

DATE OF DETERMINATION	2 September 2022
DATE OF PANEL DECISION	2 September 2022
DATE OF PANEL MEETING	1 September 2022
PANEL MEMBERS	Abigail Goldberg (Chair), Roberta Ryan, David Ryan, Richard Thorp
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held videoconference on 1 September 2022, opened at 10:30am and closed at 10:42am.

MATTER DETERMINED

PPSSCC-324 - City of Parramatta - DA/1/2022- 37-41 Oxford Street, Epping - 30 storey mixed use building comprising 2 storey commercial podium (retail unit, 60 children centre-based childcare facility and commercial office space) and a shop-top housing tower above comprising 211 apartments, 6 basement levels providing 317 car parking spaces, landscaping and public domain works. The proposal constitutes stage 2 detailed design of concept plan approval DA/314/2017

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.

In terms of Section 38 of the *Environmental Planning and Assessment Regulation 2021* the Panel rejects the application for an amendment to the Development Application submitted by the applicant on 21 July 2022, subsequent to the publication of Council's assessment report.

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 application for the reasons outlined in the Council assessment report, noting that the site is subject to a concept 'envelope' approval, regarding which a modification application has recently been refused by the Panel. The reasons for refusal are:

- 1. Height** – The applicant's clause 4.6 variation request to the height standard in clause 4.3 of the Hornsby Local Environmental Plan 2013 is not considered to be well founded because the applicant has not demonstrated that there are sufficient environmental planning grounds to vary the standard and the proposal is not in the public interest as it does not adequately satisfy the zone objectives.
- 2. FSR** - The proposed variation of the floor space ratio standard in clause 4.4 of the Hornsby Local Environmental Plan 2013 is not considered to be allowable per the limitations outlined in sub-section 8A of the clause. Specifically, the clause does not allow a floor space variation to be approved for shop-top housing.
- 3. Parking** – The proposal is contrary to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, is inconsistent with the zone objective of the Hornsby Local Environmental Plan 2013, and the parking controls in section 1C.2.1 of the Hornsby Development Control Plan 2013. Specifically, the quantum of car parking proposed is excessive, the quantum of bicycle parking is

insufficient and there are no end-of-trip facilities proposed which would not sufficiently encourage public transport usage, cycling and walking.

4. **Traffic/Access** – The proposal is contrary to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, Clauses 4.4(1)(a) of Hornsby Local Environmental Plan 2013 and Section 2.121 of State Environmental Planning Policy (Transport and Infrastructure) 2021 in that the proposal has not demonstrated that the proposal would have an acceptable impact on local traffic conditions. Specifically, the modelling within the submitted traffic report is not considered to be satisfactory, no queue analysis has been provided, and vehicle manoeuvrability has not been justified as adequate.
5. **Podium** – The proposal is inconsistent with design quality principles 1 ‘Context and Neighbourhood Character’ and 2 ‘Built Form and Scale’ in Schedule 1 of SEPP 65, clause 6.8 of Hornsby Local Environmental Plan 2013 and the desired future character of the area and built form controls in Section 4.6 of the Hornsby Development Control Plan 2013. Specifically, the proposed podium height and alignment are not consistent with the streetscape, are not commensurate with the scale of the tower and are not consistent with the desired future character of the area.
6. **Concept Consistency** – The proposal does not satisfy the requirement in section 4.24(2) of the Environmental Planning and Assessment Act 1979 that the proposal not be inconsistent with the concept approval which applies to the site (i.e., DA/314/2017). Specifically, excessive basement volume, insufficient environmental sustainability, insufficient front setback tree planting and urban design requirements are not consistent with the concept approval.
7. **Contamination** – The proposal is contrary to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 and is inconsistent with clause 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021. Specifically, the applicant has not undertaken sufficient site investigation to demonstrate that the site is, or can be made, suitable for the proposed uses of the site.
8. **Landscaping** – The proposal is contrary to the provisions of clause 4.6.8(a) of the Hornsby Development Control Plan 2013. Specifically, the proposal does not include sufficient tree planting in the front setback.
9. **Wind** – The proposal is inconsistent with clause 4.6.6(v-y) of the Hornsby Development Control Plan 2013. Specifically, the applicant has not demonstrated that the building can maintain appropriate wind comfort for future occupants (childcare, retail visitors, residents).
10. **Reflectivity** – The proposal is inconsistent with clause 4.6.6(z-aa) of the Hornsby Development Control Plan 2013. Specifically, the applicant has not demonstrated that the building will not result in unacceptable glare.
11. **Child Care Acoustic** – The proposal is contrary to the provisions of Clause 3.23 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 and the Child Care Planning Guidelines. Specifically, the proposal does not include an acoustic assessment of the proposed childcare centre.
12. **ESD** – The proposal is contrary to the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. Specifically, the submitted BASIX certificate does not accurately describe the development and stamped drawings have not been provided to clarify sustainability commitments are to be implemented.
13. **Accessibility** – The proposal is inconsistent with clauses 1C.2.2 and 4.6.11(b) of the Hornsby Development Control Plan 2013. Specifically, large areas of the communal open space do not have step-free access and there is a lack of size diversity in the adaptable dwelling offering.
14. **Stormwater/WSUD** – The proposal is inconsistent with clause 1C.1.2 of the Hornsby Development Control Plan 2013. Specifically, the on-site detention system has not been designed appropriately to manage stormwater and the proposal does not provide appropriate water sensitive urban design measures.
15. **Ceiling Heights** – The proposal is inconsistent with objective 4C-1 of the Apartment Design Guide. Specifically, the ceiling height of the ground floor retail unit and first floor office units are insufficient to provide appropriate amenity and flexibility of use.





The Panel notes that the application is the subject of a Class 1 appeal before the Land and Environment Court.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during the public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Height and bulkiness of buildings
- Loss of solar access
- Loss of views
- Traffic.

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Abigail Goldberg (Chair)	 Roberta Ryan
 David Ryan	 Richard Thorp

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSCC-324 - City of Parramatta - DA/1/2022- 37-41
2	PROPOSED DEVELOPMENT	30 storey mixed use building comprising 2 storey commercial podium (retail unit, 60 children centre-based childcare facility and commercial office space) and a shop-top housing tower above comprising 211 apartments, 6 basement levels providing 317 car parking spaces, landscaping and public domain works. The proposal constitutes stage 2 detailed design of concept plan approval DA/314/2017
3	STREET ADDRESS	37-41 Oxford Street, Epping
4	APPLICANT/OWNER	Meriton/Karimbla Properties No. 59 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"> Environmental Planning and Assessment (EP&A) Act 1979 SEPP (Building Sustainability Index: BASIX) 2004 SEPP (Transport & Infrastructure) 2021 SEPP (Planning Systems) 2021 SEPP (Biodiversity & Conservation) 2021 SEPP (Resilience & Hazards) 2021 SEPP No. 65 (Design Quality of Residential Apartment Development) & Apartment Design Guide (ADG) Hornsby Local Environmental Plan (HLEP) 2013 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Hornsby Development Control Plan (HDCP) 2013 Planning agreements: Nil Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</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 <ul style="list-style-type: none"> 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: 28 June 2022 Clause 4.6 variation requests - Hornsby Local Environmental Plan 2013, Clause 4.3 – Height of Buildings, Clause 4.4 – Floor Space Ratio, B2 Local Centre Zone Written submissions during public exhibition: 14 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Joseph Ki, Fushen Wang Council assessment officer – Alex McDougall, Myfanwy McNally On behalf of the applicant – Walter Gordon Total number of unique submissions received by way of objection: 14
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Applicant /Council Briefing: 3 March 2022 <ul style="list-style-type: none"> Panel members: Abigail Goldberg (Chair), David Ryan, Brian Kirk Council assessment staff: Alex McDougall, Myfanwy McNally Applicant /Council Briefing: 4 August 2022 <ul style="list-style-type: none"> Panel members: Abigail Goldberg (Chair), Roberta Ryan, Brian Kirk, Richard Thorp Council assessment staff: Mark Leotta, Myfanwy McNally

		<ul style="list-style-type: none"> ○ <u>Applicant Representatives</u>: Walter Gordon, Matthew Lennartz, Daniel Handler, Frank Ru • Final briefing to discuss Council's recommendation: 1 September 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Abigail Goldberg (Chair), David Ryan, Roberta Ryan, Richard Thorp ○ <u>Council assessment staff</u>: Alex McDougall, Myfanwy McNally
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not applicable