

<b>DATE OF DETERMINATION</b>	10 November 2023
<b>DATE OF PANEL DECISION</b>	10 November 2023
<b>DATE OF PANEL MEETING</b>	08 November 2023
<b>PANEL MEMBERS</b>	Peter Debnam (Chair), Sue Francis, Lindsey Dey, Brian Kirk, Che Wall
<b>APOLOGIES</b>	Nicole Gurran
<b>DECLARATIONS OF INTEREST</b>	Karla Castellanos declared a conflict of interest as she assisted the applicants with a planning proposal on the site during her previous employment at GMU.

Public meeting held by teleconference on 08 November 2023, opened at 11.30am and closed at 12.24pm.

#### **MATTER DETERMINED**

PPSSNH-377 – North Sydney – DA/66/23 – 286 – 294 Pacific Highway, Crows Nest Lot 1 DP 1279891

Partial demolition of the existing heritage building, construction of a 13 storey mixed use building comprising ground floor and first floor commercial tenancies, 61 residential apartments, basement parking, public domain works and landscaping.

#### **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 North Sydney Local Environmental Plan 2013 (LEP), seeking to demonstrate that:

- compliance with cl. 4.3 Height of Buildings is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard

The Panel is not satisfied that:

- the Applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- the development will be in the public interest because the Panel considers that it will be inconsistent with the objectives of cl. 4.3 Height of Buildings of the LEP and the objectives for development in the MU1 Mixed Use and R2 Low Density Residential zone.
- The concurrence of the Secretary has been assumed.

#### **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 application for the reasons below and in Council's comprehensive Assessment Report.

The development application seeks consent for the partial demolition of the existing heritage building, and construction of a 13 storey mixed use development containing 61 residential apartments, above four (4) basement levels of parking containing 105 car spaces and tree removal.

The proposal exceeds the maximum height permitted under North Sydney's Local Environmental Plan and accordingly the Applicant submitted a written Clause 4.6 Request to vary the development standard. However, the Panel concurs with Council's reasoning detailed in the Assessment Report that in the written request there are insufficient environmental grounds to justify the proposed contravention and that compliance with the standard, particularly in respect of the contravention sought to the R2 land is not reasonable or unnecessary in the circumstance of the case.

The Panel also notes that in the months before and since the application was lodged, the Applicant met with Council and on one occasion with the Council and the Panel to discuss the proposal and key issues of concern but significant changes were not subsequently made to the proposal.

Nevertheless, during the public meeting, the Applicant outlined potential changes to the proposal in an effort to better comply with planning controls and requested a deferment of the Panel's determination in order that such amendments could be formally submitted and assessed by Council. The Panel noted the determination would proceed based upon the application as submitted and assessed by Council and before the Land and Environment Court.

As noted by Council, the proposal fails to satisfy a number of applicable provisions of the North Sydney DCP 2013 and in relation to site specific controls for the St Leonards / Crows Nest Planning Area, the proposal does not comply with required setbacks, solar access provisions and the scale, massing and scale of the building results in a built form inconsistent with the context of the area. The proposal also fails to satisfy several ADG provisions.

The Panel also agrees that the utilisation of cl 5.10 of the LEP to overcome the permissibility of the proposal on the R2 land is not substantiated having regard to the requirements of that clause. In the absence of satisfying cl 5.10 the development as proposed is prohibited.



The Council's Assessment report includes extensive reasons for refusal and the Panel agrees the proposal should be refused.

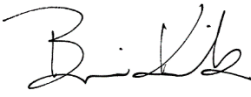


The Panel concurs with Council that the proposal has been properly assessed against the relevant provisions of the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013 and it is in the community interest the proposal be refused.

#### **CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the Panel considered 18 written submissions made during the public exhibition of the proposal and also heard from members of the public who wished to address the public meeting. Issues raised included: Permissible use, density, bulk and scale, construction disruption, parking and traffic impacts, solar access, cross ventilation, heritage item, height variation and privacy impacts.

The Panel considers community concerns in the submissions and expressed during the public meeting have been adequately addressed in Council's Assessment Report.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Sue Francis

 Brian Kirk	 Che Wall
 Lindsey Dey	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-377 – North Sydney – DA/66/23
2	PROPOSED DEVELOPMENT	Partial demolition of the existing heritage building, construction of a 13 storey mixed use building comprising ground floor and first floor commercial tenancies, 61 residential apartments, basement parking, public domain works and landscaping.
3	STREET ADDRESS	286 – 294 Pacific Highway, Crows Nest Lot 1 DP 1279891
4	APPLICANT/OWNER	Applicant – Eastinwest Pty Ltd and Visionvest Pty Ltd. Owners – Eastinwest Pty Ltd and Visionvest Pty Ltd.
5	TYPE OF REGIONAL DEVELOPMENT	Development with a capital investment value (CIV) over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments:               <ul style="list-style-type: none"> <li>State Environmental Planning Policy (Resilience and Hazards) 2021.</li> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development</li> <li>State Environmental Planning Policy (Planning Systems) 2021</li> <li>State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX)</li> <li>North Sydney Local Environmental Plan 2013</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans:               <ul style="list-style-type: none"> <li>North Sydney Development Control Plan 2013</li> </ul> </li> <li>Planning agreements:               <ul style="list-style-type: none"> <li>Environmental Planning and Assessment Regulation 2021</li> </ul> </li> <li>Provisions of the Environmental Planning and Assessment Regulation 2001</li> <li>Coastal zone management plan: Nil</li> </ul>

		<ul style="list-style-type: none"> <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 dated 01 November 2023</li> <li>• Clause 4.3 –Building Height</li> <li>• Written submissions during public exhibition: 18</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>• Members of the community – Lars Rognlien, John Hancox - On behalf of Wollstonecraft Precinct</li> <li>• Council Assessment Officers – Michael Hornery, Stephen Beattie</li> <li>• On behalf of the applicant – John Wynne, Alain Assoum</li> </ul> </li> </ul>
8	<b>MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• 19 April 2023– Kick off briefing</li> <li>• 27 September 2023 – Council and Applicant Briefing</li> <li>• 08 November 2023 - Final briefing to discuss council's recommendation: <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Peter Debnam (Chair), Sue Francis, Lindsey Dey, Brian Kirk, Che Wall</li> <li>○ <u>Council assessment staff</u>: Michael Hornery, Stephen Beattie</li> </ul> </li> </ul>
9	<b>COUNCIL RECOMMENDATION</b>	Refuse
10	<b>DRAFT CONDITIONS</b>	N/A