DETERMINATION AND STATEMENT OF REASONS

SYDNEY NORTH PLANNING PANEL

DATE OF DETERMINATION	18 May 2021
PANEL MEMBERS	Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Ken Robinson, Kevin Alker
APOLOGIES	Virginia Waller
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 18 May 2021, opened at 2.33pm and closed at 3.17pm.

MATTER DETERMINED

PPSSNH-153 – North Sydney – DA161/2020 at 23 Atchison Street St Leonards for a top shop housing development (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 North Sydney Local Environmental Plan 2013 (LEP), that has 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 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 B4 mixed use zone; and
c) the concurrence of the Secretary has been provided.

Development application

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

The Panel determined to uphold the Clause 4.6 variation to building height and approve the application for the reasons outlined below and in Council's Assessment Report.

A maximum building height of 56m applies to the site and a Clause 4.6 written request for variation was submitted for a non-compliance relating to roof plant, which exceeds the building height by 1.85m.

The site drops by nearly 3m from west down to its eastern boundary and the building has been stepped to address the topography and follow the natural gradient of the site. The stepping of the development reduces the non-compliance with the building height control.

The proposed development will remove some views from surrounding properties. Notwithstanding this, the building elements that result in a breach of the building height control being the roof plant do not result in any material impact on views. That part of the roof plant which breaches the building height control will be mostly set behind elements of the roof that comply with the building height control.

Similarly, the overshadowing impact results from those elements of the building that comply with the building height control. Those elements on the rooftop in breach of the building height include the plant and screening and have been set back from the building edge to ensure they do not result in material overshadowing impacts.

The written request seeking a variation to the building height control adequately demonstrates that compliance with the building height standard is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the proposed breach.

The development application seeks consent for the demolition of existing buildings and construction of a shop top housing development comprising 17 storeys with 3 levels of basement parking. The subject site is zoned B4 Mixed Use and shop top housing is permissible with the zone with the consent of Council.

The proposed development will comply with the maximum 6.3:1 FSR pursuant to Clause 4.4 NSLEP 2013. The proposed development will also provide a compliant non-residential floorspace, meeting the minimum 1.5:1 as set out in Clause 4.4A NSLEP 2013.

The issues of setbacks, view loss, site isolation (21 Atchison Street) have been adequately addressed by the Applicant and comprehensively assessed by Council.

A Voluntary Planning Agreement also accompanied the Planning Proposal and has been executed. This includes a number of key deliverables of public benefit including:

- A monetary contribution of $2.8 million dollars towards the upgrade of Hume Street Park
- A 5m wide land dedication to Oxley Street to contribute to the establishment of the Oxley Street Linear Park concept as well as embellish works
- Provision of a 6m wide publicly accessible through site link to improve pedestrian connectivity.

Conditions of consent are imposed to reinforce the VPA requirements within the development consent.

Overall, the Panel concurs with Council that the proposed development will provide a high level of amenity to its future occupants and conditions address privacy, the provision of balconies and on-going amenity considerations such as use of the common areas.

The Panel notes Council's advice that whilst the proposed development will result in impacts on the surrounding locality, the development is be generally consistent with the expected outcome of development on the site, as expressed within the planning controls and more broadly within the St Leonards and Crows Nest 2036 Plan. On balance, the proposed development is satisfactory having regard to the relevant Environmental Planning Instruments, Development Control Plans and Council policies and is in the public interest because it is consistent with the objectives of the building height control and the objectives of the B4 mixed use zone.

The Panel unanimously resolved to approve the development application subject to conditions in Council's Assessment Report.

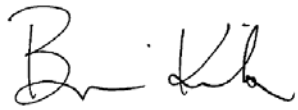
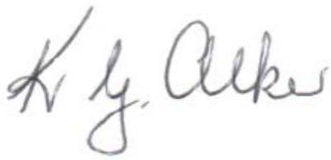
The Panel also considered it important to note that Council should in the future address the state of Albany Lane with a view to improving neighbourhood amenity.

CONDITIONS
The development application was approved subject to the conditions in Council's Assessment Report.

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 public meeting. Community issues of concern included: Building Height, Scale, Overshadowing, Traffic & Parking, Privacy, Solar Access, Noise, Wind Tunnel Impact and Views.

The Panel considers that concerns raised by the community have been adequately addressed in Council's Assessment Report, by Applicant and Council responses during the public meeting and by the conditions.

PANEL MEMBERS	
Peter Debnam (Chair)	Julie Savet Ward
 Brian Kirk	Ken Robinson
 Kevin Alker	

SCHEDULE 1		
1	**PANEL REF – LGA – DA NO.**	PPSSNH-153 – North Sydney – DA161/2020
2	**PROPOSED DEVELOPMENT**	Demolition of existing buildings and construction of shop top housing development.
3	**STREET ADDRESS**	23-35 Atchison Street, St Leonards
4	**APPLICANT/OWNER**	Aplus Design Group / Tildoon (CARE: TWT Global)
5	**TYPE OF REGIONAL DEVELOPMENT**	General development over $30 million
6	**RELEVANT MANDATORY CONSIDERATIONS**	• Environmental planning instruments: o State Environmental Planning Policy No.55 – Remediation of Land o State Environmental Planning Policy (Building Sustainability Index) BASIX 2004 o Sydney Regional Environmental Plan Sydney Harbour Catchment 2005 (Deemed SEPP) o State Environmental Planning Policy No.65 - Design Quality of Residential Apartment Development o North Sydney Local Environmental Plan 2013 o Environmental Planning and Assessment (Special Infrastructure Contribution – St Leonards and Crows Nest) Direction 2020 • Draft environmental planning instruments: Nil • Development control plans: o North Sydney Development Control Plan 2013 • 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 *Environmental Planning and Assessment Act 1979* or regulations • The public interest, including the principles of ecologically sustainable development
7	**MATERIAL CONSIDERED BY THE PANEL**	• Council assessment report: 10 May 2021 • Clause 4.6 Written Request: Height of buildings • Written submissions during public exhibition: 44 • Total unique submissions received by way of objection: 44 • Verbal submissions at the public meeting 18 May 2021: o Community members – Hugh Sangster, Rocco Cutri, Namrata Gollamudi, Charles Pillay o Council assessment officer – Lara Hucksteep o On behalf of the applicant – Tony Leung
8	**MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL**	• Briefing: 18 November 2020 o Panel members: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Kevin Alker, Ken Robinson o Council assessment staff: Lara Huckstepp • Final briefing to discuss council's recommendation: 18 May 2021 o Panel members: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Kevin Alker, Ken Robinson o Council assessment staff: Lara Huckstepp
9	**COUNCIL RECOMMENDATION**	Approval
10	**DRAFT CONDITIONS**	Attached to the council assessment report