

DATE OF DETERMINATION	15 December 2020
PANEL MEMBERS	Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Steve Kennedy, Annelise Tuor
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 15 December 2020, opened at 12.05pm and closed at 1.02pm.

MATTER DETERMINED

2018SNH070 – Northern Beaches – DA2018/1924 at Forestway Shopping Centre Frenchs Forest for Alterations and Additions to the Forest Way shopping centre (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 a development standard

The Panel considered the written request under cl 4.6 (3) of the Warringah Local Environmental Plan 2011 (LEP), and considers that it has not demonstrated that:

- a) compliance with cl.4.3 (maximum building height) is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard.

The Panel is not 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 (maximum building height) of the LEP and the objectives for development in the B2 zone.

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 development application for the reasons outlined below and in Council’s Assessment Report.

The DA involves a major refurbishment and increase in commercial floor space of the existing Forest Way Shopping Centre and includes two basement levels of parking, an additional roof-top parking level, and two floors of commercial floor space. The proposal includes supermarkets, childcare centre, a “skypark”, health centre, gym, restaurants, and specialty retail shops.

The proposal is reliant upon a variation to the maximum building height development standard prescribed by clause 4.3 of WLEP 2011, with a maximum variation of 41.5%. The Panel believes the Applicant’s Clause 4.6 written request is not well founded - in particular it does not provide sufficient environmental planning grounds for the variation.

The Panel notes that in the last two years, the application was amended a number of times, primarily to obtain concurrence from Transport for NSW (TfNSW). The concurrence was granted in due course subject to conditions of consent, which include no exit from the site directly onto Forest Way, no right turns into the site from Forest Way, and banning any right turns out of Russel Avenue onto Forest Way. All traffic exiting the centre would be required to exit via either Russel Avenue or Grace Avenue to the west, and all south bound traffic would be forced into the local road networks for a significant distance in either a north or south direction before being able to gain access back onto either of the nearby arterial roads.

Part of the Hospital Precinct Structure Plan is the upgrading of Grace Avenue, and works to the north and south to facilitate greater traffic flows. However, these works generally fall into the medium to long-term category, and as the Structure Plan is not a planning instrument, there is not a high level of certainty that these works will take place in the near term. Given these factors, the Panel concurs with Council's concern with the impacts of the significant increase in traffic on the local road network.

A further concurrence requirement of TfNSW is that the Applicant would be required to dedicate land from the Forest Way frontage for use as a deceleration lane to enter the site, and a future bus lane on Forest Way. The Applicant submitted a subdivision plan for the land to be dedicated and a separate draft Voluntary Planning Agreement (VPA), the outcome of which is uncertain at this stage.

The Panel also notes the significant difference in calculations and opinions between the Applicant and Council in the provision of car parking spaces. The Panels considers that this issue is far from resolved.



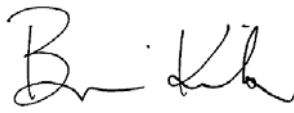


In summary, the Panel believes the consideration of the DA is premature given the current planning framework and the status of the Structure Plan. Furthermore, very significant traffic, access and infrastructure issues remain unresolved.

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 public meeting. The Panel notes issues of concern included traffic, pedestrian safety, loss of trees, potential damage to neighbouring properties, noise and impacts on other shopping centres.

PANEL MEMBERS	
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 Annelise Tuor	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018SNH070 – Northern Beaches – DA2018/1924
2	PROPOSED DEVELOPMENT	Alterations and additions to the Forest Way shopping centre including a childcare centre, medical centre, shops, restaurant/cafes, recreation facility (indoor), office premises and basement car parking.
3	STREET ADDRESS	Lot 20 DP 1209801, Forest Way FRENCHS FOREST NSW 2086
4	APPLICANT/OWNER	Are Chemin De La Foret Pty Ltd
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 Educational Establishments and Child Care Facilities 2017 ○ State Environmental Planning Policy (Infrastructure) 2007 ○ State Environmental Planning Policy No. 55 – Remediation of Land (and draft) ○ Warringah Local Environmental Plan 2011 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Warringah Development Control Plan 2011 • 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: 4 December 2020 • Clause 4.6 Variation Request – maximum height of building • Applicant submission: 14 December 2020 • Written submissions during public exhibition: 101 • Number of unique submissions received by way of objection: 101 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Community members: Tom Griffiths, David North ○ Council assessment officer: David Auster ○ On behalf of the applicant: Naomi Daley, David Hoy, Andrew Hogan, Lauren Fellows, Ian Schilling, Tim Rogers, Lee Tredwell, Anthony El-Hazouri
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 26 February 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Steve Kennedy, Annelise Tuor ○ <u>Council assessment staff</u>: David Auster, Phil Jamieson, Rod Piggot • Final briefing to discuss council’s recommendation: 15 December 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Steve Kennedy, Annelise Tuor ○ <u>Council assessment staff</u>: David Auster, Phil Jamieson, Rod Piggot
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Conditions without prejudice submitted with assessment report