

## DETERMINATION AND STATEMENT OF REASONS

### SYDNEY NORTH PLANNING PANEL

<b>DATE OF DETERMINATION</b>	20 September 2024
<b>DATE OF PANEL DECISION</b>	19 September 2024
<b>DATE OF PANEL MEETING</b>	18 September 2024
<b>PANEL MEMBERS</b>	Peter Debnam (Chair), Nicole Gurran, Brian Kirk, Tanya Taylor and Philippa Hayes
<b>APOLOGIES</b>	James Harrison
<b>DECLARATIONS OF INTEREST</b>	None

Public meeting held by videoconference on 18 September 2024, opened at 2:30pm and closed at 3:22pm.

#### MATTER DETERMINED

PPSSNH-404 – Willoughby - DA-2023/172 at 44, 46, 52 Anderson Street, Willoughby - shop top housing (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 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 Willoughby Local Environmental Plan 2012 (LEP), that has not demonstrated that:

- compliance with cl. 4.4 (Floor Space Ratio) 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 is in the public interest because it isn't consistent with the objectives of cl. 4.4 (Floor Space Ratio) of the LEP and the objectives for development in the MU1 (mixed use); and

#### Development application

The Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

#### REASONS FOR THE DECISION

The Panel determined to not uphold the applicant's request to contravene the Floor space ratio development standard; and refuse the application for the Reasons for Refusal (Attachment 7) in Council's Assessment Report.

Clause 4.4 of the WLEP imposes a maximum FSR of 6:1 while the DA seeks an FSR of 6.375:1, which is a breach of 6.25%. The Panel considered the Applicant's written request to allow for a contravention of the FSR development standard but concur with Council that the request is not well founded and should not be supported.

During the public meeting, the Panel heard extensively from the Applicant and Council on the various issues detailed in Council's Assessment Report including the draft Reasons for Refusal.

Despite the long history of this proposal including a proponent led planning proposal and ongoing discussions between Applicant and Council, significant issues remain unresolved as evidenced by the Assessment Report and in particular the Reasons for Refusal.




On balance, the Panel is of the view that the proposal has been properly assessed in accordance with relevant planning legislation and controls and it is in the community interest that the application be refused.

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

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Privacy
- Overshadowing
- Visual impact/building height
- Loss of views
- Ventilation
- Traffic congestion and parking
- Excessive wind/wind tunnelling
- Pressure on infrastructure
- Noise pollution
- Impact on residential amenity, general well-being and mental health
- Instability to adjoining properties from deep excavation
- Proximity to heritage conservation area
- Character
- Setbacks

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Nicole Gurrán
 Brian Kirk	Tanya Taylor (Willoughby Council)

A handwritten signature in black ink, appearing to be 'PH' or 'PHH' with a stylized flourish.

Philippa Hayes

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-404 – Willoughby - DA-2023/172
2	PROPOSED DEVELOPMENT	Nominated Integrated Development (Water NSW s90 Water Management Act 2000) - SNPP - Consolidation of site, demolition of existing structures, construction of 26 storey mixed use development comprising commercial/retail, 95 residential units, publicly accessible through-site link, 4 levels of basement carparking, landscaping nad associated works.
3	STREET ADDRESS	44 - 52 Anderson Street, Willoughby
4	APPLICANT/OWNER	Grace Wu
5	TYPE OF REGIONAL DEVELOPMENT	General development 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 (Biodiversity and Conservation) 2021</li> <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 (Planning Systems) 2021</li> <li>○ SEPP No 65 - Design Quality of Residential Apartment Development and NSW Apartment Design Guide (ADG)</li> <li>○ Willoughby Local Environmental Plan 2012</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Willoughby Development Control Plan (including SS DCP)</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i></li> <li>• Coastal zone management plan: 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	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Council Assessment Report: 4 September 2024</li> <li>• Clause 4.6 variation request prepared by Mecone: August 2024</li> <li>• PPSSNH-404 Memo: 18 September 2024</li> <li>• Written submissions during public exhibition: 41</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ Lisa Bella Esposito</li> <li>○ Council assessment officer – Peter Wells, Adeline Sim</li> <li>○ On behalf of the applicant – Ian Caddy, Simon Lincoln</li> </ul> </li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Briefing: 4 October 2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Peter Debnam (Chair) and Brian Kirk</li> <li>○ <u>Council assessment staff</u>: Ritu Shankar, Peter Wells, Clare Woods and Will Robertson</li> <li>○ <u>Applicant representatives</u>: Gemma Bassett, John Li, Grace Wu and David Liu</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>○ <u>Department staff</u>: George Dojas, Adam Iskander and Adam Williams</li> <li>• Final briefing to discuss council's recommendation: 18 September 2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Peter Debnam (Chair), Nicole Gurran, Brian Kirk, Philippa Hayes and Tanya Taylor</li> <li>○ <u>Council assessment staff</u>: Peter Wells, Wil Robertson, Nicholas Kennedy, Adeline Sim, Clare Woods, Lachlan Marshall</li> <li>○ <u>Department staff</u>: Adam Iskander, George Dojas and Joel Burgess</li> </ul> </li> <li>• Public Determination Briefing: 18 September 2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Peter Debnam (Chair), Nicole Gurran, Brian Kirk, Philippa Hayes and Tanya Taylor</li> <li>○ <u>Council assessment staff</u>: Peter Wells, Wil Robertson, Nicholas Kennedy, Adeline Sim, Clare Woods, Lachlan Marshall</li> <li>○ <u>Department staff</u>: Adam Iskander, George Dojas and Joel Burgess</li> <li>○ <u>Applicant</u>: Ian Cady, Gemma Bassett, Josh Milston, Jamie Talbot.</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Attached to the Council Assessment Report (Attachment 8)