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| DATE OF DEFERRAL | 20 December 2024 |
| DATE OF PANEL MEETING | 16 December 2024 |
| PANEL MEMBERS | Peter Debnam (Chair), Nicole Gurran, Brian Kirk, Tanya Taylor and James Harrison |
| APOLOGIES | None |
| DECLARATIONS OF INTEREST | None |

Public meeting held by teleconference on 16 December 2024, opened at 9:30am and closed at 10:09am.

MATTER DEFERRED

PPSSNH-526 – Willoughby – DA-2024/159 at 1 Walter Street, Willoughby – Amending development application to alter the approved development under DA-2021/300 and subsequent modifications to provide for 5 residential flat buildings ranging from 5– 11 storeys, increase units from 154 to 186, including additional affordable housing units facilitated through increasing height & GFA of blocks D,E & F pursuant to State Environmental Planning Policy (Housing) 2021 (as described in Schedule 1).

REASONS FOR DEFERRAL

The Panel considered the matters listed at item 6, the material listed at item 7 and the material presented at the briefings and meetings listed at item 8 in Schedule 1.

During the public meeting, the Panel discussed with Council and the Applicant amending Council's draft conditions to include a Deferred Commencement for draft Condition 1A and also a new condition to provide a compliance mechanism in relation to the Applicant's Affordable Housing commitments. Both changes were agreed by the Applicant.

Subsequent to the meeting on 17th December, Council requested the Panel include an additional condition (103A) to levy an affordable housing contribution under clause 6.8 of WLEP. This request was not supported by the Applicant.

The Panel discussed the content and legality in the circumstances of the new condition and resolved to defer their determination to obtain urgent legal advice from the Department on the legality of including condition 103A (see below).

103A. Affordable Housing Conditions pursuant to clause 6.8 of the Willoughby Local Environmental Plan

In accordance with clause 6.8 of the Willoughby Local Environmental Plan (WLEP) 4% of the residential gross floor area in the development is to provide for affordable housing. Such provision of affordable housing in accordance with clause 6.8 of the WLEP is satisfied by the following:

- (a) The applicant shall pay to Council a monetary contribution (**prior to the issue of the Occupation Certificate**) for the purpose of providing affordable housing that is calculated at 4% of the residential gross floor area of the development. The amount of the monetary contribution is determined by reference to the market value of dwellings of a similar size to the dwellings in the proposed development, and as set out below:

- (i) **Within three (3) months of the issue of the Construction Certificate**, the applicant is to submit to Council a valuation report (prepared by a registered valuer) identifying the market value of dwellings of a similar size to dwellings in the development by reference to the recent sales prices of such new dwellings of similar size and, in the absence of recent sales prices at the subject development, recent sales price of similar sized dwelling(s) in comparable development(s) within the Willoughby local government area.
- (ii) Council will consider the valuation report and, acting reasonably, determine the amount of the contribution to be paid.
- (iii) If it considers it desirable to do so, Council may appoint an independent registered valuer to undertake a separate valuation. The applicant / developer is to pay Council all reasonable costs associated with the service provided by Council's appointed valuer for this valuation.
- (iv) The applicant is to submit to Council's Director of Planning & Infrastructure the valuation report and documentation to demonstrate how the applicant has calculated the contribution, including identifying the residential gross floor areas used in the calculation. The evidence is to be provided prior to any application is made for an occupation certificate, and before any payment of contribution is made.

Evidence of payment of the monetary contribution is to accompany the application for any Occupation Certificate.


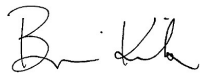



(Reason: Ensure compliance)

The decision to defer the matter was unanimous.

ACTIONS

To allow for the progression of the Development Application to determination, the Panel directed that:

1. The Planning Panels Team seek legal advice regarding proposed Condition 103A.
2. When the legal advice is received, the Panel will reconvene to determine the matter.

| PANEL MEMBERS | |
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|  Peter Debnam (Chair) |  Brian Kirk |
|  Nicole Gurran |  Tanya Taylor |
|  James Harrison | |

| SCHEDULE 1 | | |
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| 1 | PANEL REF – LGA – DA NO. | PPSSNH-526 – Willoughby – DA-2024/159 |
| 2 | PROPOSED DEVELOPMENT | Amendment to an approved development construction of 5 residential flat buildings comprising a total of 180 units (154 units previously approved) over basement car parking, landscaping, road widening, new footpath and street planning. |
| 3 | STREET ADDRESS | 1 Walter Street, Willoughby |
| 4 | APPLICANT/OWNER | Mo Chehelnabi (Architecture Urbaneia) Walter Projects Pty Ltd |
| 5 | TYPE OF REGIONAL DEVELOPMENT | Private infrastructure and community facilities over \$5 million |
| 6 | RELEVANT MANDATORY CONSIDERATIONS | <ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> Environmental Planning & Assessment Act 1979 Environmental Planning & Assessment Regulation 2021 State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Sustainable Buildings) 2022 Willoughby Local Environmental Plan 2012 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Willoughby Development Control Plan 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: 2 December 2024 Council memos to Panel: 13 December and 17 December 2024 Applicant (Vaughan Milligan) email to Council re proposed condition 103A: 17 December 2024 Applicant email received 18 December 2024 re proposed condition 103A including letter re legal opinion from Malcolm Craig KC dated 17 December 2025 Clause 4.6 variation request: November 2024 Written submissions during public exhibition: 92 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Wayne Holborow Maurice Bouloux Kristy Hodgkinson Council assessment officer – Peter Wells On behalf of the applicant – Vaughan Milligan (Planner) |

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| 8 | MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL | <ul style="list-style-type: none"> • Preliminary Briefing: 16 October 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk and Nicole Gurran ○ <u>Council assessment staff</u>: Peter Wells ○ <u>Applicant representatives</u>: Mo Chehelnabi ○ <u>Department staff</u>: Adam Iskander • Final briefing to discuss council's recommendation: 16 December 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Nicole Gurran, Tanya Taylor and James Harrison ○ <u>Council assessment staff</u>: Peter Wells, Ritu Shankar (Development Planning Team Leader), Nick Kennedy (Landscape Architect), Clare Woods (Development Engineer Team Leader), Wil Robertson (Urban Design Specialist) ○ <u>Department staff</u>: Lillian Charlesworth, Jade Buckman • Public meeting: 16 December 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Nicole Gurran, Tanya Taylor and James Harrison ○ <u>Council staff</u>: Peter Wells (consultant Planner), Ritu Shankar (Development Planning Team Leader), Nick Kennedy (Landscape Architect), Clare Woods (Development Engineer Team Leader), Wil Robertson (Urban Design Specialist), Michael Lee Jones (Building Inspector) ○ <u>Applicant representatives</u>: Vaughan Milligan (Planner), Mo Chehelnabi (Architect), Chris Rose (owner) |
| 9 | COUNCIL RECOMMENDATION | Approval |
| 10 | DRAFT CONDITIONS | Attached to the Council Assessment Report and as amended by Council's email to the Panel dated 17 December 2024. |