

## DETERMINATION AND STATEMENT OF REASONS

### SYDNEY SOUTH PLANNING PANEL

<b>DATE OF DETERMINATION</b>	15 June 2023
<b>DATE OF PANEL DECISION</b>	7 June 2023
<b>DATE OF PANEL MEETING</b>	5 June 2023
<b>PANEL MEMBERS</b>	Annelise Tuor (Chair), Penelope Holloway and Glennis James
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	Bilal El-Hayek declared a Conflict of Interest as Council was involved in a planning proposal for the subject site and did not participate Charlie Ishac declared a Conflict of Interest as Council was involved in a planning proposal for the subject site and did not participate

Public meeting held by teleconference on 5 June 2023 opened at 2:00 pm and closed at 2.37pm.  
Papers circulated electronically on 29 May 2023.

#### MATTER DETERMINED

PPSSSH-132 – Canterbury-Bankstown – DA-91/2023 at 355 Waterloo Road, 353 Waterloo Road and 87 Norfolk Road, Greenacre – Concept DA encompassing Stages 1 and 2 of proposed redevelopment of the subject sites, with a detailed DA for Stage 1 of the proposed redevelopment. Concept DA (for Stages 1 & 2) includes: public roads and public domain layout; building envelopes (retail, residential and childcare centre); and parking. Stage 1 Detailed Development Application includes: the redevelopment of the southern part of existing shopping centre; construction of basement car parking, a 130-place childcare centre and 90 residential units in a residential flat building arrangement up to 6 storeys in height; demolition of existing dwelling and construction of a new road at 87 Norfolk Rd; landscaping and associated civil works and services.

#### 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 observed at site inspection listed at item 8 in Schedule 1.

#### Request for deferral

The Panel notes that an appeal has been lodged to the Land and Environment Court against the deemed refusal of the application. The Panel also notes the applicant's request that the development application be deferred to enable amended plans and further information to be provided. However, the Panel is not satisfied that the suggested changes would resolve the issues and therefore deferral of the application is not warranted. Furthermore, the extent of changes, further information and the time required would result in unacceptable delays to the determination of the application.

#### Application to vary a development standard

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Bankstown Local Environmental Plan 2015 (LEP), which seeks to demonstrate that:

- compliance with cl. 4.3 and cl. 6.14 of the LEP is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standards

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. It is not consistent with the objectives of cl. 4.3 and cl 6.14 of the LEP and the objectives for development in the B2 Local Centre zone.

## 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

1. The application fails to comply with the requirements of Section 6, State Environmental Planning Policy (Building Sustainability Index: Basix) 2004 [*Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979*] because the certificate is based on incorrect information.
2. The application fails to comply with the requirements of Chapter 4, State Environmental Planning Policy (Resilience and Hazards) 2021 [*Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979*] due to failure to provide an up to date preliminary site investigation (section 4.6 of the SEPP).
3. The application fails to comply with the requirements of State Environmental Planning Policy (Transport and Infrastructure) 2021 [*Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979*] due to insufficient detail to enable a full assessment of the requirements under part 3.3 of the SEPP to determine whether the proposed child care centre could accommodate 130 places and its associated impacts.
4. The application fails to comply with the requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development [*Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979*] in terms of satisfying the design quality principles in the SEPP and requirements of section 6A of the Apartment Design Guide, as outlined in Council's assessment report.
5. The application fails to comply with the requirements of both Part 7 of the Biodiversity Conservation Act 2016 and Part 2.2 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 relating to the need for a vegetation management plan, minimum deep soil areas and an amended landscape plan to mitigate the effects to threatened species or their habitats.
6. The application fails to comply with the requirements of the Bankstown Local Environmental Plan 2015 [*Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979*]. In particular, the permissibility of the access to the development from Norfolk Road, non-compliance with the height controls in clauses 4.3 and 6.14, satisfaction of the requirements in clause 4.6 and the criteria in clause 6.14 (in particular deep soil and commercial floor space) and whether clause 6.14 is a standard that can be varied by clause 4.6, and other matters as outlined in Council's assessment report.
7. The application is not consistent with the requirements of the Draft Canterbury Bankstown Local Environmental Plan 2023 [*Pursuant to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*]. In particular, the design quality of the development.
8. The application fails to comply with the requirements of the Bankstown Development Control Plan 2015 [*Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979*]. In particular, the site specific controls in Part A3 section 9 of the DCP and the absence of an indicative concept plan with sufficient detail to provide an understanding of the redevelopment of the whole site.
9. The application fails to satisfy the requirements of Section 7.4 of the Environmental Planning and Assessment Act 1979 [*Pursuant to Section 4.15(1)(a)(iiia) of the Environmental Planning and Assessment Act 1979*] with regard to the adopted Planning Agreement.

10. The proposed development is likely to result in adverse impacts on the locality [*Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979*] regarding traffic impacts, the impact on the adjoining reserve, properties adjoining Norfolk Road and other matters as detailed in Council's assessment report.
11. The Panel has considered submissions [*Pursuant to Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979*] and concludes that the matters raised have not been adequately addressed in the proposed development.
12. For the reasons stated above, the site is considered unsuitable for the proposed development [*Pursuant to Section 4.15(1)(c) of the Environmental Planning & Assessment Act, 1979*].
13. For the reasons stated above, it is considered that the development is not in the public interest [*Pursuant to Section 4.15(1)(e) of the Environmental Planning & Assessment Act 1979*].

#### CONDITIONS

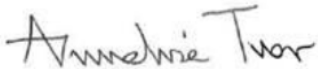

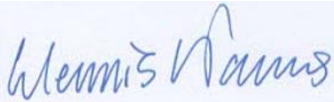
Not Applicable

#### 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 impacts on the surrounding street network
- The safety of pedestrians and motorists due to the proposed site access
- Difficulty of vehicular access to adjoining properties due to new access for the development
- Additional traffic noise
- Reduced visual and acoustic privacy, loss of amenity and pollution
- Landscaping needs to be appropriate to achieve privacy, solar access in mid-winter and not compromise the future development potential of adjoining properties
- Privacy and overshadowing impacts on adjoining homes and private open space
- Overdevelopment
- Impacts on the physical and mental health of adjoining residents (arising from the above concerns)

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
Annelise Tuor (chair) 	Penelope Holloway 
Glennis James 	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSSH-132 – Canterbury-Bankstown – DA-91/2023
2	PROPOSED DEVELOPMENT	Concept DA encompassing Stages 1 and 2 of proposed redevelopment of the subject sites, with a detailed DA for Stage 1 of the proposed redevelopment. Concept DA (for Stages 1 & 2) includes: public roads and public domain layout; building envelopes (retail, residential and childcare centre); and parking. Stage 1 Detailed Development Application includes: the redevelopment of the southern part of existing shopping centre; construction of basement car parking, a 130-place childcare centre and 90 residential units in a residential flat building arrangement up to 6 storeys in height; demolition of existing dwelling and construction of a new road at 87 Norfolk Rd; landscaping and associated civil works and services.
3	STREET ADDRESS	355 Waterloo Road, 353 Waterloo Road & 87 Norfolk Road, Greenacre
4	APPLICANT/OWNER	Dan Maurici (Applicant)/Henroth Pty. Ltd. (owner) and 87 Norfolk Pty. Ltd. (owner)
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>○ State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>○ State Environmental Planning Policy (Planning Systems) 2021</li> <li>○ State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>○ State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development</li> <li>○ State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>○ Bankstown Local Environmental Plan 2015</li> </ul> </li> <li>• Draft environmental planning instruments: <ul style="list-style-type: none"> <li>○ Draft Canterbury-Bankstown Local Environmental Plan 2023</li> </ul> </li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Bankstown Development Control Plan 2015</li> </ul> </li> <li>• Planning agreements: A planning agreement was entered into in association with the planning proposal for the site.</li> <li>• Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i></li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Council Assessment Report: 29 May 2023</li> <li>• Clause 4.6 Variation – Exception to maximum height of buildings – Chullora Marketplace</li> <li>• Written submissions during public exhibition: 23</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ Anas Haswani</li> <li>○ Aiyaz Ali</li> <li>○ On behalf of the applicant – Dan Maurici, Debrah Barr, Stephen Cox, Ben Salon</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>Total number of submissions received by way of objection: 23 (16 unique)</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Kick Off Briefing: 27 March 2023 <ul style="list-style-type: none"> <li><u>Panel members</u>: Annelise Tuor (Chair), Penelope Holloway and Glennis James</li> <li><u>Council assessment staff</u>: Ian Woodward, Stephen Arnold, George Gouvatsos and Michael Bonnici</li> <li><u>Applicant</u>: Dan Maurici, Deborah Barr and Steven Coy</li> <li><u>Other</u>: Amanda Moylan and Timothy Cook (DPE)</li> </ul> </li> <li>Site inspection: 21 March 2023 <ul style="list-style-type: none"> <li><u>Panel members</u>: Annelise Tuor (Chair), Penelope Holloway and Glennis James</li> <li><u>Council assessment staff</u>: Ian Woodward, Stephen Arnold, George Gouvatsos and Michael Bonnici</li> <li><u>Other</u>: Amanda Moylan and Timothy Cook (DPE)</li> </ul> </li> <li>Briefing to discuss Council's assessment: 3 May 2023 <ul style="list-style-type: none"> <li><u>Panel members</u>: Annelise Tuor (Chair), Penelope Holloway and Glennis James</li> <li><u>Council assessment staff</u>: Ian Woodward, Stephen Arnold, George Gouvatsos and Michael Bonnici</li> <li><u>Other</u>: Amanda Moylan and Timothy Cook (DPE)</li> </ul> </li> <li>Final briefing to discuss Council's recommendation: 5 June 2023 <ul style="list-style-type: none"> <li><u>Panel members</u>: Annelise Tuor (Chair), Penelope Holloway and Glennis James</li> <li><u>Council assessment staff</u>: Ian Woodward, Stephen Arnold, Michael Bonnici and Mark Bonanno</li> <li><u>Other</u>: Lillian Charlesworth, Timothy Cook and Nick Ridout (DPE)</li> </ul> </li> <li>Public Meeting: 5 June 2023 <ul style="list-style-type: none"> <li><u>Panel members</u>: Annelise Tuor (Chair), Penelope Holloway and Glennis James</li> <li><u>Council assessment staff</u>: Ian Woodward, Stephen Arnold and Michael Bonnici</li> <li><u>Applicant</u>: Dan Maurici, Debrah Barr, Stephen Cox and Ben Salon</li> <li><u>Other</u>: Lillian Charlesworth and Timothy Cook (DPE)</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Refusal