

DATE OF DETERMINATION	28 October 2021
PANEL MEMBERS	Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Kevin Alker, Kenneth Robinson
APOLOGIES	Virginia Waller
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 20 October 2021.

MATTER DETERMINED

PPSSNH-208 - North Sydney - DA92/2021 at 14 Waters Road, Neutral Bay – Demolition of existing buildings, excavation, and construction of a five storey shop top housing (mixed use) development with apartments on the upper levels, with commercial/retail tenancies below and basement parking. (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 assumed.

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.

The North Sydney LEP building height map specifies a maximum building height of 16m for the subject site. However, the proposal breaches the LEP height limit in the area of the upper section of Level 5, the roof slab including planters, communal swimming pool, communal/private terraces and a structure housing the building services cores (2 x lift overruns/fore stairs and a 25sqm communal room). The building services

and communal room structure is located at the centre of the roof level with the top of this structure reaching a maximum height of 21.3m which breaches the LEP maximum building height limit by 5.3m.

Despite the height breach, the Panel concurs with Council that the height, bulk and scale of the proposed shop top housing development would generally be consistent with other similar developments within the Neutral Bay Town Centre. The building elements in breach of the building height development standard would not be easily discernible from the public domain or result in unacceptable loss of significant views, overshadowing or privacy impacts. The five storey built form would be generally consistent with the B4 Mixed Use zoning and relevant planning controls.

The original DA was lodged with Council in April 2021 but was significantly amended after public, Council and Design Excellence Panel feedback. An amended proposal was submitted in July and Council's Design Excellence Panel reviewed the proposal again. Subsequently the Applicant submitted further updates to plans and additional information.

Council's Assessment Report recommended deferred commencement conditions requiring design modifications to the layout of the roof top areas to provide more suitable communal areas and changes to the design of four (4) apartments on two upper levels to provide additional building separation and to improve access to daylight and natural ventilation within the light well.

The Panel met with the Applicant and Council to review Council's comprehensive Assessment Report. The meeting also discussed the detail of the Applicant's 4.6 written request, deferred commencement conditions and communal rooftop facilities. The Panel discussed the inclusion of additional rooftop shade structures to improve the year round functionality of the communal rooftop facilities but concluded the proposed landscaping, once established, and proposed awning to be sufficient.

The development application has been assessed against the North Sydney LEP 2013 and North Sydney DCP 2013, SEPP 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide and found to be generally satisfactory.

The Panel concurs with Council that the Applicant's amended design, including deferred commencement changes, provide a more compliant five storey built form and retail and commercial spaces which address concerns raised by the public, Council Officers and Council's Design Excellence Panel.

Accordingly, the Panel believes approval of the Development Application is in the public interest.

CONDITIONS

The Development Application was approved subject to the conditions in Council's Assessment Report with the amendment of the Deferred Commencement Condition to include an additional toilet in the roof top communal area and the retention of the change room.

Modifications to Roof Level



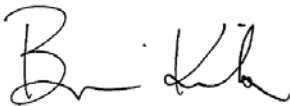
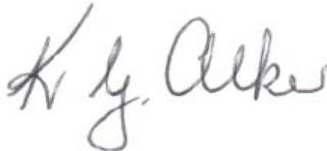

The design and layout of the roof level of the proposed mixed use building be modified as follows:

- a) The private terrace for Unit 4.05 be deleted and the area be used as communal area with seating and appropriate landscaping. The arrangement will provide better amenity for the communal areas on the northern side of the roof level;
- b) The setback from the southern edge of the communal areas and the southern property boundary with No.4-8 Waters Road be increased to 5m to minimise any privacy impacts on the adjoining mixed use building; and
- c) An additional toilet be provided within the communal area on the roof level to ensure adequate facilities for the users of the roof top communal area. The proposed change room and accessible toilet on the roof level are to be retained.

(Reason: To ensure the amenity and adequate facilities for the roof top communal areas and privacy protection for the adjoining property to the south.)

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered 12 written submissions over two exhibition periods (including two submissions each from three members of the public) made during and subsequent to public exhibition of the original proposal and the amended proposal. The Panel notes issues of concern included height, traffic, parking, pedestrian safety and loading dock arrangements. The Panel considers that concerns raised by the community were adequately addressed in Council's Assessment Report and by Applicant and Council responses during the meeting.

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

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-208 - North Sydney - DA92/2021
2	PROPOSED DEVELOPMENT	Demolition of existing buildings, excavation, and construction of a five storey shop top housing (mixed use) development with apartments on the upper levels, with commercial/retail tenancies below and basement parking.
3	STREET ADDRESS	14 Waters Road, Neutral Bay
4	APPLICANT/OWNER	Applicant: CE Waters Pty Ltd Owners: SP68360, SP75048, SP88483, Hari Om Investment Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • SREP (Sydney Harbour Catchment) 2005 • SEPP (Infrastructure) 2007 • SEPP (State and Regional Development) 2011 • SEPP No. 55 – Remediation of Land and draft Remediation SEPP • SEPP No.65 – Design Quality of Residential Apartment Development) • SEPP (Building Sustainability Index – BASIX) 2004 • SEPP (Vegetation in Non-Rural Areas) 2017 • Draft SEPP (Environment) • North Sydney Local Environmental Plan 2013 • North Sydney Development Control Plan 2013 • Apartment Design Guide • Sydney Harbour Foreshores and Waterways Area DCP 2005
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 20 October 2021 • Clause 4.6 application relates to maximum building height Clause 4.3 of the North Sydney LEP 2013 – Height of Building • Written submissions during public exhibition: Exhibition One 23 April to 7 May – 7, Exhibition Two 16 July to 30 July – 4, Additional submission received September 2021 - 1
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 25 August 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Kenneth Robinson ○ <u>Council assessment staff</u>: Robin Tse • Site inspection: Panel members visited the site individually on different days due to Covid-19 precautions. • Final briefing to discuss council's recommendation: 27 October 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Kenneth Robinson, Kevin Alker ○ <u>Council assessment staff</u>: Robin Tse, Robyn Pearson ○ <u>Applicant representatives</u>: Adam Haddow, Daniel Barber
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report