

DETERMINATION AND STATEMENT OF REASONS
SYDNEY NORTH PLANNING PANEL

DATE OF DETERMINATION	7 March 2025
DATE OF PANEL DECISION	6 March 2025
PANEL MEMBERS	Peter Debnam (Chair), Brian Kirk, Stephen O'Connor, Cedric Spencer, Kim Wheatley
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 28 February 2025.

MATTER DETERMINED

PPSSNH-515 – Ku-ring-gai– eDA0223/24 at 7-9 Merriwa Street, Gordon – Demolition of existing structures, construction of a 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 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 Ku-ring-gai Local Environmental Plan 2015 (LEP), the Panel is satisfied that the applicant has demonstrated that:

- a) compliance with:
 - clause 4.3(2) (Height of buildings),
 - clause 4.4(2) (Floor space ratio), and
 - clause 6.7 (Active street frontages)is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard.

As the proposal breached Council's Height, FSR and Active Street Frontages development standards, the Applicant submitted Clause 4.6 written variation requests to vary each standard. The majority of the Panel determined the written requests to be well founded and presented. Given the complexities of the site including topography, existing excavations, surrounding current and likely future built form and nature of the precinct, the majority of the Panel felt the written requests were comprehensive and provided adequate justification for each of the variations.

Development application

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

The decision was 3:2 in favour. Against the decision were Cedric Spencer and Kim Wheatley.

REASONS FOR THE DECISION

The majority of the Panel determined to uphold the clause 4.6 variations and approve the application for the reasons below.

The Panel met twice to consider the application initially at a public meeting in December 2024 and again in March 2025 for briefings with Council and the Applicant. After the public meeting in December, the Panel

had resolved to defer consideration of the matter to allow the Applicant to provide additional information and to allow Council to provide a Supplementary Assessment Report.

The Applicant provided a detailed response to Council in February and the Panel at its 5th March meeting considered the Applicant's additional information and Council's Supplementary Assessment Report.

While the Council had again recommended refusal of the application, the Panel extensively discussed the reasons for refusal with the Applicant and Council during the meeting. The Panel also discussed with the Applicant their approach to and reasons for rejecting alternative compliant (in relation to Height and FSR) designs.

The majority of the Panel acknowledged that while the Applicant had considered alternatives, they had proposed a viable design on a challenging site. The result was the height breach was mostly restricted to the rooftop community facility structures, but they had been confined to the central area of the top floor minimising visual impacts. Additionally, the proposed design breaches the FSR standard and does not satisfy Council's Active Street Frontage standards. However, as noted above, these deficiencies were comprehensively addressed and justified in the Applicant's written requests to vary the development standards.

The majority of the Panel believe the proposal has been properly assessed, satisfies relevant planning controls and will provide a positive upgrade to the precinct. Accordingly, the majority of the Panel believe approval of the application would be in the community interest.

The following Panel members disagreed with the majority decision for the following reasons:

- Cedric Spencer due to excess HOB in terms of the building rooftop (as well as equipment) exceeding the height plane and impacts on adjoining properties.
- Kim Wheatley, as options to avoid excess HOB were not pursued by the Applicant.

CONDITIONS

The Development Application was approved subject to the conditions uploaded by Council to the NSW Planning Portal on 27 February 2025.


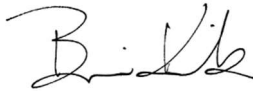



CONSIDERATION OF COMMUNITY VIEWS

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

- Acoustic impacts
- Traffic congestion
- Overshadowing
- Excessive height, bulk and scale

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. The Panel notes that in addressing these issues, appropriate conditions have been imposed.

In coming to its decision, the Panel notes that no further written submissions were received following the deferral (as Council were of the view that additional information provided by the applicant did not require re-notification) and therefore no further issues of concern were raised.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Brian Kirk
 Stephen O'Connor	 Cedric Spencer
 Kim Wheatley	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-515 – Ku-ring-gai – eDA0223/24
2	PROPOSED DEVELOPMENT	Demolition of existing structures, construction of a mixed-use development
3	STREET ADDRESS	7-9 Merriwa Street Gordon
4	APPLICANT OWNER	Mecone Wei Dong Chen
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> SEPP (Planning Systems) 2021 (PS SEPP) SEPP (Housing) 2021 (Housing SEPP) SEPP (Biodiversity and Conservation) 2021 (BC SEPP) SEPP (Transport and Infrastructure) 2021 SEPP (Resilience and Hazards) 2021 SEPP (Sustainable Buildings) 2022 Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) Ku-ring-gai Contributions Plan 2023 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Ku-ring-gai Development Control Plan (KDCP) Planning agreements: Nil Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</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: 13 November 2024 Supplementary Council Assessment Report and attachments (i.e. cover letter from the applicant, amended architectural and landscape plans, shadow diagrams, NatHERS summary certificate, BASIX certificate and updated Clause 4.6 request): 18 February 2025 Clause 4.6 variation requests: <ul style="list-style-type: none"> Building height (revised): 31 January 2025 Floor space ratio: November 2024 Active street frontage: November 2024 Written submissions during public exhibition: 20 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Jeffrey Peng Council assessment officer – Brent Pearce On behalf of the applicant – Tyson Ek-Moller, Victor Schneider Total number of unique submissions received by way of objection: 18
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Preliminary Briefing: 18 September 2024 <ul style="list-style-type: none"> <u>Panel members</u>: Peter Debnam(Chair), Nicole Gurran and Brian Kirk <u>Council assessment staff</u>: Brent Pearce, Selwyn Segall

		<ul style="list-style-type: none"> ○ <u>Department staff</u>: George Dojas, Adam Iskander ○ <u>Applicant representatives</u>: Wei Dong Chen, Tyson Ek-Moller, Matt Lai, Victor Schneider and Elizabeth Leong <ul style="list-style-type: none"> ● Applicant Briefing: 30 October 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Nicole Gurran, Kim Wheatley and Cedric Spencer ○ <u>Applicant representatives</u>: Wei Dong Chen, Tyson Ek-Moller, Matt Lai, Victor Schneider and Elizabeth Leong ● Final briefing to discuss council's recommendation: 18 December 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Nicole Gurran, Cendric Spencer and Kim Wheatley ○ <u>Council assessment staff</u>: Brent Pearce, Trudi Coutts, Selwyn Segall, Vincent Ooi, Fiona Ambrosino, Kerry Hunter ○ <u>Department staff</u>: Lillian Charlesworth, Jade Buckman ● Public meeting: 18 December 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Nicole Gurran, Cendric Spencer and Kim Wheatley ○ <u>Council assessment staff</u>: Brent Pearce, Trudi Coutts, Selwyn Segall, Vincent Ooi, Fiona Ambrosino, Kerry Hunter ○ <u>Applicant representatives</u>: Elizabeth Leong, Victor Schneider, Tyson Ek-Moller, Chris Shannon ○ <u>Department staff</u>: Lillian Charlesworth, Jade Buckman ● Final briefing to discuss council's recommendation: 5 March 2025 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Stephen O'Connor, Cedric Spencer, Kim Wheatley ○ <u>Council assessment staff</u>: Brent Pearce, Shaun Garland, Kerry Hunter, Fiona Ambrosino, Vincent Ooi, Selwyn Segall ○ <u>Applicant representatives</u>: Tyson Ek-Moller, Chris Shannon, Victor Schneider, Elizabeth Leong ○ <u>Department staff</u>: Lillian Charlesworth, Jade Buckman
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Council prepared draft conditions (uploaded to the Portal 27 February 2025) should the Panel approve the DA.