

DATE OF DETERMINATION	11 April 2023
DATE OF PANEL DECISION	6 April 2023
DATE OF PANEL MEETING	05 April 2023
PANEL MEMBERS	Peter Debnam (Chair), Nicole Gurran, Brian Kirk, Eugene Sarich, Vivienne Albin
APOLOGIES	Nil
DECLARATIONS OF INTEREST	Nil

Public meeting held by teleconference on 05 April 2023, opened at 9.30am and closed at 10.14am.

MATTER DETERMINED

PPSSNH-338 - DA79/2022, Lane Cove, 1 - 5 Canberra Avenue, 4 - 8 Marshall Avenue, 2 - 8 Holdsworth Avenue St Leonards South, Demolition of existing structures and construction of three (3) residential flat buildings (ranging from 12 to 19 - storeys) comprising a total of 232 apartments and basement parking for 348 vehicles (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

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Lane Cove Local Environmental Plan 2009 (LEP), that has demonstrated that:

- a) compliance with cl. 4.3 Minimum Site Area 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 clauses 4.6 and 7.1 of the LEP and the objectives for development in the R4 High Density Residential 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 Panel's decision was unanimous.

REASONS FOR DECISION

The Panel approved the development application, including the Applicant's Clause 4.6 written request to vary the minimum site area, for the reasons below and in Council's Assessment Reports.

The Panel considered extensive documentation including Council's original and supplementary Assessment Reports and community submissions and was also briefed several times by Council. The application was originally scheduled to be determined in December 2022 but was withdrawn and rescheduled for 5th April 2023 after the submission of amended and additional information by the Applicant and community.

The subject site is located within the St Leonards South Precinct, is known as Areas 1, 2 and 4 and has a total area of 6,727.5 square meters, which exceeds the minimum site area requirement of 6,500 square metres. However, Area 1 at 2,736 square metres is 264 square metres below the minimum site area requirement and accordingly a written request to vary the development standard was submitted.

Despite the inability to meet the minimum site area requirement for Area 1, the proposed development would still achieve the minimum required public open space area in Area 1 by providing 913 square metres of space and providing a compliant total of 1,348 square metres of land for public open space over Areas 1 and 2.

The minimum site area requirements (clause 7.2) can be varied subject to the consent authority accepting the Applicant's Clause 4.6 written request to vary the development standard. In this regard, the Panel concurs with Council that the Applicant's 4.6 written request sufficiently justified that strict compliance with the development standard is unreasonable or unnecessary in this instance and there are sufficient environmental planning grounds to justify departure from the standard.

Further, the Panel concurs with Council that the fact that adjacent land has not been amalgamated is not an impediment to the progress of the DA, as the Applicant has demonstrated an appropriate response to the Land and Environment Court Planning Principle for site isolation as set out in *Karavellas v Sutherland Shire Council*[2004] NSWLEC 251. While site isolation is regrettable, it is a legitimate planning issue recognised by the planning system, which provides a mechanism to deal with it in accordance with the aforementioned Planning Principle. As such, site isolation cannot be used as a reason for refusal of an otherwise meritorious proposal.

The applicant has demonstrated several opportunities for the redevelopment of 2 Marshall Avenue which are consistent with the zoning. The options presented would require variations to Council's controls to varying extents however, it would not be an unreasonable expectation, having regard to the particular circumstances of the site that, that appropriate flexibility could be afforded to a future applicant.

Additionally, the Panel notes Council's advice that 39% of Area 1 would be soft landscape with a combination of large public and communal park areas. The accumulated development includes 1,680 square metres for the central green spine communal area and 1,300 square metres of public recreation area to be dedicated to Council as a pocket park. Over 50% of the green spine is unencumbered deep soil and can accommodate compliant soil volumes for vigorous canopy trees at a replacement ratio of 1:1. The landscaping setbacks adjacent to 2 Marshall Avenue at both Canberra and Marshall Avenue frontages would also allow a better integration between the standalone site and the development site.

The Panel notes that in the course of Council's consideration of this project over the last two years, the proposal benefited from extensive consultation between Applicant and Council, feedback from the community and advice from the NSROC Design Review Panel, which twice considered the proposal.

The Panel concurs with Council that the proposal has been properly assessed against relevant planning controls.

Given the extensive consultation with Council and the Design Review Panel, the Panel concurs the project will provide a diverse mix of new dwellings for a growing population within a high-density environment and the project meets the objectives set for the St Leonards South Precinct.

In summary, the proposal would meet the objectives of the R4 High Density Residential Zone, is highly consistent with the supporting planning scheme and the desired future character of the area and consequently, approval of the application is in the community interest.

CONDITIONS

The development application was approved subject to the conditions detailed in Council's Assessment Report with one further amendment to ensure the enclosure of fire hydrants and associated services.






C.39 - Fire Hydrant Enclosure

Prior to the issue of the relevant Construction Certificate for works above Ground/Podium slab level, the Certifying Authority is to be provided with plans demonstrating that all ground level plant and services (e.g. gas meter, water meter, fire hydrant and sprinkler booster valves and the like) are enclosed in a manner that compliments the building and in accordance with the requirements of EP1.3 & EP1.4 of the BCA.

Reason: To ensure essential services are appropriately screened.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered 23 written submissions made during the public exhibition of the proposal and heard from members of the public during the public meeting. Issues raised included: site isolation, minimum site area, floor space ratio, solar access, building depth, building separation, urban design, traffic and parking, landscaping and open space, heritage, wind impacts, acoustic impacts. The Panel considers concerns raised in submissions and in the public meeting have been adequately addressed in Council's Assessment Reports and in the amended conditions.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Nicole Gurran
 Brian Kirk	 Vivienne Albin
 Eugene Sarich	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-338 - DA79/2022, Lane Cove
2	PROPOSED DEVELOPMENT	Demolition of existing structures and construction of three (3) residential flat buildings (ranging from 12 to 19 - storeys) comprising a total of 232 apartments and basement parking for 348 vehicles
3	STREET ADDRESS	1 - 5 Canberra Avenue, 4 - 8 Marshall Avenue, 2 - 8 Holdsworth Avenue St Leonards South
4	APPLICANT/OWNER	Applicant: SLS Holdsworth Residences Pty Ltd. (New Hope Evergreen) Owner: SLS Holdsworth Residences Pty Ltd. (New Hope Evergreen)
5	TYPE OF REGIONAL DEVELOPMENT	Capital investment value (CIV) over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none">Environmental planning instruments:<ul style="list-style-type: none">SEPP 65 – Design quality of Residential Apartment Development and Apartment Design Guide (ADG)SEPP Resilience and Hazards 2021

		<ul style="list-style-type: none"> • SEPP (Building Sustainability Index) 2004 • SEPP (Infrastructure) 2007 • SEPP (Transport and Infrastructure) 2021 • SEPP (State and Regional Development) 2011 • Lane Cove Local Environmental Plan 2009 <ul style="list-style-type: none"> • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> • Lane Cove Development Control Plan 2009 • Planning agreements: Yes – draft planning agreement that a developer has offered to enter into under Section 7.4 • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Regs 92, 93, 94, 94A, 288. Clause 92(1)(b) – Demolition of Structures • Coastal zone management plan: Nil • Other relevant plans: Apartment Design Guide (ADG) - St Leonards South Landscape Masterplan - St Leonards South Section 7.11 Contributions Plan - Special Infrastructure Contribution Levy Direction • 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 with draft conditions of consent. • Clause 4.6 • Written submissions during public exhibition: 23 • Verbal submissions at the public meeting: • Members of the community – Deb Assheton on behalf of Owner of the property at 2 Marshall Avenue is Daryl Hart, Councillor David Brooks-Horn, Alex Yim, Tony Pizzolato, Sue Yelland, Jennifer Schneller, Anita Jubian, Arlette Jubian, Albert Jubian, Merri Southwood. • Council Assessment Officers - Rajiv Shankar, Mark Brisby, Chris Shortt • On behalf of the applicant – Clare Swan
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • 09 November 2022 - Briefing • 05 April 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, Vivienne Albin, Eugene Sarich ○ <u>Council assessment staff</u>: Rajiv Shankar, Mark Brisby, Chris Shortt
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report

