

<b>DATE OF DETERMINATION</b>	06 July 2023
<b>DATE OF PANEL DECISION</b>	06 July 2023
<b>DATE OF PANEL MEETING</b>	05 July 2023
<b>PANEL MEMBERS</b>	Peter Debnam (Chair), Brian Kirk, Sue Francis, Martin Smith, Kim Wheatley
<b>APOLOGIES</b>	Nicole Gurran
<b>DECLARATIONS OF INTEREST</b>	Nil

Papers circulated electronically on 26 June 2023.

#### **MATTER DETERMINED**

PPSSNH-364 – MOD0173/22 - 161, 163 and 185A Fox Valley Road, Wahroonga, Modification to Land and Environment Court Approval 35670 of 2022 (DA0539/21) proposing internal and external changes to the approved residential flat buildings (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 approve the modification application pursuant to section 4.56 of the *Environmental Planning and Assessment Act 1979*.

The Panel's decision was unanimous.

#### **REASONS FOR DECISION**

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

One of the proposed modifications seeks a variation to the maximum building height stipulated in Condition A8(1) of the approved Concept Plan and while the Applicant submitted a written variation request, the building height control is not a development standard but under Condition A8 (2), variations to the maximum building height can be approved.

The height variation relates to the south-eastern portion of Building C with a variation to the Concept Plan Envelope of a maximum of 1.35m, measured from the approved Concept Plan height of RL172.50 to the top of the glass balustrade of RL 173.85.

The Panel concurs with Council that the proposed height variation is minor in nature and will have negligible impacts in relation to building bulk and scale, overshadowing and visual impact. The Panel agrees with Council that the variation can be accepted as it is consistent with the assumed objectives of the building height control and the objectives of the R4 High Density Residential zone. The proposed height increase is necessary to meet the requirements of the BCA in terms of floor to floor and balustrade heights.

The Panel concurs with Council that the modification application has been properly assessed in accordance with relevant planning controls, is substantially the same development and is consistent with the previous court approval there being no specific reasons for that determination. The likely impacts of the



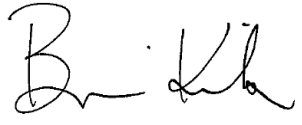


modifications are acceptable and consequently it is in the public interest that the modification be approved.

#### CONDITIONS

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

#### CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel noted no written submissions were made during public exhibition.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Sue Francis
 Brian Kirk	 Martin Smith
 Kim Wheatley	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-364 – MOD0173/22 – Ku ring gai
2	PROPOSED DEVELOPMENT	Modification to Land and Environment Court Approval 35670 of 2022 (DA0539/21) proposing internal and external changes to the approved residential flat buildings
3	STREET ADDRESS	161, 163 and 185A Fox Valley Road, Wahroonga
4	APPLICANT/OWNER	Capital Corporation Wahroonga Pty Limited (Applicant) Australasian Conference Association Limited (Owner)
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.56 modification
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments:               <ul style="list-style-type: none"> <li>Environmental Planning and Assessment Regulation 2021</li> <li>Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>State Environmental Planning Policy (Transport and Infrastructure)</li> </ul> </li> </ul>

		2021 <ul style="list-style-type: none"> <li>State Environmental Planning Policy No.65 - Design Quality of Residential Flat Development</li> <li>Ku-ring-gai Local Environmental Plan 2015</li> </ul> <ul style="list-style-type: none"> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans:             <ul style="list-style-type: none"> <li>Ku-ring-gai Development Control Plan</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>:</li> <li>Coastal zone management plan: Nil</li> <li>Other relevant plans: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	<b>MATERIAL CONSIDERED BY THE PANEL</b>	<ul style="list-style-type: none"> <li>Council assessment report with draft conditions of consent.</li> <li>Attachment 1. Amended Architectural Plans</li> <li>Attachment 2. Amended Landscape Plans</li> <li>Attachment 3. Revised Design Verification Statement</li> <li>Attachment 4. Section 4.56 Statement Wahroonga Precinct B</li> <li>Attachment 5. Architectural RFI response</li> <li>Attachment 6. Variation request for Condition A8</li> <li>Attachment 7. Urban Form Control Diagram- Roof Plan – Concept Approval - Major Project No. 07_0166_Mod 8</li> <li>Written submissions during public exhibition: 0</li> </ul>
8	<b>MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL</b>	<ul style="list-style-type: none"> <li>12 April 2023 - Briefing</li> <li>05 July 2023 - Final briefing to discuss council's recommendation:             <ul style="list-style-type: none"> <li><u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Sue Francis, Martin Smith, Kim Wheatley</li> <li><u>Council assessment staff</u>: Michael Miocic, Geoff Bird, Kerry Hunter, Luke Donovan, Jonathan Goodwill</li> </ul> </li> </ul>
9	<b>COUNCIL RECOMMENDATION</b>	Approval
10	<b>DRAFT CONDITIONS</b>	Attached to the Council Assessment Report