

DATE OF DETERMINATION	11 May 2023
DATE OF PANEL DECISION	11 May 2023
DATE OF PANEL MEETING	10 May 2023
PANEL MEMBERS	Peter Debnam, Nicole Gurran, Brian Kirk, Eugene Sarich, Vivienne Albin
APOLOGIES	Nil
DECLARATIONS OF INTEREST	Nil

Papers circulated electronically on 26 April 2023.

MATTER DETERMINED

PPSSNH-339 – DA-115/2022, Lane Cove, 12-20 Berry Road and 11-19 Holdsworth Avenue, St Leonards, Demolition of existing structures and construction of a mixed-use development containing two buildings comprising a total of 130 apartments (including one affordable dwelling), childcare centre, community facility and basement parking for 180 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.

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 a majority decision with Nicole Gurran dissenting.

REASONS FOR DECISION

The Panel majority determined to refuse the application for the reasons set out below and in Council's Assessment Report.

The Panel considered Council's comprehensive Assessment Report and met with Council and the Applicant to discuss key issues in considerable detail.

The Development Application had followed an extensive design process through the Northern Sydney Region of Council's Design Review Panel and Design Excellence Panel prior to the lodgement of the Development Application and during its assessment. There had also been considerable consultation between Applicant and Council during the Assessment process. Nevertheless, significant non-compliances remained in the proposed design.

The Panel considered Council's Draft Reasons for Refusal and the Applicant's rebuttal in some detail and noted draft Reason No 1 was no longer applicable as the required General Terms of Agreement had been obtained from WaterNSW by the date of determination and similarly Reason No.5 was no longer valid.

In discussing other draft reasons for refusal, the Applicant noted that: "*strict application of the numerical requirements of the LCDCP prevents the achievement of the full incentive HOB and FSR on the applicant's site commensurate with the substantial quantum of community infrastructure required. Effectively, the LCDCP controls are misaligned with the LCLEP controls.*" While the Panel majority understands the argument put forward by the Applicant, the Panel majority is of the view that St Leonards South Precinct

proposals should strive to comply with the LEP and DCP controls which have been applied with consistency to date.

The Panel majority concurred with Council that the application should be refused as the designed balconies encroached into the Green Spine and as such were non-compliant with the LCLEP, meaning that due to the Height of Building limit in the green spine (2.5m), and the inability to invoke Clause 4.6, there is no jurisdiction to approve the balconies even if the Panel wanted to. While the Applicant offered to redesign the balconies to be compliant, the proposal's other major non-compliances could not readily be resolved.

The Panel concurred with Council that the proposed number of storeys is not compliant with the maximum 10 storeys DCP control and additionally the proposal does not comply with the required setbacks to the street and the required 15m wide east-west pedestrian link. The setbacks are intended to give spatial relief along the ground plane and to support soft landscaping. Instead, building bulk is introduced into these important setback areas. The Panel is not averse to DCP variations however the cumulative effect of the variations sought and their negative impacts led to a majority view that supported the Council's assessment in this instance.



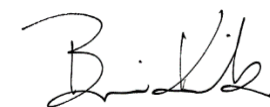
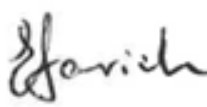

In summary, the Panel majority believed the proposal had been properly assessed against the relevant parts of Section 4.15 of the Environmental Planning and Assessment Act, 1979 and given the significant breaches of storeys and setbacks, the Panel majority believe approval of the proposal would not be in the community interest.

Panel member Nicole Gurran dissented with this decision and voted to approve the development, for the following reasons:

1. The development is consistent with the relevant LEP controls and zone objectives (with an exception relating to balcony intrusion into the Green Spine Area, which could be addressed via a condition of consent, discussed further below)
2. The design of the development has been assessed by the independent NSROC Design Excellence Panel (9/11/22) which commended 'the Applicant and Design Team on the high quality of the design and the innovative strategies applied to the context and built form' and provided qualified overall support, subject to design amendments which have been generally incorporated by the applicants.
3. The development will provide much needed housing supply including a dedicated affordable housing unit and purpose built rental accommodation which may contribute to the availability of secure and lower cost housing for local keyworkers in the well located St Leonards South Precinct.
4. The development will deliver important recreation and facilities for the local community, including a childcare centre.
5. The variations to the Lane Cove Development Control Plan (LCDCP) requirements in relation to the number of storeys for a building, while substantive, do not in my view warrant refusal of the development nor would flexible application in this instance establish an undesirable precedent, because of the specific topography of the site; and the fact that proposed building heights remain compliant with the LEP. While below ground development is generally undesirable, in this instance, the partly subterranean situation of the childcare centre is offset by being at ground level with the Green Spine and achieving increased solar access and daylight through orientation towards this communal open space. Other below ground residential elements of the original design have been generally addressed in revisions which responded to the Design Excellence Panel recommendations.
6. I note that the Council and Applicant have differing views about the potential intrusion of balconies above the maximum 2.5m green spine building height development standard under Clause 7.1(3)(a) of LCLEP 2009). I consider that this is not a matter warranting refusal of the application but if necessary could be addressed by a condition requiring the design of the balconies to be modified, given that the amount of intrusion is between 0.44-0.74m.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered 5 written submissions made during public exhibition of the proposal. Issues raised included design quality, building separation, height, bulk, scale, setbacks, solar access, natural ventilation, overshadowing, traffic, transport and access, parking, flora and fauna, green spine, sustainability, open space, privacy, views, infrastructure, public interest, DCP and LEP non-compliances, SEPP 65 and ADG compliance, Canberra Avenue closure. The Panel considers concerns raised in submissions have been adequately addressed in the Assessment Report.

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

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-339 – DA-115/2022, Lane Cove
2	PROPOSED DEVELOPMENT	Demolition of existing structures and construction of a mixed-use development containing two buildings comprising a total of 130 apartments (including one affordable dwelling), childcare centre, community facility and basement parking for 180 vehicles
3	STREET ADDRESS	12-20 Berry Road and 11-19 Holdsworth Avenue, St Leonards
4	APPLICANT/OWNER	Applicant: Hilary Apitz (Altis Bulky Retail P/L) Owner: SJD St Leonards P/L and Aqualand St Leonard Development 3 P/L as Trustee for Aqualand St Leonard Development 2 Unit Trust
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"> SEPP 65 – Design Quality of Residential Apartment Development SEPP Transport and Infrastructure 2021 SEPP Resilience and Hazards 2021 SEPP Building Sustainability Index 2004 SEPP Planning Systems 2021 Lane Cove Local Environmental Plan 2009 Draft environmental planning instruments: Yes – draft voluntary planning agreement that a developer has offered to enter into under Section 7.4 Development control plans: Lane Cove Development Control Plan 2009

		<ul style="list-style-type: none"> • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Clause 92(1)(b) – Demolition of Structures • 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. • Written submissions during public exhibition: 5
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • 15 March 2023 - Briefing • 08 May 2023 - Final briefing to discuss council's recommendation: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam, Nicole Gurrán, Brian Kirk, Eugene Sarich, Vivienne Albin ○ <u>Council assessment staff</u>: Greg Samardzic, Mark Brisby ○ <u>Applicant</u>: Hilary Apitz, Cameron Hay, Carlo Di Giulio, Ben Watkins, Silvester Fuller, Stephen Kerr
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A