2022 • Keyland Consulting Pty Ltd summary of response to reasons for refusal in section 8.2 review of determination report • Written submissions during public exhibition: 11 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Members of the community – Dianne O'Hara on behalf of Project Independence, Rebecca Mitchel on behalf of Frenchs Forest Community Group, Paul Clark, Elaine Bridge & Dianne Brissett on behalf of the Frenchs Forest Over 60's Community Group. ○ Council Assessment Officer - Lashta Haidari, Rodney Piggott ○ On behalf of the applicant – Simon Militano – Project Director, Matthew Pullinger – Matthew Pullinger Architects, Dan Keary – Keylan Consultants – Planning Consultant Director, Mike Staunton –

		Martin Place Chambers
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Kick Off Briefing: 30 March 2022 • Final briefing to discuss council's recommendation: 26 May 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Brian Kirk (Chair), Marcia Doheny and Stuart McDonald ○ <u>Council assessment staff</u>: Lashta Haidari, Rodney Piggott
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A