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| DATE OF DETERMINATION | 26 June 2023 |
| DATE OF PANEL DECISION | 23 June 2023 |
| DATE OF PANEL MEETING | 21 June 2023 |
| PANEL MEMBERS | Peter Debnam (Chair), David Kitto, Brian Kirk, Eugene Sarich, |
| APOLOGIES | Nicole Gurran |
| DECLARATIONS OF INTEREST | Vivienne Albin declared a potential conflict as she works with one of the Applicant's team on other projects. |

Public meeting held by teleconference on 21 June 2023, opened at 11.30am and closed at 12.18pm

MATTER DETERMINED

PPSSNH-380 - DA162/2021 – Lane Cove, Nos. 13 to 19 Canberra Avenue, St Leonards, Section 4.55(2) modification to an approved mixed-use development (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 4.55 of the *Environmental Planning and Assessment Act 1979*.

The Panel's decision was unanimous.

REASONS FOR DECISION

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

The original consent (Development Consent No. 162/2021) was for construction of a mixed-use development comprising 81 apartments, childcare centre for 60 children, community facility, restaurant/café and basement parking for 116 vehicles, pedestrian link and stratum/strata subdivision. The subject Modification Application to the original consent proposes construction of two new levels (storeys) to accommodate four additional apartments with additional basement car parking. The two new levels would exceed the 12 storey limit set out in the planning controls.

The Panel considered Council's comprehensive Assessment Report as well the Applicant's detailed response to the Report and during the public meeting the Panel heard extensively from both parties on the key issues in each document.



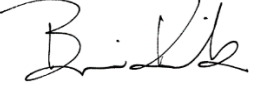
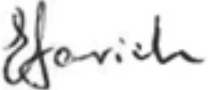
The Panel does not accept the proposed modification with additional floors as it would not result in a development substantially the same as that originally approved. While the Applicant argued the changes would be largely hidden from street level, it would not be the case for residents of surrounding buildings and other interested members of the community who each day would be witness to a lack of consistency in application of the planning controls.

The Panel concurs with Council that the Modification Application has been properly assessed in accordance with the EP&A Act with the exception of the question of the applicability of Clause 4.6 of the Lane Cove

Local Environmental Plan. It is well founded in case law that Clause 4.6 applies to *development applications* but not to modification applications under Section 4.55 of the Act. Notwithstanding, the proposed development, with a breach of the building height and number of storeys is not consistent with relevant planning controls which have been applied with consistency to date. The Panel is of the view that it is not appropriate to grant flexibility in this instance and that the public interest is best served in this instance by applying consistency in decision making which must result in the refusal of the application.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered 15 written submissions made during the public exhibition of the proposal and heard from members of the public and community groups who addressed the public meeting. Issues raised included building height and number of Storeys. The Panel considers community concerns were adequately addressed in the Assessment Report.

| PANEL MEMBERS | |
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|  Peter Debnam (Chair) |  David Kitto |
|  Brian Kirk |  Eugene Sarich |

| SCHEDULE 1 | | |
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| 1 | PANEL REF – LGA – DA NO. | PPSSNH-380 - DA162/2021 – Lane Cove |
| 2 | PROPOSED DEVELOPMENT | Section 4.55(2) modification to an approved mixed-use development |
| 3 | STREET ADDRESS | Nos. 13 to 19 Canberra Avenue, St Leonards |
| 4 | APPLICANT/OWNER | Applicant: Simon Truong - HPG General P/L Owners: SLD P/L |
| 5 | TYPE OF REGIONAL DEVELOPMENT | Development has a capital investment value of more than \$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 SEPP (Building Sustainability Index) 2004 Lane Cove Local Environmental Plan 2009. Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Lane Cove Development Control Plan 2009 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Coastal zone management plan: Nil Other relevant plans: St Leonards South Section 7.11 Contributions Plan The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality |

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| | | <ul style="list-style-type: none"> • 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 • Draft Reasons for Refusal • Written submissions during public exhibition: 15 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> • Sue Yelland, Jennifer Schneller • Council Assessment Officers – Mark Brisby, Greg Samardzic, Christopher Shortt and Rajiv Shankar • On behalf of the applicant – Stephen Abolakian, Simon Truong, Jeff Mead and Jonathan Knapp |
| 8 | MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL | <ul style="list-style-type: none"> • 15 March 2023 – Council briefing • 22 March 2023 – Site Inspection • 03 May 2023 - Final briefing to discuss council's recommendation: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), David Kitto, Brian Kirk, Eugene Sarich ○ <u>Council assessment staff</u>: Mark Brisby, Greg Samardzic, Christopher Shortt and Rajiv Shankar |
| 9 | COUNCIL RECOMMENDATION | Refusal |
| 10 | DRAFT CONDITIONS | N/A |