

DATE OF DETERMINATION	17 August 2023
DATE OF PANEL DECISION	14 August 2023
DATE OF PANEL MEETING	14 August 2023
PANEL MEMBERS	Annelise Tuor (Chair), Penelope Holloway, Glennis James, Carol Provan,
APOLOGIES	Stephen Nikolovski
DECLARATIONS OF INTEREST	None

Public meeting held by videoconference on 14 August 2023, opened at 10:00am and closed at 10.40am.

MATTER DETERMINED

PPSSSH-126 – Sutherland Shire – DA022/1126 - 113 Willarong Road, Caringbah - Demolition of existing structures, tree removal and the construction of 9 residential flat buildings containing affordable rental housing under State Environmental Planning Policy (Housing) 2021, an internal access road, parking and Strata subdivision.

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 matters 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 Sutherland Shire Local Environmental Plan 2015 (LEP), the panel is not satisfied that:

- the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- the development is in the public interest because it is consistent with the objectives of cl. 4.3 (Height of Buildings) of the LEP and the objectives for development in the R4 High Density Residential Zone.

Development application

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

REASONS FOR THE DECISION

The panel determined to refuse the application for the reasons outlined below:

- The proposal is not consistent with the stage 1 development consent (DA16/0388) for the site, which remains in force, and as such does not satisfy the provisions of section 4.24(2) of the *Environmental Planning and Assessment Act 1979*. In particular:
 - The FSR has been substantially increased from 1.38 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 individual buildings within the site, has been removed. An internal road (Burrawang Lane), with a single access point to Willarong Road, is now proposed.
 - The number of buildings, building footprints, disposition and setbacks from the property boundaries, internal road network and landscaping 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.

(b) The proposal does not satisfy the relevant provisions of the Housing SEPP 2021 as follows:

- i) The proposal does not satisfy the pre-conditions for obtaining a bonus floor space ratio of 0.5:1 under section 17(1)(a)(i) of the Housing SEPP 2021, in that less than 50% of the gross floor area would be dedicated for affordable housing.
- ii) The proposal does not provide adequate and consistent information to demonstrate that the non-discretionary development standards under section 18 of the Housing SEPP 2021, being landscaped area, deep soil zone, solar access and minimum internal area, have been met. A clause 4.6 variation may be required to justify the contravention of the standards.
- iii) The proposal fails to demonstrate the design requirements under section 19 of the Housing SEPP 2021 have been satisfied.
- iv) There is insufficient information to demonstrate that the nominated affordable housing will be used and maintained as such for a minimum period of 15 years, as required in section 21 of the Housing SEPP 2021.
- v) A clause 4.6 variation may be required for any non-compliance with the apartment sizes and layout requirements in the Apartment Design Guide, as the non-discretionary development standard stated in section 18(2)(h) of the Housing SEPP 2021 requires development to achieve the minimum internal area specified in the ADG for each type of apartment.

(c) The proposal does not satisfy the aims of Chapter 2 'Vegetation in non-rural areas', under section 2.1 of SEPP (Biodiversity and Conservation) 2021 due to the excessive removal of native trees on the site, including the critically endangered Sydney Turpentine Ironbark Forest (STIF) community.

(d) The proposal does not demonstrate adequate regard to the design quality principles of SEPP No. 65 Design Quality of Residential Apartment Development. The proposal has not provided adequate regard to the objectives specified in the Apartment Design Guide relating to site context and local character, community and public open space, visual privacy, pedestrian access and entries, solar and daylight access, natural ventilation, apartment size and layout, common circulation and spaces, and acoustic privacy. As such, development consent cannot be granted pursuant to section 30(2) of this SEPP.

(e) The proposal has not adequately considered the road network capacity and any required intersection upgrade by failing to provide digital copies of SIDRA modelling and information requested by Transport for NSW as part of its comments made pursuant to section 2.122 of SEPP (Transport and Infrastructure) 2021.

(f) The proposal does not satisfy the relevant provisions of the Sutherland Shire LEP 2015 as follows:

- i) The proposal is inconsistent with the aims of the LEP specified in clause 1.2(2)(a), (c) and (f) as it would not achieve an appropriate balance between development and management of the environment, protect and enhance the amenity of existing and future residents, and retain and rehabilitate significant vegetation on the site.
- ii) The proposal does not satisfy the objectives of the R4 High Density Residential zone in that it does not provide facilities or services to meet the day to day needs of the residents, nor promote a high standard of urban design and residential amenity in a landscape setting.

- iii) The proposal does not comply with the height of buildings standard under clause 4.3(2) nor the pre-conditions for obtaining the bonus height under clause 4.3(2E)(e), as vehicular access is not provided to all lots within the adjoining land identified as "Area 5A" on the Height of Buildings Map. The clause 4.6 variation request fails to demonstrate that compliance with the height of buildings standard, which in this case is specified in Clause 4.3(2), is unreasonable and unnecessary and has not provided sufficient environmental planning grounds to justify the contravention of the standard.
 - iv) The proposal does not comply with the floor space ratio standard under clause 4.4(2) nor the pre-conditions for obtaining the bonus floor space pursuant to clause 4.4(2A)(a). There is no clause 4.6 variation submitted to justify the contravention of the applicable development standard, which in this case is specified in Clause 4.4(2).
 - v) The proposal has not provided adequate and consistent information to establish that the landscaped area requirement under clause 6.14 has been satisfied.
 - vi) The proposal does not satisfy the urban design matters specified in clause 6.16(1)(e) and clause 6.17(b), (c), (e) and (f).
- (g) The proposal does not facilitate alternative vehicular access to the adjoining properties fronting Taren Point Road and Kingsway to reduce direct access from the above main roads, which is envisaged as a strategic outcome for the locality in the Sutherland Shire LEP 2015.
- (h) The proposed single access point to the site and narrow width of Burrawang Lane are not supported due to the lack of an individual street address for all buildings, insufficient permeability for both pedestrians and vehicles that does not facilitate integration with the surrounding residential neighbourhood, inadequate access for service and emergency vehicles, increased traffic impact on Willarong Road and lack of vehicular access to the adjoining properties fronting Taren Point Road and Kingsway as envisaged as a strategic outcome in the Sutherland Shire LEP 2015.
- (i) The proposal does not satisfy the objectives and controls in Part 4 'Tree and Bushland Vegetation' of Chapter 39 'Natural Resource Management' of the Sutherland Shire DCP 2015 due to the excessive tree removal and the inadequate landscape design to facilitate restoration of Green Web corridor.
- (j) The proposal does not satisfy the objectives and controls in Part 5 'Streetscape and Building Form', Part 6 'Street Setbacks', Part 7 'Side and Rear Setbacks', Part 8 'Landscape Design' and Part 10 'Solar Access' of Chapter 7 'Caringbah North Residential Flat Precinct' of the Sutherland Shire DCP 2015, in that the building and landscape design have not appropriately responded to the context and setting of the site and mitigated impacts on the amenity of the adjoining and nearby properties.
- (k) The proposal is not good design and is an over development of the site due to the buildings' heights and floorplates; homogenous façade articulation and material palette, which do not mitigate the excessive bulk and scale; the quality of landscaped areas; the site's access arrangements and the amenity provided to future occupants.
- (l) The proposal has not sufficiently addressed or resolved stormwater management, vehicular access and car parking configuration, fire safety and site facilities required to support the development.
- (m) The documentation supporting the development application is deficient in crucial information and contains errors in floor space calculations.
- (n) The proposal will result in detrimental environmental and social impacts on the locality. The site is not considered to be suitable for the proposed development.

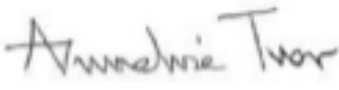

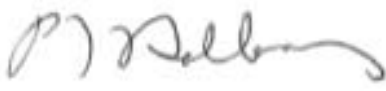

- (o) For the above reasons, the proposal is not in the public interest and valid public objections have been received.

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. The panel notes that issues of concern included:

- Traffic, parking, access, road capacity and safety
- Infrastructure capacity
- Height, bulk and scale
- Lack of amenities and open space
- Social impact in terms of crime risk and over-crowding
- Insufficient affordable housing
- Loss of trees and vegetation
- Noise
- Visual privacy
- Waste management
- Construction impacts
- Contamination

The panel considers that concerns raised by the community have been considered in the assessment report and that no new relevant issues requiring further assessment were raised during the public meeting.

PANEL MEMBERS	
 Annelise Tuor (Chair)	 Glennis James
 Penelope Holloway	 Carol Provan

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSSH-126 – Sutherland Shire – DA022/1126
2	PROPOSED DEVELOPMENT	Demolition of existing structures, tree removal and the construction of 9 residential flat buildings containing affordable rental housing under State Environmental Planning Policy (Housing) 2021, an internal access road, parking and Strata subdivision.
3	STREET ADDRESS	113 Willarong Road, Caringbah
4	APPLICANT/OWNER	Applicant: Tier Architects Owner: Caringbah NSW 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 (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development Sutherland Local Environmental Plan 2015 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Sutherland Development Control Plan 2015 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Nil 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"> Consultant assessment report: 19 July 2023 and supplementary information dated 9 August 2023 Clause 4.6 variation request to vary clause 4.3 Height of Buildings Written submissions during public exhibition: 70 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Angie Wilcock on behalf of residents within the adjoining Oasis apartment building Marilyn Urch on behalf of the North Cronulla and Woollooware Precinct Committee Sarah Davis Total number of unique submissions received by way of objection: 70
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Kick Off Briefing: 6 March 2023 <ul style="list-style-type: none"> Panel members: Annelise Tuor (Chair), Penelope Holloway, Glennis James, Carol Provan

		<ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Vivian Tran, Beth Morris, Slavco Bujaroski, Meredith Bagnall, Dianne Copping, Rachel Corry ○ <u>Applicant representatives</u>: Nicholas Nasser, Benjamin Black <ul style="list-style-type: none"> ● Final briefing to discuss council's recommendation: 14 August 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Annelise Tuor (Chair), Penelope Holloway, Glennis James, Carol Provan, Stephen Nikolovski ○ <u>Council assessment staff</u>: Slavco Bujaroski, Meredith Birchall, Sue McMahon ○ <u>DPE Consultants</u>: Simon Ip ○ <u>Applicant representatives</u>: none
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A