

9 August 2023

Ms Annelise Tuor
Chair
Sydney South Planning Panel
Planning Panels Secretariat
Department of Planning and Environment
enquiry@planningpanels.nsw.gov.au

Dear Ms Tuor,

DEVELOPMENT APPLICATION FOR 113 WILLARONG ROAD, CARINGBAH (PPSSSH-126 / DA22/1126)

I refer to the development application (DA) for the construction of 9 residential flat buildings comprising 686 dwellings (of which 351 are affordable housing) and 4 multi-level basement car parking areas for 886 cars; site preparation and formation works including tree removal, remediation, cutting and filling; landscaping works; civil engineering works including an access road, stormwater drainage and on-site detention facilities, for the site at 113 Willarong Road, Caringbah.

The DA is scheduled for determination by the Sydney South Planning Panel (Panel) on 14 August 2023. An assessment report prepared by our practice on behalf of the Department of Planning and Environment (the Department) has been submitted to the Panel.

Further to the information provided in the assessment report, we submit the following additional information on behalf of the Department for consideration by the Panel in relation to the subject DA.

As outlined in the assessment report, the site is subject to a stage 1 concept DA (DA16/0388) approved by the Land and Environment Court on 7 September 2020. This consent will lapse 5 years from the date of operation, it is active but has not yet commenced. The approved development comprises a 3-stage master plan for the site comprising 12 residential flat buildings, with stage 1 construction of 3 of the buildings. The floor space ratio (FSR) of the development is 1.38:1.

The subject DA is a separate proposal and is not specifically nominated as a stage 2 application pursuant to the above stage 1 development consent. In this respect, and as detailed in the assessment report and outlined below, the current proposal is **not** consistent with the stage 1 development consent for the site.

Section 4.24 of the *Environmental Planning and Assessment Act 1979* (the Act) states that:

- (2) *While any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site.*

The subject DA is **not** consistent with the stage 1 development consent (DA16/0388) in that:

- The FSR has been substantially increased from 1.38:1 to 2.06:1.
- The internal loop road that provides access to the adjoining properties fronting Taren Point Road and Kingsway as well as providing addresses to the individual buildings within the site has been removed.

- The number of buildings, building footprints, disposition and setbacks from the property boundaries have been substantially altered, with the consequence that the development would have inadequate internal amenity as well as increased environmental and amenity impacts on the adjoining land.

Based on the provisions of section 4.24 of the Act, while a consent for a concept development proposal remains in force for a site, any further development application in respect of the site cannot be inconsistent with that consent for the concept proposal. In this case, the subject DA is inconsistent with the previous stage 1 concept development consent that is still in force. There is no section 4.56 modification lodged with Sutherland Shire Council to amend the stage 1 concept proposal to facilitate the outcome envisaged by the current DA.

While it is acknowledged that the application of section 4.24 of the Act has not yet been tested or clarified by relevant case laws, the subject DA does not satisfy the provisions of section 4.24 of the Act by virtue of the inconsistency with the approved stage 1 concept proposal that is still in force. On this basis, we submit that the subject DA cannot be approved due to the requirements of section 4.24 of the Act not being met.

Accordingly, we would recommend the following additional reason for refusal be considered.

- (j) The proposal is inconsistent with the consent issued for the stage 1 concept development application for the site that remains in force, and as such does not satisfy the provisions of section 4.24(2) of the *Environmental Planning and Assessment Act 1979*.

Should you have any further questions on this matter, please do not hesitate to contact the undersigned or Simon Ip on 9071 1896.

Yours sincerely



Susan E Francis
Executive Director