

DATE OF DETERMINATION	21 July 2023
DATE OF PANEL DECISION	21 July 2023
DATE OF PANEL MEETING	19 July 2023
PANEL MEMBERS	Peter Debnam (Chair), Brian Kirk, Nicole Gurran, Tania Taylor, Kara Krason
APOLOGIES	James Harrison
DECLARATIONS OF INTEREST	Nil

Public meeting held by teleconference on 19 July 2023, opened at 2.30pm and closed at 3.31pm.

MATTER DETERMINED

PPSSNH-333 – DA/2022/240 – Willoughby Council – 42 Archer Street Chatswood, Demolition of existing residential flat building and construction of a 26-storey building comprising community facilities from ground level to Level 3, residential communal open space at Level 3, 42 residential units above, and 4 levels of basement carparking (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 listed at item 8 in Schedule 1.

Application to vary a development standard

The Applicant submitted written requests to vary the Height of Buildings and Floor Space Ratio (FSR) development standards specified under clauses 4.3 and 4.4 respectively, of the Willoughby Local Environmental Plan 2012 (LEP).

Following consideration of the written requests from the applicant, made under cl 4.6(3) of the LEP the Panel is not satisfied that:

- a) the Applicant's written requests 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 both development standards and the objectives for development in the R4 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 Panel's decision was unanimous.

REASONS FOR DECISION

The Panel determined to refuse the development for the reasons below and in Council's Assessment Report.

The Proposal breaches planning controls FSR (proposing 6:1 versus 1.7:1) and Height (proposing 90m versus 34m) and the Applicant submitted written Clause 4.6 Requests for Variations. However, the Panel concurs with Council that the Applicant's written requests do not adequately demonstrate that such variations are justifiable and in the community interest.

Over the last year, Council and the Applicant had twice briefed the Panel on the progress of the assessment and also the progress of prospective changes to relevant planning controls.

During the course of the public meeting, the Panel heard from the Applicant and Council and the extensive reasons for refusal were discussed at length.



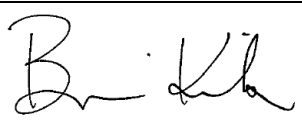

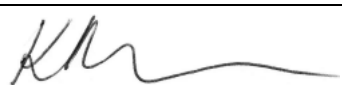
While Council's Reasons for Refusal were 21 in number, it became apparent during the public meeting that Council and Applicant attention was focused on four major points of difference being the lack of a design excellence competition, lack of clarity on proposed affordable housing and deficiencies in site area and setbacks. While Affordable Housing was an important concern, the Panel felt this was not fatal to the proposal as it could be conditioned. However, the Panel noted the lack of a design competition, deficient site area and setbacks were fundamental points of disagreement between the Applicant and Council's application of relevant planning controls.

At the close of the public meeting, the Applicant requested that, in addition to considering either approving or refusing the proposal, the Panel consider the option of deferring the determination to seek further information from the applicant. During its deliberations, the Panel considered a deferral instead of refusal, but decided the design and information changes required would be too substantial for a deferral.

In summary, the Panel decided the proposal had been properly assessed under relevant planning controls and it was in the community interest the proposal be refused.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered 19 written submissions made during the public exhibition of the proposal and heard from a member of the public who addressed the Panel during the public meeting. Issues of concern included use, height, consultation, noise, traffic, overdevelopment, bulk and scale, overshadowing and privacy. The Panel considers concerns raised in submissions have been adequately addressed in Council's Assessment Report.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Nicole Gurran
 Brian Kirk	 Tanya Taylor
 Kara Krason	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-333 – DA/2022/240 – Willoughby Council
2	PROPOSED DEVELOPMENT	Demolition of existing residential flat building and construction of a 26-storey building comprising community facilities from ground level to Level 3, residential communal open space at Level 3, 42 residential units above, and 4 levels of basement carparking
3	STREET ADDRESS	42 Archer Street Chatswood
4	APPLICANT/OWNER	Applicant – Oscar Williams - The Trustee for Wilbec Chatswood Unit Trust Owner - Various
5	TYPE OF REGIONAL DEVELOPMENT	Capital Investment Value > \$30M
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> Willoughby Local Environmental Plan 2012 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Willoughby Development Control Plan Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Coastal zone management plan: Nil Other relevant plans: 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 Site description and aerial photo Development controls, statistics, developer contribution & referrals SEPP 65 Assessment and apartment design guide Assessment under SEPPS, WLEP 2012 & WDCP Submissions table Section 4.15 (79C) & 4.55 Assessment Reasons for refusal Notification map Written submissions during public exhibition: 19 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Members of the community – Jackie Roberts

		<ul style="list-style-type: none"> ○ Council Assessment Officers – Peter Wells, Clare Woods ○ On behalf of the applicant – Guy Lake, Oscar Williams, Ben Salon
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • 21 September 2022 – Kick off briefing • 19 October 2022 - Briefing • 19 July 2023 - Final briefing to discuss council's recommendation: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Nicole Gurran, Brian Kirk, Kara Krason, Tanya Taylor ○ <u>Council assessment staff</u>: Peter Wells, Clare Woods
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report