

DATE OF DETERMINATION	20 June 2024
DATE OF PANEL DECISION	20 June 2024
DATE OF PANEL MEETING	19 June 2024
PANEL MEMBERS	Peter Debnam (Chair), Nicole Gurran, Brian Kirk, Che Wall, Karla Castellanos
APOLOGIES	Nil
DECLARATIONS OF INTEREST	Nil

Public meeting held by teleconference on 19 June 2024, opened at 1.33pm and closed at 2.22pm.

MATTER DETERMINED

PPSSNH-422 – DA 215/23, North Sydney, 45 McLaren Street, North Sydney

Demolition of existing building and works, construction of a mixed-use building with a basement of 3 levels for parking, storage, waste management, plant and commercial space, 2.5 levels of commercial space (above and below natural ground level), 12 levels of residential accommodation, landscaping and associated works.

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), that has demonstrated that:

- compliance with cl. 4.4A Non-Residential 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 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 is consistent with the objectives of cl. 4.4A Non-Residential Floor Space Ratio of the LEP and the objectives for development in the MU1: Mixed Use zone; and
- the concurrence of the Secretary has been assumed.

Development application

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

The Panel's decision was 3:2.

REASONS FOR DECISION

The Panel majority approved the DA for the reasons below and in Council's comprehensive Assessment Report.

As the design evolved after discussions with Council, the amount of commercial floor space was reduced resulting in a non-compliant FSR. Accordingly, a written request to vary the minimum non-residential floor

space ratio development standard, required by Clause 4.4A of the NSLEP, was submitted by the Applicant. The minimum permitted non-residential FSR is 1:1 and the proposed FSR is 0.72:1, representing a variation of 28%. The Panel majority concurs with Council's assessment that the 4.6 Request is well founded in that the urban design outcomes of the non-compliant development are superior when compared with the compliant scheme first submitted, the environmental impacts of the proposal are suitably managed and approval would not be inconsistent with the objectives of the zone and development standard.

The Panel majority notes the site was the subject of a planning proposal to increase its development capacity and subsequent amendments to the LEP were published in 2023.

The site lies between McLaren Street, Walker Street, Harnett Street and a pedestrian link on the southern side. It slopes sharply to the south-south-west and is a challenging development site.

The Panel majority notes the proposal has been the subject of discussions with Council for several years and the Panel majority concur that the design has benefited from those extensive discussions and feedback from the community. Amendment of the design was also informed by feedback from Council's Design Excellence Panel.

The proposed development has been assessed regarding applicable provisions of the Environmental Planning & Assessment Act 1979 (the Act), State Environmental Planning Policies (SEPPs), the LEP, the North Sydney Development Control Plan 2013 (the DCP) and the North Sydney Local Infrastructure Contributions Plan and is acceptable.

The Panel majority concurs with Council that despite inconsistencies with various numerical controls of the Apartment Design Guide, the proposal satisfies applicable performance criteria (objectives and guidelines, both numeric and descriptive) of this document, and is consistent with the SEPP's design principles.

The Panel majority also concurs with Council that the proposal would make a positive contribution to North Sydney's built environment, offering both additional residential and commercial accommodation in a highly dynamic neighbourhood. The proposal responds to metropolitan investment by the NSW Government, and to Council's strategies to both promote a more vibrant CBD and manage urban growth and the Panel majority believe approval of the DA is in the community interest.

Ms Castellanos is of the opinion that while the proposal has resolved most aspects of the design satisfactorily, the proposal's solar access performance is significantly below the Design Criteria (70%) under Objective 4A-1 – Solar and Daylight Access of the Apartment Design Guide (SEPP 65).

52% of the apartments are purported to receive Solar Access between 8:45 and 10:45 am; however, if the calculation were to be calibrated to start at 9:00 am, then it would appear as if none of the proposed units will meet numerical compliance. When assessed against the objectives of the guideline, the proposal, in Ms Castellanos' opinion, has also failed to "optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space".

31% or approximately 22 apartments, mainly those facing west, will receive no solar access at all. This surpasses and doubles the maximum "15% of apartments in a building" that are permitted "to receive no direct sunlight between 9 am and 3 pm at mid-winter". The Applicant has not provided any evidence of what other measures have been implemented to "optimise receiving sunlight to habitable rooms." The Applicant's team was unable to provide an indication as to how many out of the affected dwellings, are multi-level or shallow apartments – effective measures typically utilised in improving the intake of indirect light.

In Ms Castellanos opinion, the significantly deficient solar access performance cannot be overlooked even in the presence of other reasonably well resolved aspects of the proposal. An exemplary and meritorious development must achieve compliance or be reasonably close, at least, with the minimum requirements of the Apartment Design Guide.

Mr Wall agrees with Ms Castellanos's opinion and considers that the proposal also compromises the Apartment Design Guide objectives for natural ventilation. While the site is acknowledged as constrained, it is not evident that amenity outcomes and related SEPP 65 design quality principles have been addressed to the extent possible on the site.



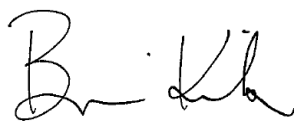


CONDITIONS

The development application was approved subject to the revised conditions of consent in Council's email of 19 June 2024. The amended conditions are as follows:

- **C1 Design amendments** - Paragraphs (b) and (c) have been added, to respectively include a condition for enclosure of utility services and to require window openings of a minimum 5%.
- **C24 External finishes and colours** - The external finishes and colours, including window glazing and screens, must be in accordance with the schedule of materials and colours shown on drawings A.09.001, A09.002, A09.003 in the architectural plans prepared by Bates Smart cited in the table to condition A1. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the relevant issued Construction Certificate, fully satisfy the requirements of this condition.
- **C48A Apartment Noise Attenuation Design** – addresses concerns regarding design of party walls between units, I have included reference to 'relevant standards and guidelines' to reinforce the condition without being too specific.
- **G7A Apartment Noise Attenuation Construction** – as above, to be satisfied before issue of an occupation certificate

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered thirteen written submissions made during exhibition of the proposal. No members of the public sought to address the public determination meeting. Issues raised in submissions included view loss, solar access, overshadowing, privacy, traffic congestion, construction impacts, setbacks, and relationship with neighbouring heritage items. The Panel considers community concerns in the submissions have been adequately addressed in Council's Assessment Report, in Applicant and Council responses during the public meeting and in the amended conditions.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Nicole Gurran
 Brian Kirk	 Che Wall
 Karla Castellanos	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-422 – DA 215/23, North Sydney
2	PROPOSED DEVELOPMENT	Demolition of existing building and works, construction of a mixed-use building with a basement of 3 levels for parking, storage, waste management, plant and commercial space, 2.5 levels of commercial space (above and below natural ground level), 12 levels of residential accommodation, landscaping and associated works.
3	STREET ADDRESS	45 McLaren Street, North Sydney
4	APPLICANT/OWNER	Applicant - The Trustee for Aidop No 4 Unit Trust C/- Urbis Pty Ltd Owner - 45 McLaren Street, North Sydney
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"> North Sydney LEP 2013 SEPP (Transport and Infrastructure) 2021 SEPP (Biodiversity and Conservation) 2021 SEPP (Resilience and Hazards) 2021 SEPP (Housing) 2021/SEPP 65 Design Quality of Residential Apartment Development Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> North Sydney Development Control Plan 2013 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Coastal zone management plan: 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. Conditions of Consent Report of the North Sydney Council Design Excellence Panel (10 10 23) Clause 4.6 Variation Request – Urbis (28 February 2024) Architectural Plans - Bates Smart (19 February 2024) Design Report -Bates Smart (June 2023) RFI Response Design Report - Bates Smart (February 24) Landscape Documentation – 360 (23 February 2024) Civil Engineering Drawings – Robert Bird Group (26 February 2024) On-site Detention Drains Report – Robert Bird Group (26 February 2024)

		<ul style="list-style-type: none"> • Written submissions during public exhibition: 13 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Members of the community – Nil ○ Council Assessment Officers – Jim Davies, Surb Bhatti ○ On behalf of the applicant – Sophy Purton, Matt Davies, Ross Osidacz, Stephen White
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • 11 October 2023 – Preliminary briefing <ul style="list-style-type: none"> • <u>Panel members</u>: Peter Debnam (Chair), Nicole Gurrán, Brian Kirk • <u>Council assessment staff</u>: Jim Davies, Surb Bhatti • <u>Applicant</u>: Sam McGough, Renato Calandro, Matt Davis, Jill Woodley, Kimberley Brooke, Sophy Purton, Matt Walto • 19 June 2024 - - Final briefing to discuss council's recommendation: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Nicole Gurrán, Brian Kirk, Che Wall, Karla Castellanos ○ <u>Council assessment staff</u>: Jim Davies, Surb Bhatti
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report