

DATE OF DETERMINATION	20 September 2023
DATE OF PANEL DECISION	19 September 2023
PANEL MEMBERS	Annelise Tuor (Chair), Glennis James, Penelope Holloway
APOLOGIES	None
DECLARATIONS OF INTEREST	The Chair has made a decision in line with item 5.2 of the Panel Operating Procedures, that the Council representatives have a perceived conflict of interest having previously voted on the related Planning Proposal (PP2021/7338).

Papers circulated electronically on 5 September 2023.

MATTER DETERMINED

PPSSSH-110 – Georges River - DA2022/0061 – 9 Gloucester Road, Hurstville - Demolition and construction of mixed-use development.

PANEL CONSIDERATION AND DECISION

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

Application to vary a development standard

The Panel is not satisfied that the clause 4.6 variation request to vary the height standard in clause 4.3(2) of the Georges River Local Environmental Plan 2021 has adequately addressed the matters required to be demonstrated by subclause 4.6(3). The panel is not satisfied that the proposed development will be in the public interest, because it is not consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

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 refuse the clause 4.6 variation request for variation to building height and to refuse the application for the reasons outlined in the assessment report as detailed below:

1. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the variation to the building height development standard pursuant to Clause 4.3(2) of *Georges River Local Environmental Plan 2021* lodged pursuant to Clause 4.6(3) has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case or that there are sufficient environmental planning grounds to justify the contravention of the development standard.
2. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the building height, comprising the lift

overruns, is inconsistent with the *Georges River Local Environmental Plan 2021* in that it adds unnecessary bulk and scale to the proposal and the visual impact of the proposed height variation is considered to be unacceptable since some of the lift overruns and plant equipment are not located centrally on the roof, particularly for Buildings B and C, which can be readily perceptible from the public domain. The proposal is inconsistent with:

- (a) Clause 1.2(2)(f) in that the proposal does not promote a high standard of urban design and built form and is therefore contrary to one of the aims of the plan;
 - (b) Clause 4.3(1)(a) in that the proposal does not ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality; and
 - (c) Clause 6.10(5)(b) in that the proposal does not provide a form and external appearance of development will improve the quality and amenity of the public domain.
- 3. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the development does not exhibit design excellence and accordingly, consent cannot be granted pursuant to Clause 6.10(4) of *Georges River Local Environmental Plan 2021*. In considering whether the development exhibits design excellence, the following matters have not been satisfied (Cl 6.10(5)):
 - (a) A high standard of architectural design, materials and detailing appropriate to the building type and location has not been achieved by the proposal in that (Cl 6.10(5)(a)):
 - (i) The proposed facades of all five buildings are dominated by the repetition of materials and architectural detailing and the proposed design does not incorporate an adequate composition of lightweight materials or detailing to minimise the perceived bulk and scale.
 - (ii) The proposed buildings largely appear as monolithic blocks without any recessing or projecting elements or any massing variation with the exception of the repetitive balconies and glazed door and windows, which emphasises horizontality and increases the perceived building bulk and scale of the proposal.
 - (iii) There is limited visual interest in the façades, which do not contribute to the aesthetic appeal of the building or the character of the area. There is also a lack of integration between the ground floor and the upper floors in terms of the architectural detailing and materials.
 - (iv) Building D proposes an 8 storey wall height and combined with the extensive use of the same material, lacks articulation, while Building C comprises an 11 storey wall height, with minimal articulation and no variation in massing which will dominate the streetscape along Gloucester Road.
 - (b) The external appearance of the proposed development does not improve the quality or amenity of the public domain arising from the lack of adequate detailing and articulation, which exacerbates the bulk and scale of the proposal, pursuant to Clause 6.10(5)(b);
 - (c) The proposed development has not adequately addressed the following matters pursuant to Clause 6.10(5)(d):
 - (i) The relationship of the development with other development on both the site and within the site in terms of separation, setbacks, amenity and urban form in that the proposed development has an unsatisfactory building separation with respect to the adjoining buildings as well as between the proposed buildings on the site. (Cl 6.10(5)(e)(iv));
 - (ii) The bulk, massing and modulation of buildings in that the proposed buildings are unsatisfactory due to a lack of adequate articulation of the building forms, particularly for Buildings A, B, E and D which combine to create a “C” shaped built form with around 200 metres perimeter length over 5 storeys. There is also an inadequate street wall height and upper level setbacks provided for Buildings D and E above 4 storeys to enhance the streetscape and be consistent with the objectives

- for built form and setbacks, which would provide more visual relief to the street and allow a more even distribution of bulk from the development across the site (Section 6.10(5)(e)(v));
- (iii) The street frontage heights for Building D, consisting of a wall height of 8 storeys, which is inconsistent with the characteristic medium rise streetscape along Gloucester Road comprising 3 to 4 storey walk up apartments. This street frontage height results in an adverse impact on the streetscape (Clause 6.10(3)(5)(vi));
 - (iv) The proposed interfaces with the public domain are unsatisfactory in that the proposed building entry areas are recessed from the building edge, are awkwardly shaped and are not clearly identifiable or distinguishable from the street, which does not enhance the presence of the building in the streetscape. The proposed substation in a prominent location along the Gloucester Road frontage results in a 14 metre blank wall to the street at this prominent corner and reduces street activation along this frontage. The majority of the street entry / pedestrian access to the Commercial Lobby for Building C will be blocked by the existing bus stop located almost at the site boundary (Clause 6.10(5)(e)(x));
 - (v) The proposed landscape design is unsatisfactory given there is inadequate podium planting depths which will reduce the opportunities for landscaping on the site (Clause 6.10(5)(e)(xi));
 - (vi) The proposed waste management arrangements for the site are unsatisfactory in that a sufficient area for waste management has not been adequately demonstrated (Clause 6.10(5)(e)(xiv)); and
 - (vii) The promotion of safety has not been achieved by the proposal in that there are a number of blind corners identified in the basement levels and the ground floor levels (Clause 6.10(5)(e)(xv)).
4. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the development does not provide adequate consideration of environmental sustainability in the design of the development and accordingly, consent cannot be granted pursuant to Clause 6.11(3) of *Georges River Local Environmental Plan 2012*.
5. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the design quality of the proposal when evaluated in accordance with the design quality principles is unacceptable, contrary to Clause 28(2)(b) of *State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development* ('SEPP 65') and adequate regard has not been demonstrated to the design quality principles contrary to Clause 30(2)(a) of SEPP 65. Consent must not be granted as the proposal does not demonstrate that adequate regard has been given to the design quality principles.

In particular, the proposal is inconsistent with the following design quality principles:

- (a) Principle 1: Context and neighbourhood character as the proposed development does not respond to its context given the inconsistencies with the building separation and side setback controls. These building alignment controls assist in providing the character of the area since landscaping and open space can be provided throughout the site when appropriate building separation and side setbacks are provided. The proposed facades of the building are also unsatisfactory and reduce the compatibility of the proposal with surrounding development given the bulk and scale of the proposed building forms is not sufficiently mitigated.
- (b) Principle 2: Built form and scale as the proposed building form and massing is inconsistent with the setbacks, street frontage heights, building separation controls for the site and the lack of legibility of the residential entry lobbies is unsatisfactory. The lack of articulation and manipulation of the building elements, particularly for the 'C shaped' area of Building A, B, D and E as well as the street façade of Building D, to reduce bulk and scale is unsatisfactory. The proposed 8 storey wall height of Building D along Gloucester Road does not provide any substantial articulation which will dominate the surrounding residential context. Building E also does not provide any substantial articulation.

- (c) Principle 5: Landscaping as the proposed landscape design is considered to be unsatisfactory in that there is lack of adequate podium planting depths which reduces the available landscaping opportunities on the site given the large extent of podiums across the site. The proposed deep soil zone has not been provided in accordance with the DCP controls and is inadequate for the size of the site, being larger than 1500 square metres and there is an inadequate amount of canopy cover as outlined in the Development Control Plan.
 - (d) Principle 7: Safety as there are a number of safety concerns in the basement in relation to potential entrapment sites and concealment opportunities. There are also concerns with the interface of the proposal with the public domain in relation to the deeply recessed entry areas and the lack of surveillance of the street entry points. The lifts also face away from the street which reduces overlooking of these areas from the street.
 - (e) Principle 9: Aesthetics as the architectural expression of the proposed development is considered to be unsatisfactory in that the visual interest in the façades has not been provided, with the proposed façades not contributing to the aesthetic appeal of the building or the character of the area. The repetition of the face brick exacerbates the bulk of the buildings to the street, with the proposed corbelling not having a high degree of legibility from the street.
6. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal does not comply with the building separation design criteria or the objectives of Part 3F-1 of the *Apartment Design Guide* given the separation between buildings on adjoining sites and within the site does not ensure visual privacy is achieved. Pursuant to Clause 30(2)(b) of *State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development*, consent cannot be granted as the proposal does not demonstrate that adequate regard has been given to the objectives specified in the Apartment Design Guide for the building separation (visual privacy) design criteria. Further, the application does not provide sufficient information as to whether the objectives have been satisfied for the design criteria for apartment layout (Part 4D) and private open space and balconies (Part 4E) of the ADG.
7. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as there are numerous inconsistencies with the *Apartment Design Guide* pursuant to Clause 28(2)(c) of *State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development* ('SEPP 65') which result in an unsatisfactory impact to amenity, adjoining properties and the streetscape, including the following:
- (a) Part 3C: Public Domain Interface in that there are limited opportunities for casual surveillance of the street from the residential lobby areas due to the long, recessed nature of the corridors from the street and awkwardly shaped entries into the proposed buildings. Opportunities have also not been provided for casual interaction between residents and the public domain on these areas given the small and narrow areas provided. The amenity of the public domain is not enhanced since the substation and other service requirements are located along the street frontages and often adjoining entry areas, which results in a lack of street activation along this frontage and is unsatisfactory.
 - (b) Part 3E: Deep Soil Zones in that the site is larger than 1,500m² and therefore 15% of the site area should be provided as deep soil zone as outlined in the design guidance, which is not provided.
 - (c) Part 3F: Visual Privacy in that the proposal does not comply with the building separation distances to both side boundaries for adjoining properties as well as within the site. In particular, Buildings A and E are not adequately setback from side boundaries while Buildings A (from Level 5) to B and Buildings B to C (from Level 2) are also inadequately separated within the site. The proposal has

minimal steps proposed in the buildings, in particular Building D and an increased separation distance of 3 metres when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping has not been provided for Building E.

- (d) Part 3G: Pedestrian access and entries in that the proposed residential entry lobbies are not clearly visible or distinguishable as these areas are narrow and/or inset from the building edge and are often obstructed by building services. The proposed building entries and pedestrian access do not adequately connect to and address the public domain and the lift lobbies are not clearly visible from the street given they are recessed into the building and are awkward shaped areas with no surveillance of this area from the street.
 - (e) Part 4D: Apartment size and layout in that the application does not provide sufficient information to assess whether the proposal satisfies the design criteria and design guidance for this Part.
 - (f) Part 4E: Private Open Space and balconies in that the application does not provide sufficient information to assess whether the proposal satisfies the design criteria and design guidance for this Part, including the recommended wind measures outlined in the Wind Report.
 - (g) Part 4H: Acoustic Privacy in that there are several apartments located in close proximity to noise sources such as circulation areas in Building D.
 - (h) Part 4M: Facades in that the proposed building facades do not provide visual interest along the street as the façades lack a composition of varied building elements, a defined base, middle and top of buildings and clearly defined entries have not been provided. The proposal building facades are not well resolved with an appropriate scale and proportion to the streetscape and lacks well composed horizontal and vertical elements.
 - (i) Part 4P: Planting on Structures in that the proposal provides inadequate soil depths for the proposed podium planting and therefore plant growth will not optimised.
 - (j) Part 4W: Waste Management in that the proposed waste rooms provide an insufficient area for the required number of bins in the basement.
8. The proposed development is considered unacceptable as the proposal is inconsistent with the objects of the *Environmental Planning and Assessment Act 1979* pursuant to Section 1.3 in that the proposed built form, including the proposed height of the building, does not promote good design and is incompatible with the character of the area contrary to Object (g).
9. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the *Hurstville Development Control Plan No 2* in that:
- (a) The proposal is inconsistent with the urban design principles of Section 8.3.1 since:
 - (i) The proposed development does not achieve design excellence (Objective (a));
 - (ii) The proposal does not provide visually interesting or appealing facades (Objective (b));
 - (iii) The proposal does not address the context of the site in that the building form is not sufficiently articulated or have adequate upper level setbacks (Objective (c));
 - (iv) The proposal does result in a built form outcome that provides a transition to the adjoining sites given the inconsistencies with the side setback controls (Objective (e));
 - (v) The proposal does not provide articulated building facades to enhance streetscape character (Objective (d));
 - (b) The proposal is inconsistent with the built form and setbacks of Section 8.3.3.3 in that:

- (i) There are encroachments into the 5 metre setback for Buildings D and E comprising terrace areas for the proposed ground level units (Section 8.3.3.3(c)).
- (ii) Buildings A and E do not comply with the required side setback of 6 metres as Building A is only setback 3 metres at ground level and Building E has terrace areas encroaching into the 3 metre setback (Section 8.3.3.3(d)).

(c) The proposal is inconsistent with the façade treatment and street corners of Section 8.3.3.4 in that:

- (i) Building facades have not been sufficiently articulated or materials and finishes proposed that enhance and complement the streetscape character (Section 8.3.3.4(a));
- (ii) The proposed development heavily relies on the use of two-dimensional colour and materials to create visual interest with limited articulation in the building form (Section 8.3.3.4(e)); and
- (iii) The proposal does not integrate essential services into the façade in that a substation is proposed in a prominent location, which is unsatisfactory.

(d) The proposal is inconsistent with building entrances and lobbies controls of Section 5.3.9 in that:

- (i) The proposed entrances are not clearly visible or identifiable from the street and public areas (Section 5.3.9(a));
- (ii) The proposed lobby areas do not have a generous street frontage and the lifts are not located to maximise casual surveillance from the street (Section 5.3.9(c)); and
- (iii) The lobby areas have not been designed to provide resident interaction opportunities arising from the awkward and narrow shape of these areas (Section 5.3.9(e)).

10. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the waste management objectives and requirements of Section 6.2.4 Waste Minimisation and Management of the *Hurstville Development Control Plan No 2* in that the proposed waste management arrangements are unacceptable and do not adequately demonstrate compliance with the requirements including:

- (a) The proposed bin storage rooms for each building do not appear to provide the number of waste, recycling and FOGO bins required for the proposal;
- (b) The access and travel distances to the collection point for the bulky waste storage areas are unsatisfactory; and
- (c) The proposal has not made provision for Food Organics and Garden Organics waste on each occupied floor.

11. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with Section 5.3.14 of the *Hurstville Development Control Plan No 2* in that the proposal is inconsistent in relation to the Crime Prevention Through Environmental Design controls since there are areas which offer potential concealment opportunities including:

- (a) A number of blind corners in the basement and the ground floor levels
- (b) Storage and garbage areas in basement levels 1-3;
- (c) Areas of the ground floor façade between Building B and the vehicle entry ramp on the ground floor and between the residential and retail components of Building A on level 1;
- (d) The proposed lifts face away from the street reducing opportunities for natural surveillance of these areas from the street.

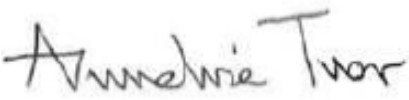

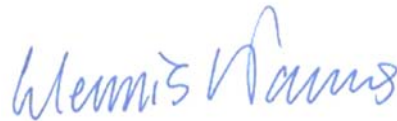
12. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the landscaping and deep soil requirements of the *Hurstville Development Control Plan No 2* including:
- (a) Section 5.3.16 in that there is insufficient podium planting depth for the proposed landscaping regime;
 - (b) Section 8.3.3.7 in that the proposed deep soil zone is not provided along the northwest boundary adjoining Building A; and
 - (c) Section 8.3.3.8(b) in that the proposed canopy cover required to compensate for the loss of trees on the site for the proposal has not been provided, with the proposed canopy site coverage being undersized by 507m².
13. The proposed development is considered unacceptable pursuant to the provisions of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* as the proposal is not in the public interest as it is inconsistent with numerous planning controls in relation to the adverse impacts on the streetscape and amenity of immediately adjoining properties. The proposal also lacks good urban design and will negatively affect the character and nature of the neighbourhood.
14. The application is unsatisfactory in that there is inadequate information on the following matters:
- (a) Future ownership and management of the publicly accessible areas on the site;
 - (b) The recommended full height impermeable screens for the corner balconies for the units in the eastern corner of Building C; and
 - (c) There are inadequate building sections provided for the proposal.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition. The panel notes that issues of concern included:

- Traffic impacts and parking
- Privacy and overlooking
- Loss of natural light
- Impact on view
- Construction management and impacts (including asbestos)
- Building height
- Air quality and noise pollution
- Overdevelopment of the site
- Reduction in property value
- Visual impact
- Tree removal

The panel considers that concerns raised by the community have been adequately addressed in the assessment report.

PANEL MEMBERS	
 Annelise Tuor (Chair)	 Penelope Holloway
 Glennis James	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSSH-110 – Georges River - DA2022/0061
2	PROPOSED DEVELOPMENT	Demolition of existing structures, remediation and construction of an 8 to 18 storey mixed use development comprising 5 buildings consisting of retail and commercial uses and 349 residential apartments over 3 basement levels
3	STREET ADDRESS	9 Gloucester Road, Hurstville
4	APPLICANT/OWNER	Applicant: Sutherland and Associates Planning Owner: GTB Hurstville Pty Ltd
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"> State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2024 State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 Georges River Environmental Plan 2021 Draft environmental planning instruments: Draft Remediation of Land SEPP Development control plans: Hurstville Development Control Plan No 2 – Amendment 12 ('HDCP No 2') Planning agreements: A planning agreement was entered into in association with the planning proposal for the site. 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"> Assessment report: 5 September 2023 Clause 4.6 variation request to vary height Written submissions during public exhibition: five (5)

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Kick Off Briefing: 22 March 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Helen Lochhead (Chair), Stuart McDonald, Sam Stratikopoulos ○ <u>Council assessment staff</u>: Michael Hornery, Judy Clark, Catherine McMahon, Nicole Askew ○ <u>Applicant representatives</u>: Aaron Sutherland, Stephen Cox, Carolina Alvarez, Mark Maryska ○ <u>Department staff</u>: Leanne Harris, Carolyn Hunt and Holly McCann • Site inspection: Panel members performed individual site inspections at various times. • Council Briefing: 23 August 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Helen Lochhead (Chair), Stuart McDonald, Sam Stratikopoulos ○ <u>Council assessment staff</u>: Michael Hornery, Judy Clark, Catherine McMahon, Nicole Askew ○ <u>Department staff</u>: Carolyn Hunt and Sharon Edwards • Assessment Briefing: 6 June 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Annelise Tuor (Chair), Glennis James, Penelope Holloway, Elise Borg, Sam Stratokopoulos ○ <u>Council assessment staff</u>: Nicole Askew, Brendan Leo ○ <u>Department staff</u>: Lillian Charlesworth and Timothy Cook • Final briefing to discuss independent planner's recommendation: 18 September 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Annelise Tuor (Chair), Glennis James, Penelope Holloway ○ <u>Council assessment staff</u>: Nicole Askew ○ <u>Independent planning consultant</u>: Kim Johnston ○ <u>Applicant representatives</u>: Aaron Sutherland, Stephen Cox ○ <u>Department staff</u>: Lillian Charlesworth and Lisa Foley
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not provided