

DETERMINATION AND STATEMENT OF REASONS
SYDNEY SOUTH PLANNING PANEL

DATE OF DETERMINATION	Wednesday, 19 June 2019
PANEL MEMBERS	Nicole Gurran (Chair), Bruce McDonald, Julie Savet Ward, Steve Simpson, Michael Forshaw
APOLOGIES	Helen Lochhead
DECLARATIONS OF INTEREST	None

Public meeting held at Sutherland Shire Council, 4-20 Eton Street, Sutherland on 19 June 2019, opened at 11.35am and closed at 12.10pm

MATTER DETERMINED

2018SSH036 – Sutherland – DA18/0884 - 678, 680, 682 Kingsway, Miranda, 11, 13 Pinnacle Street, Miranda - Demolition of existing structures, construction of 2 residential flat buildings containing 114 units under the Affordable Rental Housing SEPP and 2 lot 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.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

1. The proposed development will provide additional housing supply and choice, including affordable rental housing, within the Sutherland Shire and the Sydney South District in a location with ready access to the amenities and services provided by Miranda centre and the metropolitan transport services available from Miranda Rail Station.
2. The Panel has considered the Applicant's request to vary the development standard contained in clause 4. of Sutherland Shire LEP 2015 relating to maximum building height. It is noted that the proposed development constitutes 2 separate buildings, Building A and Building B each of which exceed the development standard to a differing extent.
3. Regarding Building A, the Panel considers compliance with the standard is unreasonable and unnecessary in the circumstances of this case as that variation responds to the accommodation of the additional floor space entitlement secured under SEPP (Affordable Rental Housing) 2009, will facilitate access to roof top communal open space so improving on site amenity for and encouraging positive social interaction of residents. Further the additional height will not generate unacceptable impacts on nearby premises, is of minor perception in the planned context of the locality and remains consistent with the objectives of the standard and the objectives of the R4 high Density Residential zone.
4. Regarding Building B, the Panel for the reasons expressed in the assessment report concurs with the conclusion that the proposed height of the building fails the objectives of the development standard with respect to the desired scale and character of the street and locality in which the

building is located and that the applicant's request to vary the standard fails to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. The Panel further considers that the issue of consent requiring the deletion of the 7th residential level and other design adjustments which result in a conforming height is a preferred approach to that of refusing the application.

5. The Panel has considered the potential issue of site isolation for the adjacent 2 sites to the east and concludes that future development potential remains.
6. The proposed development subject to the conditions imposed adequately satisfies the relevant State Legislation and State Environmental Planning Policies including the Biodiversity Act 2016 SEPP (Affordable Rental Housing) 2009, SEPP 55 -Remediation of Land, SEPP 65 Design Quality of Residential Apartment Development and its associated Apartment Design Guide, SEPP (Infrastructure)2007 and Greater Metropolitan Regional Environmental Plan No2- Georges River Catchment.
7. The proposal subject to the conditions imposed adequately satisfies the applicable objectives and provisions of Sutherland Shire LEP DCP 2015.
8. The proposed development subject to the conditions imposed will have no unacceptable adverse impacts on the natural or built environments including the amenity of nearby buildings the or the utility of the local road system.
9. While the proposed development will be situated in a residential context now undergoing transformation to higher density and contains detached dwellings, the proposed development as amended by the terms of this approval is considered to be of acceptable form and scale consistent with the planned residential apartment context and character of the locality within which the site is placed.
10. In consideration of conclusions 1-9 above the Panel considers the proposed development is a suitable use of the site and approval of the proposal is in the public interest.

The Panel notes that the applicant verbally foreshadowed a change in the affordable housing proportion of the development, as a consequence of the reduced height of Building B. However, the application and material before the Panel today does not address this potential adjustment as part of the decision to approve the application.

CONDITIONS

The development application was approved subject to the conditions in the Council Assessment Report with the following amendments:

- **Amend the description of the proposal** - Demolition of existing structures, construction of 2 residential flat buildings containing **102 units** under the Affordable Rental Housing SEPP and 2 lot stratum subdivision
- **Amend Condition 2: Design Changes Required**

A. Before Construction

The following design changes must be implemented:

- i. Building B - Residential Level 7 is to be deleted and the Level 8 Communal space and associated lift / stair and plant shall be provided at Level 7. The floor to floor dimension between Level 4 to 5 shall be

reduced from 3.2m to 3.1m. The floor to roof height at the new COS level 7 (including associated screen enclosure around the lobby, lift, fire stair, plant rooms, toilet etc.) shall be reduced from 3.4m to 2.4m. The lift over-run shall be reduced in height by 1m equally.

ii. Building A - The floor to floor dimension between Level 3 to 4, and Level 6 to 7 shall be reduced from 3.2m to 3.1m. The floor to roof height at the ninth level / COS access level (including associated screen enclosure around the lobby, lift, fire stair, plant rooms, toilet etc.) shall be reduced from 3.4m to 2.4m. The lift over-run shall be reduced in height by 1m equally.

iii. The hydrant boosters and meters must be fully enclosed as depicted on the approved plans. Alternatively, the hydrant boosters and meters must be incorporated within the building fabric to avoid the need for any radiant heat shield wall. Front fencing - all fencing forward of the building line must be no greater in height than 1.5m (including retaining any retaining wall component) and be open form. Privacy is to be achieved through the provision of screen planting.

iv. Delete retained planters along the eastern boundary and maintain existing grades. Provide screening planting adjacent to exposed basement/retaining walls

v. Provide shade structure (maximum dimension 4mx6m, maximum height 2.1m) over BBQ and seating areas to rooftop communal open spaces. A performance based approach to the BCA is to be achieved with respect to Building A. An open structure with vegetated trellis or retractable awning is permitted in lieu of the covered shade structure if a performance based approach cannot be achieved.

vi. Driveway walls adjacent to the entrance of a basement car park are to be treated in a high quality finish so that the appearance is consistent with the external finish of the building.

Details of these design changes must be included in documentation submitted with the application for a Construction Certificate.

- **Amend Condition 4: Affordable Rental Housing - Restriction as to User**

A. Before Occupation

Sutherland Shire Council must be notified of the registered affordable housing provider managing the Affordable Rental Housing apartments in the development.

A Restriction as to User must be registered against the title of the property in accordance with section 88E of the Conveyancing Act 1919. This restriction must be registered, before the date of the issue of the Occupation Certificate, against the title of the property on which development is to be carried out. This restriction is to ensure that all apartments within Building B are provided as affordable rental housing as defined by State Environmental Planning Policy (Affordable Rental Housing) 2009. The restriction shall contain the following wording:

Clause 17(1) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 entitled 'Must be used for affordable housing for 10 years' states:

(1)(a) for 10 years from the date of the issue of the occupation certificate:

(i) the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and

(ii) all accommodation that is used for affordable housing will be managed by a registered community housing provider.

B. Ongoing

That the Restriction as to User require the dwellings, for a period of 10 years from the date of issue of an Occupation Certificate, to be Affordable Housing as defined by State Environmental Planning Policy (Affordable Rental Housing) 2009, namely:

“**affordable housing**” means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument

- **Amend Condition 6 - Section 7.11 Contributions - S94 2016 Contributions Plan - Miranda Centre Precinct**

A. Before Construction

Pursuant to Section 7.11 of the Environmental Planning and Assessment Act 1979 and Sutherland Shire Council Section 94 Development Contributions Plan 2016, a total monetary contribution of \$1,940,000.00 must be paid to Sutherland Shire Council toward the cost of regional and local public domain works contained in the Works Programme of the Development Contributions Plan.

This contribution has been assessed and calculated in accordance with the Development Contributions Plan on the basis of 102 proposed Residential Flat Units, Apartments etc, with a concession for 5 existing allotments.

Infrastructure & Facilities

Contribution Required

Local open space and public domain works	\$1,419,244.20
Regional open space	\$520,755.80

The contribution will be indexed on 1 July in each year in accordance with the Consumer Price Index (All Groups Index) for Sydney.

The formula to index a contribution rate is:

$$\text{New Contribution Rate} = \text{Current Contribution Rate} \times \frac{\text{Current CPI}}{\text{Previous year's CPI}}$$

Payment must be made prior to the issue of the Construction Certificate.





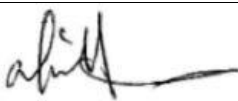
Council may accept an offer by the applicant to satisfy the contribution, or a portion of the contribution, by carrying out works in kind, in accordance with the applicable Section 7.11 Development Contribution Plan 2016. Council will only accept such an offer where the works are constructed by the developer to the Council's standards and then transferred to Council. Works-in-kind should facilitate items which are included in the works schedule. Should Council accept works in kind in lieu of a contribution, this consent must be modified in accordance with section 4.55 of the EP&AA Act.

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 raised during the public meeting included:

- Traffic, particularly during peak hour
- Potential impacts on local crime

The Panel considers that concerns raised by the community in written submissions and during the public meeting have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting. The Panel notes that in addressing these issues, appropriate conditions have been imposed.

PANEL MEMBERS	
 Nicole Gurrán (Chair)	 Bruce McDonald
 Julie Savet Ward	 Steve Simpson
 Michael Forshaw	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018SSH036 – Sutherland – DA18/0884
2	PROPOSED DEVELOPMENT	Demolition of existing structures, construction of 2 residential flat buildings containing 114 units under the Affordable Rental Housing SEPP and 2 lot stratum subdivision.
3	STREET ADDRESS	678, 680, 682 Kingsway, Miranda, 11, 13 Pinnacle Street, Miranda
4	APPLICANT/OWNER	Altis Bulky Retail Pty Ltd As Trustee For Altis Aret Sub Trust 8
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 (State and Regional Development) 2011 State Environmental Planning Policy No. 55 – Remediation of Land Draft State Environmental Planning Policy (Remediation of Land) (draft Remediation of Land SEPP) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Infrastructure) 2007. Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment. Draft State Environmental Planning Policy (Environment) (draft Environment SEPP) Biodiversity Conservation Act 2016 State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP). State Environmental Planning Policy No. 65 (Design Quality of Residential Flat Development). Apartment Design Guide (ADG) Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015) Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Sutherland Shire Development Control Plan 2015 (SSDCP 2015) Planning agreements: Nil Provisions of the Environmental Planning and Assessment Regulation 2000: 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: 14 May 2019 Clause 4.6 variation request – Building Height Written submissions during public exhibition: 10 Verbal submissions at the public meeting: <ul style="list-style-type: none"> In support – Nil In objection – Michael Andrew

		<ul style="list-style-type: none"> ○ Council assessment officer – Evan Phillips ○ On behalf of the applicant – Julie Horder - Planning Ingenuity; James McCarthy – Turner Architects, Nick Murdoch
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection: 19 June 2019 • Briefing: 21 November 2018 • Final briefing to discuss council’s recommendation, 19 June 2019, 10.40am. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Nicole Gurran (Chair), Bruce McDonald, Julie Savet Ward, Steve Simpson, Michael Forshaw ○ <u>Council assessment staff</u>: Evan Phillips, Mark Adamson, Carine Elias
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report