

DATE OF DETERMINATION	6 February 2025
DATE OF PANEL DECISION	6 February 2025
PANEL MEMBERS	Peter Debnam (Chair), Nicole Gurran, Brian Kirk, Tanya Taylor and James Harrison
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 3 February 2025.

MATTER DETERMINED

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).

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 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), the Panel is satisfied that the applicant has demonstrated that:

- compliance with cl. 4.3 (height of buildings) and clause 18(2) of *State Environmental Planning Policy (Housing) 2021* is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard.

The Applicant's clause 4.6 written request notes *SEPP (Housing) 2021* allows the maximum height for a building used for residential flat buildings or shop top housing to be the maximum permissible building height for the land plus an additional building height of up to 30%, based on the minimum affordable housing component calculated in accordance with clause 18(3) of *State Environmental Planning Policy (Housing) 2021*. The proposal seeks a 23.81% increase in height and floor space ratio in exchange for 11.907% of the floor space of the development being offered as additional infill affordable housing. The clause 4.6 written request has been comprehensively reviewed in Council's Assessment Report.

The Panel concurs with Council that the site is located within a high density residential environment as identified by its R4 High Density Residential zone and the extent and location of proposed height variations do not create a disharmony with the bulk and scale of surrounding buildings and the streetscape. The proposal continues to revitalise the site by delivering additional affordable housing, improved pedestrian linkages and large landscaped areas. On balance, where the incentive mechanism of the Housing SEPP is being used, utilisation of the existing floor plates is a more appropriate means of achieving the uplift, retaining the landscaping and deep soil intact to contribute to the enjoyment of the site and the surrounds. As a result, the Panel believes the height variation can be accepted on its merits.

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 unanimous.

REASONS FOR THE DECISION

The Panel determined to uphold the clause 4.6 variation to building height and approve the application for the reasons below and in Council's comprehensive Assessment Report.

The Panel met twice to consider this application. Initially the Panel convened a public meeting on 16th December but then deferred the determination to obtain legal advice as discussed below. The Panel then met again on 5th February with Council and Applicant.

Subsequent to the December public meeting, Council had requested the Panel include an additional condition to levy an affordable housing contribution under Clause 6.8 of WLEP. The Applicant did not support the request for an additional condition. 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. The legal advice was received in January and the Panel met on 5th February to determine the matter.

The substance of the proposal is the Applicant seeks to modify the parent consent (DA-2021/300) and use the incentive mechanism in *SEPP (Housing) 2021* for uplift to FSR and building height with Buildings D, E and F to be increased in height. The Panel notes the application was lodged in July 2024 and after public notification, a substantial number of community submissions were received. Subsequently, the Applicant submitted amended plans and updated documentation, which included a reduction in levels and height of Buildings D, E and F. Comprehensive view impact assessments were also provided.

The Panel also notes TfNSW reviewed the application and raised no objection as the proposed development is unlikely to have a significant impact on the classified road network.

The issue of Affordable Housing and its quantification was discussed extensively in Council's Assessment Report but the Panel notes the issue of ongoing compliance was not addressed and is further discussed below under Conditions.

In summary, the Panel concurs with Council that the application has been properly and comprehensively assessed in accordance with relevant planning legislation and controls and it satisfies all relevant SEPP, LEP and DCP objectives and achieves design excellence. The proposal achieves State-led aims to increase housing supply in NSW while minimising impacts to the surrounding environment. Consequently, the Panel believes approval of the application is in the community interest.

CONDITIONS

Council's recommended conditions of consent were amended by the Panel to include the following changes:


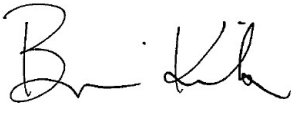



- Condition 1A to be a deferred commencement condition as per s67 of the Regulations
- Add a deferred commencement condition for the Applicant to notify Council of the Community Housing Provider as per clause 26 of the EP&A Regulations 2021.
- Amend condition 106 to notify Council on commencement of operations of the Community Housing Provider (CHP) and to inform Council on an annual basis of any change of the CHP and the ongoing eligibility of tenants (in accordance with Ministerial guidelines).
- Amend conditions 106 and 116 to provide a compliance mechanism in relation to the Applicant's affordable housing commitments, and
- Add condition 107 (in response to a request from Council on 17 December 2024) to require an affordable housing contribution under clause 6.8 of *Willoughby Local Environmental Plan 2012*. The wording of the condition has been amended since December and the Panel accepts the imposition of the amended condition is valid.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and comments made at the public meeting held on 16 December 2024. The Panel notes that issues of concern included:

- Building height
- Visual impacts (including incompatible with the desired character of the area, inadequate setbacks and separation distances, excess bulk and scale)
- Traffic
- Impact on privacy and amenity
- Noise pollution
- Overshadowing
- Flooding impacts
- View sharing
- Design quality

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and amended conditions.

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

SCHEDULE 1		
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: dated 13 December and 17 December 2024 Clause 4.6 variation request: November 2024 Council Supplementary memo received: 30 January 2025 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)
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

		<ul style="list-style-type: none"> ○ <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) • Final briefing to discuss council's recommendation: 5 February 2025 <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, Nick Kennedy (Landscape Architect), Clare Woods (Development Engineer Team Leader), Jo Manion, Sylvania Mok, Akshay Bishnoi, Wil Robertson ○ <u>Applicant representatives</u>: Vaughan Milligan (Planner), Mo Chehelnabi (Architect), Chris Rose (owner) ○ <u>Department staff</u>: Lillian Charlesworth, Jade Buckman
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report. Amended by the Panel and final conditions uploaded to the Planning Portal on 6 February 2025.