

DATE OF DETERMINATION	22 August 2023
DATE OF PANEL DECISION	16 August 2023
DATE OF PANEL BRIEFING	10 August 2023
PANEL MEMBERS	Abigail Goldberg (Chair), David Ryan, Steve Murray, Richard Thorp, Jane Fielding
APOLOGIES	Sameer Pandey, Dan Siviero
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 10 May 2023 and 28 July 2023.

MATTER DETERMINED

PPSSCC-392 – City of Parramatta – DA/737/2022 - 32-34 Silverwater Road, Silverwater - Demolition of existing structures and construction of a mixed-use development over two levels of basement parking. The development comprises of retail premises, business/office premises; neighbourhood shops, a pub and a childcare centre with associated landscaping, drainage works and signage. The application is Nominated Integrated development pursuant to the Water Management Act 2000. The application is to be determined by the Sydney Central City Planning Panel.

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at briefings and the matters listed at item 8 in Schedule 1.

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.

KEY REASONS FOR THE DECISION

The Panel determined to refuse the application for the reasons outlined below, key of which for the Panel are the following:

- **Height and Clause 4.6 application** – the Panel is **not** satisfied in terms of Clause 4.6(4) of the Auburn Local Environmental Plan 2010.
- **FSR and Clause 4.6 application** – significant debate and uncertainty remains regarding the FSR calculations for the site pursuant to clause 4.4 of the Auburn Local Environmental Plan 2010. Regardless, the application acknowledged that there was a non-compliance with the standard, but suggested that compliance could be conditioned in the absence of a Clause 4.6 variation request to justify the departure from the standard. Given the uncertainty relating to this matter, and other concerns with the application, the Panel is not prepared to take this approach and as such, consent cannot be granted to the development.
- **Contamination** – the Phase 2 Detailed Site Investigation has indicated the presence of contaminated groundwater proximate to the location of the Childcare Centre. Insufficient information has been provided for either Council's Environmental Health Officer or the Panel to be confident that the matter has been or is able to be adequately addressed, particularly considering the sensitivity of the childcare use.

- **Design excellence** – the application does not demonstrate design excellence and has not obtained the support of Council’s internal Urban Design Excellence Team or Council’s Design Excellence Advisory Panel (DEAP).
- **Transport for NSW** – at the time of the writing of the addendum report, Council had not received a response from Transport for NSW. A lack of clarity remains regarding this issue and the Panel cannot be satisfied that traffic impacts are satisfactorily addressed in the absence of Transport for NSW’s advice.

REASONS FOR NOTICE OF DETERMINATION

The final formal reasons for the Panel refusing the application are detailed below:

1. Transport for NSW - the proposal fails to provide information required to assess Clause 2.119 – Frontage to a Classified Road and Clause 2.122 – Traffic Generating Development of State Environmental Planning Policy (Transport and Infrastructure) – Chapter 2 Infrastructure and as required by Transport for NSW.

2. Height – the Panel is **not** satisfied that—

(i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause 4.6(3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

3. FSR – the development does not comply with the maximum FSR for the site pursuant to clause 4.4 of the Auburn Local Environmental Plan 2010. The application did not submit a Clause 4.6 variation to justify the departure to the standard and as such, consent cannot be granted.

4. SEPP (RESILIENCE AND HAZARDS) 2021 - the application is not satisfactory for the purposes of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that insufficient information has been provided for the requirements of Section 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021 to be satisfied.

5. Child Care Centre - the application is not satisfactory for the purposes of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal does not meet the matters for consideration in relation to site selection and location, local character, streetscape, public domain interface, building envelope and design, noise and air pollution, traffic and car parking, pedestrian circulation, ventilation and natural light, outdoor space, natural environment, and soil assessment as nominated in Section 3.23 of State Environmental Planning Policy (Transport and Infrastructure) via the Child Care Planning Guidelines.

6. Auburn DCP 2010 - the application is not satisfactory for the purposes of section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposal does not demonstrate consistency with the principles, objectives and controls of Industrial Development Controls, Parking and Loading, Childcare Centre Controls and Advertising and Signage Controls of the Auburn DCP 2010 in relation to:

a) The application is not consistent with the urban design principles for development within the B6 Enterprise Corridor zone on Silverwater Road.

b) The provision of transition areas and the lack of indication that this area and purpose has been provided.

d) The proposal has a shortfall of 150 parking spaces and has not considered pedestrian movements and its impacts on vehicle queuing, safe vehicle turning and upgrades to the Silverwater Road and Carnarvon Street intersection.

7. Design Excellence - the application does not demonstrate acceptable design qualities.






CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered two written submissions made during the public exhibition. The Panel notes that issues of concern included:

- Miscalculation of FSR
- Insufficient car parking
- Insufficient assessment of traffic impacts
- Inappropriate height
- Insufficient CI 4.6 justification.

Amended plans were not re-advertised as it was deemed that they did not result in a greater or more serious impact and accordingly did not require re-advertisement.

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and Addendum Report.

PANEL MEMBERS	
Abigail Goldberg (Chair) 	David Ryan 
Steve Murray 	Richard Thorp 
Jane Fielding 	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSCC-392 – City of Parramatta – DA/737/2022
2	PROPOSED DEVELOPMENT	Demolition of existing structures and construction of a mixed-use development over two levels of basement parking. The development comprises of retail premises, business/office premises; neighbourhood shops, a pub and a childcare centre with associated landscaping, drainage works and signage. The application is Nominated Integrated development pursuant to the Water Management Act 2000. The application is to be determined by the Sydney Central City Planning Panel.
3	STREET ADDRESS	32-34 Silverwater Road, Silverwater
4	APPLICANT/OWNER	Applicant: C K Design Pty Ltd Owner: Sonsari 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: • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • SEPP (Planning Systems) 2021 • State Environmental Planning Policy (Resilience and Hazards (2021) • SEPP (Industry and Employment) 2021 • Auburn Local Environmental Plan 2010 • Draft environmental planning instruments: Nil • Development control plans: • Auburn Development Control Plan 2010 • Planning agreements: Nil • Relevant provisions of the Environmental Planning and Assessment Regulation 2021 • 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 Environmental Planning and Assessment Act 1979 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: 24 April 2023 • Council Addendum Report: 28 July 2023 • Clause 4.6 variation - Building Height • Written submissions during public exhibition: 2 • Total number of unique submissions received by way of objection: 1

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Kick Off Briefing: 6 October 2022 <ul style="list-style-type: none"> ○ <u>Panel member</u>: Abigail Goldberg (Chair) ○ <u>Council assessment staff</u>: Denise Fernandez ○ <u>Applicant representatives</u>: Chris Khoury, Lucinda Molloy, Bob Nation, Andrew Martin • Council Briefing: 8 December 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Abigail Goldberg (Chair), David Ryan, Blake Cansdale, Sameer Pandey ○ <u>Council assessment staff</u>: Denise Fernandez, Claire Stephens • Council/Applicant Briefing: 18 May 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Abigail Goldberg (Chair), David Ryan, Steve Murray, Sameer Pandey ○ <u>Council assessment staff</u>: Denise Fernandez, Claire Stephens ○ <u>Applicant representatives</u>: Chris Khoury, Andrew Martin • Council Applicant Briefing to discuss Deferral: 6 July 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Abigail Goldberg (Chair), David Ryan, Steve Murray ○ <u>Council assessment staff</u>: Denise Fernandez, Claire Stephens ○ <u>Planning Delivery Unit</u>: James Shelton ○ <u>Applicant representatives</u>: Chris Khoury, Andrew Martin, Raymond Raad, Erica Lyle Marshall, Tom Steal • Council Applicant Final Briefing: 10 August 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Abigail Goldberg (Chair), David Ryan, Steve Murray, Richard Thorp, Jane Fielding ○ <u>Council assessment staff</u>: Denise Fernandez, Claire Stephens ○ <u>Applicant representatives</u>: Chris Khoury, Andrew Martin, Raymond Raad, Erica Lyle Marshall, Tom Steal
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Without prejudice draft conditions attached to the Addendum Report prepared 25 July 2023