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| DATE OF DETERMINATION | 19 May 2021 |
| PANEL MEMBERS | Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Ross Walker |
| APOLOGIES | None |
| DECLARATIONS OF INTEREST | None |

Papers circulated electronically on 10 May 2021.

MATTER DETERMINED

2019SNH016 – Hornsby – DA65/2019 at 22-32 Park Avenue Waitara for a residential flat building (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

Following consideration of a written request from the Applicant, made under cl 4.6 (3) of the Hornsby Local Environmental Plan 2012 (LEP), that has not demonstrated that:

- a) compliance with cl.4.3 (height of buildings) 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 (height of buildings) of the LEP and the objectives for development in the R4 high density residential 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 does not support the written Clause 4.6 variation to building height and resolved to refuse the application for the reasons set out below and in Council's Supplementary and original Assessment Reports.

Following the October 2020 deferral of the proposal, the Applicant submitted an amended proposal and written Clause 4.6 variation request, as the amended Proposal does not comply with the maximum height of buildings development standard of 17.5m. The Panel considered the Applicant's written variation request but concurs with Council that the submission is not well founded and accordingly not supported. The Panel considered that weight should be given to the draft LEP that amends cl 4.3 in Hornsby LEP 2013 and reduces the 17.5m height limit to 16.5m. The report correctly states that the subject application is caught by the savings provisions but the draft LEP must be considered as it was an environmental planning instrument that was "subject to public consultation" (cl 4.15(1)(a)(ii) EPA Act) and the weight that should

be given to the draft plan will be greater if there is a greater certainty it will be adopted (*Terrace Towers Pty Ltd v Sutherland Shire Council [2003] NSWCA 289*). The draft LEP has been adopted so it should be given considerable weight.

Overall, the Panel determined that the written request does not adequately establish that compliance with the development standard is unnecessary in the circumstances of the development and that sufficient environmental planning grounds exist to justify contravention of the development standard. Further, complying with the height standard was given as a reason for the October 2020 deferral. The Panel resolved not to support the height variation.

The proposed development on this site flows from a prior Development Application (DA) under which demolition of existing buildings was approved in 2016 and a further DA in 2017 submitted an original design plan for Council's consideration. After consultation with Council, the Applicant withdrew the 2017 DA.

A new proposal was lodged in 2019 and considered by Council's Design Excellence Panel. Subsequently, the applicant made substantial changes to the design and submitted amended plans in December 2019.

In October 2020, the Panel considered the DA during a public meeting and based upon the Panel's review of the plans, documentation and Applicant and Council responses at the briefing, the Panel was of the view that with substantial design changes the proposal may be acceptable.

At that time, the Panel deferred the application and asked that the Applicant and the Council meet to discuss all reasons for refusal listed in the Assessment Report. The Panel noted that resolution of the matters would require substantial changes to the building design and layout but believed such an outcome was achievable. In addition to addressing Council's reasons for refusal, the Panel asked the Applicant to ensure an amended design:

- Complies with the height standard;
- Very substantially increases the amount and configuration of the communal open spaces to provide opportunities for a range of recreational activities with good solar access, landscaping and demonstrated accessibility for residents;
- Resolves the flood / stormwater issue;
- Clearly identifies all areas of private open space;
- Meets the urban design standards of both the Apartment Design Guide and Hornsby Development Control Plan 2013, both quantitatively and qualitatively, with particular reference to setbacks, solar access, articulation (façade presentation), privacy (separation distances), landscaping and deep soil areas for trees; and
- Amends the design to have regard to the future character of the Precinct and the development's street presentation should respect its highly visible presence when viewed from the public domain and adjacent park.

In March 2021, the Applicant submitted amended plans responding to the deferral. The amended plans propose construction of five 5 storey residential flat buildings', with a mezzanine level, comprising 168 units with basement parking for 198 vehicles and consolidation of 9 allotments into 1 lot. The amended proposal was further considered by Council's Design Excellence Panel and also comprehensively assessed by Council. It drew no public submissions.

The Panel considered the amended plans and associated information and Council's Supplementary Assessment Report. The Applicant and Council then briefed the Panel and the Panel adjourned to consider the matter.

In summary, the Panel concurs with Council that the amended plans do not adequately address the Panel's reasons for deferral and the proposed development is unsatisfactory with respect to the Hornsby Local Environmental Plan 2013, design principles under SEPP 65 and the objectives of the Apartment Design Guide.

The Panel notes the proposed development does not comply with the height development standard of the HLEP and the prescriptive measures and desired outcomes of the HDCP with respect to desired future character, setbacks, articulation, landscaping, built form and separation and communal open space. The scale of the development is not suitable for the site attributes and the proposal would not result in a built form, which contributes positively to the built environment and the desired future character of the Waitara five storey precinct. The Panel also notes that Council's Design Excellence Panel did not support the amended proposed development.



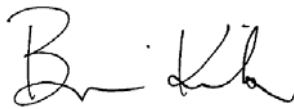

The Panel accepts Council's reasons for refusal as set out in Schedule 1 of the Supplementary Assessment Report and accordingly refuses the application.

CONDITIONS

Not applicable.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition of the original proposal. The Panel notes that issues of concern included: Non-Compliance with Height, Setbacks and Separations; Building Design; Loss of Trees and Solar Access. Concerns raised by the community were adequately addressed in the Assessment Reports.

| PANEL MEMBERS | |
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|  Peter Debnam (Chair) |  Julie Savet Ward |
|  Brian Kirk |  Ross Walker (OAM) |

| SCHEDULE 1 | | |
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| 1 | PANEL REF – LGA – DA NO. | 2019SNH016 – Hornsby – DA65/2019 |
| 2 | PROPOSED DEVELOPMENT | Amended proposal for construction of 5 x 5 storey residential flat buildings with a mezzanine level comprising 168 units with basement car parking for 198 vehicles and consolidation of 9 allotments into 1 lot. |
| 3 | STREET ADDRESS | Lot 1 and Lot 2 DP 1007710, Lot 11 DP 6852, Lot 31 and 32 DP 856384, Lot 1 and 2 DP 507307, Lot B and C DP 324923, No.22-32 Park Avenue, Waitara |
| 4 | APPLICANT/OWNER | Statewide Planning Pty Ltd / Waitara Linx 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 (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy No. 55 Remediation of Land State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River (No. 2 - 1997) State Environmental Planning Policy (State and Regional Development) 2011 Apartment Design Guide Hornsby Local Environmental Plan 2013 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Hornsby Development Control Plan 2013 Hornsby Section 7.11 Development Contributions Plan 2020-2030 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: 30 September 2020 Clause 4.6 Variation Request – Height of Buildings Applicant response: 15 October 2020 Council supplementary report: 10 May 2021 Revised conditions: 18 May 2021 Written submissions during public exhibition: 5 Total unique submissions received by way of objection: 5 |
| 8 | MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL | <ul style="list-style-type: none"> Briefing: 5 June 2019 <ul style="list-style-type: none"> <u>Panel members</u>: Peter Debnam (Chair), Sue Francis, David White, Ross Walker <u>Council assessment staff</u>: Matthew Miles, Rodney Pickles |

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| | | <ul style="list-style-type: none"> • Site inspection: 5 June 2019 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Sue Francis, David White, Ross Walker ○ <u>Council assessment staff</u>: Matthew Miles, Rodney Pickles • Final briefing to discuss council's recommendation: 13 October 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, David White, Ross Walker ○ <u>Council assessment staff</u>: Matthew Miles, Rodney Pickles • Applicant Briefing: 15 October 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, David White, Ross Walker ○ <u>Applicant representatives</u>: Charlie Demian, Aleksandar Jelcic , Christopher Demian ○ <u>Council Assessment Staff</u>: Matthew Miles, Cassandra Williams <p><u>Note</u>: Applicant briefing was requested to provide the Panel to respond to the recommendation in the council assessment report</p> • Final briefing to discuss council's recommendation: 19 May 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, David White, Ross Walker ○ <u>Council assessment staff</u>: Matthew Miles, Rodney Pickles ○ <u>Applicant representatives</u>: Charlie Demian, Aleksandar Jelcic, David Wagstaff, Nathan Pal |
| 9 | COUNCIL RECOMMENDATION | Refusal |
| 10 | DRAFT CONDITIONS | Attached to the council assessment report |