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| <b>DATE OF DETERMINATION</b>    | 20 December 2022   |
| <b>DATE OF PANEL DECISION</b>   | 19 December 2022   |
| <b>DATE OF PANEL MEETING</b>    | 6 December 2022  |
| <b>PANEL MEMBERS</b>            | Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran, Mick Fell, Romola Hollywood |
| <b>APOLOGIES</b>                | None   |
| <b>DECLARATIONS OF INTEREST</b> | None   |

Public meeting held by teleconference on 6 December 2022, opened at 10:30am and closed at 12:00pm. Papers circulated electronically on 30 November 2022.

#### **MATTER DETERMINED**

**PPSSWC-186 – Blue Mountains – X/1436/2021 – 203-223 Leura Mall, Leura NSW 2780** - or a additions and alteration to existing residential care facility including landscaping, retaining, basement car parking and new substation at Ritz Nursing Home.

#### **PANEL CONSIDERATION AND DECISION**

Having 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, the Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

That decision was unanimous.

At the same time, the Panel also agreed that the proposal had overall merit, and that if the presentation of the development to Wascoe Street and its transition to neighbouring development including an adjacent heritage listed cottage could be better resolved, and the treatment of heritage fabric within the listed item, could be better refined, then the scheme would likely warrant approval.

#### **Application to vary a development standard**

The Panel considered the applicant's written requests made under cl 4.6 (3) of the Blue Mountains Local Environmental Plan 2015 (BM LEP) to permit departure from separate development standards for maximum height and floor space ratio (FSR) recorded respectively by Clause 4.4 Floor Space Ratio in the determination of the DA, the Panel considered that variation of those controls had merit, but could not be approved until the transition to adjacent development was resolved.

Specifically, if the proposal is constructed:

- (a) The proposal would yield a gross floor area (GFA) measured by the Applicant to total 7,512.6 m<sup>2</sup> (adding 2,992.6 m<sup>2</sup> to the present FSR of 4,520 m<sup>2</sup>), which is equivalent to an FSR of 0.665:1. The proposed FSR therefore exceeds the 0.4:1 FSR standard by 66.25%.
- (b) While the maximum height of the existing Ritz building of 14.9 metres (RL 986.2) will be reduced by 1.6m by removal of a small dormer structure on the rooftop of the main building, it will continue to exceed the 8-metre height standard by a maximum of 5.3m (a 66.25% variation over the development standard). Of the proposed new work, the new extensions to the south and west of

the original Ritz building will exceed the 8m height by varying amounts. The Applicant's written 4.6 request measures them at between 1.1m (a 13.75% variation) to 4.65m (a 58.12% variation).

Particularly given the public interest in facilitating the restoration of this heritage item and providing aged care housing, the Panel is generally satisfied that there are sufficient environmental planning grounds identified and established in the written request to depart from both the height and FSR standards and it would be in the public interest to do so, provided that the other merit considerations as discussed below in this report can be resolved satisfactorily.

Subject to that reservation, compliance with the two development standards would be unreasonable or unnecessary in the circumstances, and the request has adequately addressed the matters required to be addressed under cl 4.6 (3) of the LEP.

In particular, in relation to height:

- (a) the new wing of the development could exceed the development standard of 8 metres while continuing to relate sufficiently well to the local context and without impacting unduly on the privacy of adjoining residential development or any relevant views.
- (b) the height transition between the heritage buildings on the site is appropriate in all the circumstances including the need to allow a commercial return on the development sufficient to fund the preservation of the heritage significance of the item which is presently suffering serious degradation.

In relation to FSR, the built form upon this large site will be compatible with the role of the town as a tourist destination and commercial shopping area for Leura.

The remaining matter requiring special attention in relation to the consideration of variation of both development standards is the moderation of the bulk, scale and character of the built form of the new western wing fronting Wascoe Street so that it is compatible with surrounding development and particularly the adjoining heritage listed cottage.

If that issue is resolved satisfactorily through appropriate adjustment of the design, it would be in the public interest to allow the height exceedance. The reasons for the Panel's reservations in relation to that matter are addressed below.

The concurrence of the Secretary to varying the standard is assumed (see Planning Circular PS 20-002 issued 5 May 2020).

## **REASONS FOR THE DECISION**

The heritage item the subject of the DA assessment is known as the "Ritz Hotel", which refers to one of its incarnations since the original main building was constructed in 1893 as the "Coffee Palace" – an alcohol free tourist destination.

The built form on site has been substantially extended and altered since that time, first with its conversion to operate as The Palace Hotel. The building was first known as The Ritz following extensive renovations around 1914 when the landscaping of the site first was developed. The Manager's Cottage on site was likely constructed around that time.

Various business models for the venue followed before in 1942 the site was requisitioned and converted into a military convalescent home managed by the Red Cross Society.

When the World War ended and the requisition ceased, the building operated again as a licensed hotel for a time under the control of Sydney brewers Tooth & Co. In 1970 the building was converted for use as a nursing home. That use continued for 48 years until 2018 when the home closed its doors. When it closed,

the home operated as a locked facility for about 148 high-care patients. Since 2018, the site has lain dormant, falling increasingly into disrepair.

Up until its nursing home conversion the building presented superb detailing throughout in addition to extensive manicured grounds. This 1949 postcard photograph taken from the north towards the station displays the building in its mountain setting.



The Panel inspected the buildings and grounds as part of its consideration of the DA. While an impression of Victorian grandeur from the buildings and grounds remained, much of the detailing of the interior of the Hotel could be seen to have been lost during its institutional use. The Panel accepts that the interiors of the main buildings and many of the ancillary buildings (excluding the Cottage) are severely degraded. The Applicant's heritage expert is correct to observe that the interior of the main 'Hotel' (in contrast with the exterior) has been:

“... very heavily altered with rooms divided and altered and most of the original fabric removed or over-boarded apart from some arches and windows. Original fabric may remain under later coverings.”

Building A3 – a new wing constructed around 1914 – similarly presents as largely intact from the outside, but with substantial alterations to the interior to accommodate its changing institutional use.



The Manager's Cottage (an Edwardian Arts and Crafts/Californian bungalow) appeared largely intact. Interior detailing of the Manager's Cottage and parts of the other buildings (including the attic level of the main building) remained. There were other buildings in different styles which preserved external detailing which were in differing levels of intactness. The grounds were overgrown, but the overall geography of the site's principal features remained intact such as a level lawn area to the west of the site that was the former tennis court.

This photograph taken from Leura station on the day of the inspection (21 February 2022), shows how (despite the degradation of the interior) the exterior detailing and alpine built form remains an important part of the Leura skyline that can be glimpsed from the National Trust-classified town centre and surrounds.



The principal matters requiring resolution before the DA could be approved are those surveyed in the Council assessment report in its discussion of 'design excellence' particularly in relation to clause 6.19 of the BM LEP which aims *"to deliver a high standard of architectural and urban design within the village centres of the Blue Mountains"* for new building work with reference to the Blue Mountains DCP.

The Council's assessment in that regard relies upon the advice of its independent architect, who is critical of a number of aspects of the proposal including:

*"... the proposed retention of only the façade of the 1913 wings does not allow for the proper conservation and reuse of these buildings"*

*"Insufficient details are also provided in relation to the interior heritage detailing of the Manager's Cottage and Leura Mall cottage as part of the proposed adaptive reuse of these buildings."*

*"The (proposed west wing) building is considered to be institutional in scale and the articulation not sufficiently fine grained to complement the distinctive pattern of detached cottages within Wascoe Street. .... (which does) not achieve a high standard of architectural design, materials and detailing appropriate to the building location and setting."*

Council's heritage architect expert is especially critical of the new west wing which is said to present poorly to Wascoe Street, and to give rise to inappropriate impacts on sunlight and daylight access to the adjoining residential development at 24 Wascoe Street, overshadowing the only north facing windows of that dwelling.

Council's heritage architect expert does however appear to now be generally satisfied with the upgrade of the exterior of much of the heritage item which he says *"... has the potential to conserve the heritage buildings and rejuvenate the landscape setting, improving the quality and amenity of the public domain"*. The approach to the preservation of that exterior has been augmented by amendments to the scheme following discussions encouraged by the Panel between respective experts of the Applicant and the Council.

The Panel did not agree with all of the Council's assessment which in the Panel's opinion did not sufficiently allow for the extent to which the interior of the building had degraded so as to present a serious threat to the heritage item surviving in the long term if major restoration is not undertaken soon. The current poor condition of the site also has adverse effects on the Leura town centre which should be addressed. Greater acceptance of further alteration to the interior of the main building is likely to be required to the interior of the main heritage building to facilitate its reuse, even if it changes the original masonry and arrangement of rooms.

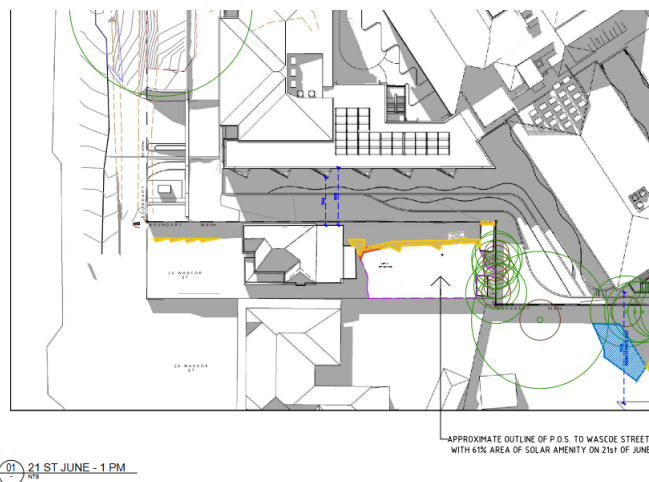
There is also a recognised need for nursing home places which Council staff confirmed to be particularly pressing in the Blue Mountains region with its significant proportion of retired population and limited institutional infrastructure. The creation of a nursing home on the site would have a major public benefit for that reason. There is also a significant heritage benefit in facilitating a nursing home use which has its own history on the site and allows for a semi-public occupation of the building and grounds, in addition to funding restoration work. Significant reworking of the interior of the building is likely to be essential and inevitable to allow for the proposed nursing home use and overly restricting the alteration of the interior of the building may lock in aspects of the architecture which are adverse to the needs of the future residents of home without sufficient heritage benefit.

The Panel has been highly encouraging of a solution being found within the competing approaches to heritage through discussions and compromise between the Council and the Applicant that have led to long delays in the assessment and reporting on this DA. The discussions have however to date been only partially successful.

While the Panel accepts that some solar access impact might reasonably be expected on No 24 Wascoe Street (which might presently already be overshadowed by vegetation to be removed by the proposal), the Panel also accepts that further investigation of how the position could be improved in that regard is warranted. The present proposal from the additional shadow diagrams supplied (which notably do not depict the effects of vegetation to be removed or planted) show 24 Wascoe Street free of shadow from the proposal between 9am and 3pm on 21 March. The cottage does seem to be in shadow from the proposed new building work up until around 2pm when it progressively comes out of shadow. The element causing



the shadow might be reconfigured to improve that situation, noting the exceedance of FSR and height of the proposal. This 2pm 21 June diagram is supplied for reference (acknowledging that existing trees probably already overshadow the house at least in part):



The other main issue is the presentation of the proposal and the transition along Wascoe Street in particular. This elevation of the new wing along Wascoe Street adjacent to the heritage listed cottage on the right is useful for reference (acknowledging that vegetation is proposed to soften that presentation over time):



The conclusion of the Council’s heritage architect is that “Despite some façade articulation and the faux-mansard roof, the West Wing will read as a three-storey high and very long building. It is therefore considered that the proposed new West Wing building is not consistent or compatible with the bulk and scale of existing cottages.”

The Panel does not agree entirely with that assessment. It is of the view that the overall height of the western wing could likely be accommodated, noting it steps up from the road following the topography of the site. However, the Panel does agree with the Council assessment that the building design where it presents a three storey wall behind and above undercroft basement parking adjacent to the heritage listed cottage at 24 Wascoe Street could be improved. That is notably the same part of the building which would impact on the solar access to that cottage. It is possible that detailing along the Wascoe Street façade could reduce the impact on the heritage feel of the street. Careful planting will also be important.

Until that part of the building design is resolved, the Panel could not be satisfied that the bulk, scale and character of the built form of the proposal had been adequately moderated to be compatible with surrounding development. That issue must be resolved sufficiently before the clause 4.6 request can be granted due to its importance to the relevant LEP objectives.

At the same time, there are a number of matters proposed in the deferred commencement conditions recommended by the Council if the DA was to be approved which in the Panel’s opinion should be better

resolved before the DA could be approved taking into account the comments above. In particular, the issue of the extent to which the interiors can be retained must be resolved. In general, the Panel accepts the conversion and upgrade to the modern nursing home use will likely require removal of significant internal fabric where it lacks original detailing. Retention of the arrangement of room openings may have to be compromised in order to deliver a nursing home with accessibility and function within a commercially viable project. There may have to be a trade off to allow for the exteriors to be restored which are important to the Leura township.

The tables at 8.6.1 and 8.6.2 of the Conservation Management Plan should provide a guide to the final assessment.

In light of the above observations, it may be that a review application could address the above matters satisfactorily, which have been set out in some detail for the proponent's and the Council's consideration.

**CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the Panel considered the numerous written submissions made during public exhibition (both for and against) and heard from all those wishing to address the Panel.

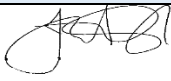


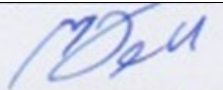

Amy Burton Bradley from the heritage cottage at 24 Wascoe Street adjoining the DA site made detailed oral submissions to supplement her written objection in relation to the impacts on the amenity of that residence due to aspects of the new building work which she said were *"profoundly non-compliant"*. She said the new building would dominate Wascoe Street and lead to a substantial loss of solar access to 24 Wascoe Street as sun would be blocked for most of the day. She was concerned about privacy impacts and that the garage would be close to bedrooms in the cottage. She was also concerned about noise from excavation and construction noting what she understood to have been poor construction practices at developments by the same developer at Longueville and Northwood. She called for a compliant redesign.

Karina Kelly from 26 Wascoe Street agreed with Amy Burton-Bradley's submissions about overlooking and the proximity to the 24 Wascoe Street cottage. She was concerned about a 24 hours a day vehicular entrance.

Rod Stowe spoke against the development as the voluntary chair of the Blue Mountains Branch National Trust and what he said were the unsympathetic scale of the new built elements. He questioned whether the chimney could not be preserved, and doubted the justification for its partial removal based on wind and earthquake fears.

Keith Thompson spoke in support of the proposal, stating that concerns about the presentation to Wascoe Street were short sighted. He was pleased to see that the renovated facility would provide an opportunity for residents to continue to live in Leura.

Rowan Holmes, a resident of Wascoe Street said he endorsed what was said by previous speakers particularly about the proposed mass and scale of the proposal. He said there had been insufficient attention to pedestrian needs, with potential traffic noise and pollution not considered in the traffic study. He called for base line data in relation to noise pollution and was concerned about impacts of construction.

| PANEL MEMBERS   |   |
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| <br>Justin Doyle (Chair) | <br>Louise Camenzuli |
| <br>Nicole Gurrán        | <br>Mick Fell       |
| <br>Romola Hollywood     |   |

| SCHEDULE 1 |   |   |
|------------|---|---|
| 1          | PANEL REF – LGA – DA NO.                              | PPSSWC-186 – Blue Mountains – X/1436/2021   |
| 2          | PROPOSED DEVELOPMENT                                  | Additions and alteration to existing residential care facility including landscaping, retaining, basement car parking and new substation at Ritz Nursing Home.  |
| 3          | STREET ADDRESS  | 203-223 Leura Mall, Leura NSW 2780  |
| 4          | APPLICANT/OWNER                                       | Skermanic Pty Ltd   |
| 5          | TYPE OF REGIONAL DEVELOPMENT                          | General development over \$30 million   |
| 6          | RELEVANT MANDATORY CONSIDERATIONS                     | <ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>○ State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>○ State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>○ Blue Mountains Local Environmental Plan 2015</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Blue Mountains Development Control Plan 2015</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i></li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> </ul> |
| 7          | MATERIAL CONSIDERED BY THE PANEL                      | <ul style="list-style-type: none"> <li>• Council Assessment Report: 29 November 2022</li> <li>• Clause 4.6 Variation Requests for Height and FSR</li> <li>• Written submissions during public exhibition: 18</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ [names of speakers]</li> <li>○ Council assessment officer - [names of speakers]</li> <li>○ On behalf of the applicant – [names of speakers]</li> </ul> </li> <li>• Total number of unique submissions received by way of objection: 13</li> </ul>  |
| 8          | MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL | <ul style="list-style-type: none"> <li>• Council Briefing: 6 December 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli and Nicole Gurran</li> <li>○ <u>Council assessment staff</u>: Debbie Pinfold, Alex Williams and Christo Aitken</li> </ul> </li> <li>• Site inspection: 21 February 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli and Nicole Gurran</li> <li>○ <u>Council assessment staff</u>: Justin Doyle (Chair), Louise Camenzuli and Nicole Gurran</li> </ul> </li> <li>• Applicant Briefing: 7 March 2022</li> </ul>  |



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|           |                               | <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli and Nicole Gurrán</li> <li>● Final briefing to discuss council's recommendation: 6 December 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, Nicole Gurrán, Mick Fell, Romola Hollywood</li> <li>○ <u>Council assessment staff</u>: Debbie Pinfold, Alex Williams and Christo Aitken</li> </ul> </li> </ul> |
| <b>9</b>  | <b>COUNCIL RECOMMENDATION</b> | Refusal  |
| <b>10</b> | <b>DRAFT CONDITIONS</b>       | Attached to the Council Assessment Report  |