

Supplementary Report to address the assessment of the application against State Environmental Planning Policy (Housing) 2021

Panel Reference	PPSSSH-143
DA Number	DA2023/0222
LGA	Georges River Council
Proposed Development	Demolition of existing structures, construction of a 10 storey shop top housing and residential flat building development, comprising 102 residential apartments, 3 x commercial tenancies, one office above two (2) levels of basement car parking providing 53 car parking spaces, tree removal, landscaping and site works.
Street Address	1-5 Stanley Street and 1–11 Princes Highway, Kogarah
Applicant/Owner	Applicant: Aaron Sutherland – Sutherland & Associates Planning Owner: Kogarah Investments No.3 Pty Ltd
Date of DA lodgement	12 July 2023
Notification Period Total number of Submissions Number of Unique Objections	<ul style="list-style-type: none"> 31 July 2023 until 17 August 2023 31 March 2024 until 18 April 2024 Twenty Eight (28)
Regional Significant Development Criteria (Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021	The development has a capital investment value of more than \$30 million.
Capital Investment Value of the Development	<ul style="list-style-type: none"> \$34,864,225.00 (excluding GST)
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy (Planning Systems) 2021 Georges River Local Environmental Plan 2021 Georges River Development Control Plan 2021
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> All plans and documents accessible via Planning Portal.
Site Area	<ul style="list-style-type: none"> 2,554.6sqm
Zone	<ul style="list-style-type: none"> R4 High Density Residential.
Land Use Definition	<ul style="list-style-type: none"> <i>Mixed use development</i> means a building or place comprising 2 or more different land uses. <i>Residential flat building</i> means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing. <p>The commercial tenancies will be used for either a shop, restaurant or café all of which are permissible with development consent.</p> <ul style="list-style-type: none"> <i>Shop</i> means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood

	<p>supermarket, but does not include food and drink premises or restricted premises.</p> <p>Note—Shops are a type of retail premises—see the definition of that term in this Dictionary.</p> <ul style="list-style-type: none"> • <i>Restaurant or cafe</i> means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided, but does not include the preparation and serving of food and drink to people that occurs as part of— <ul style="list-style-type: none"> (a) an artisan food and drink industry, or (b) farm gate premises. <p>Note—Restaurants or cafes are a type of food and drink premises—see the definition of that term in this Dictionary.</p> <ul style="list-style-type: none"> • <i>Food and drink premises</i> means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following— <ul style="list-style-type: none"> (a) a restaurant or cafe,
Permissibility	<ul style="list-style-type: none"> • Permitted with Development Consent
Report prepared by	Brendan Leo
Report date	27 May 2024

Following the publishing of the report on 27 May 2024, we provide the following supplementary report for consideration of the Sydney South Planning Panel in relation to the development associated with PPSSSH – 143 being DA2023/0222 proposing:

Demolition of existing structures, lot consolidation and construction of a 10-storey shop top housing and residential flat building development containing 102 residential apartments, 3 x commercial tenancies, one office above two (2) levels of basement containing 53 car parking spaces, tree removal, landscaping and site works.

at 1 -5 Stanley Street and 1 – 11 Princes Highway Kogarah, we provide the following assessment against the criterion of *State Environmental Planning Policy (Housing) 2021*, following the repeal of *State Environmental Planning Policy 65 – Design Quality of Residential Flat Development* and the application of *Chapter 4 Design of residential apartment development* of *State Environmental Planning Policy (Housing) 2021*.

State Environmental Planning Policy (Housing) 2021

The Development Application (DA) before the Panel was lodged on 12 July 2023, the *State Environmental Planning Policy (Housing) 2021* (SEPP Housing) came into force on 14 December 2023.

The commencement of this new instrument repealed *State Environmental Planning Policy 65 – Design Quality of Residential Flat Development* (SEPP 65) and inserted new provisions for Residential Flat Buildings under *Chapter 4 Design of residential apartment development*.

The savings provisions of the *SEPP Housing* meant any Development Application lodged but undetermined before the commencement of the *SEPP Housing* were not subject to the provisions of the new SEPP.

This created a situation where Development Applications for Residential Flat Buildings and the like previously covered by the requirements of the repealed *SEPP – 65* were not covered by the new instrument.

The Government has since amended the *Housing SEPP* to correct the oversight which had meant that neither Chapter 4 of the *Housing SEPP* nor the former *SEPP* 65 applied to relevant residential apartment Development Applications made prior to 14 December 2023.

An amendment to the *Housing SEPP* notified on 15 March 2024 has retrospectively amended section 8 of Schedule 7A of the *Housing SEPP* to correct this anomaly.

A new subsection 2A of Schedule 8 *Housing SEPP* clarifies that the new Chapter 4 applies to DAs that were made, but not finally determined, before 14 December 2023, when *SEPP* 65 was repealed.

The following is consideration of this application against the provisions of Chapter 4 of the *Housing SEPP*.

Chapter 4 Design of residential apartment development

142 Aims of chapter

- (1) *The aim of this chapter is to improve the design of residential apartment development in New South Wales for the following purposes—*
 - (a) *to ensure residential apartment development contributes to the sustainable development of New South Wales by—*
 - (i) *providing socially and environmentally sustainable housing, and*
 - (ii) *being a long-term asset to the neighbourhood, and*
 - (iii) *achieving the urban planning policies for local and regional areas,*
 - (b) *to achieve better built form and aesthetics of buildings, streetscapes and public spaces,*
 - (c) *to maximise the amenity, safety and security of the residents of residential apartment development and the community,*
 - (d) *to better satisfy the increasing demand for residential apartment development, considering—*
 - (i) *the changing social and demographic profile of the community, and*
 - (ii) *the needs of a wide range of people, including persons with disability, children and seniors,*
 - (e) *to contribute to the provision of a variety of dwelling types to meet population growth,*
 - (f) *to support housing affordability,*
 - (g) *to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions,*
 - (h) *to facilitate the timely and efficient assessment of development applications to which this chapter applies.*
- (2) *This chapter recognises that the design of residential apartment development is significant because of the economic, environmental, cultural and social benefits of high quality design.*

Officer Comment

This criterion is noted and considered in the assessment of the application in the report previously provided to the Panel.

143 Land to which chapter applies

This chapter applies to the whole of the State, other than land to which State Environmental Planning Policy (Precincts—Regional) 2021, Chapter 4 applies.

Officer Comment

This site is subject to the provisions of *State Environmental Planning Policy (Housing) 2021*.

144 Application of chapter

- (1) *In this policy, development to which this chapter applies is referred to as residential apartment development.*
- (2) *This chapter applies to the following—*
 - (a) *development for the purposes of residential flat buildings,*
 - (b) *development for the purposes of shop top housing,*
 - (c) *mixed use development with a residential accommodation component that does not include boarding houses or co-living housing, unless a local environmental plan provides that mixed use development including boarding houses or co-living housing is residential apartment development for this chapter.*
- (3) *This chapter applies to development only if—*
 - (a) *the development consists of—*
 - (i) *the erection of a new building, or*
 - (ii) *the substantial redevelopment or substantial refurbishment of an existing building, or*
 - (iii) *the conversion of an existing building, and*
 - (b) *the building is at least 3 storeys, not including underground car parking storeys, and*
 - (c) *the building contains at least 4 dwellings.*
- (4) *If particular development comprises development for the purposes specified in subsection (2) and development for other purposes, this chapter applies only to the part of the development for the purposes specified in subsection (2).*
- (5) *This chapter does not apply to development that involves only a class 1a or 1b building within the meaning of the Building Code of Australia.*
- (6) *To avoid doubt, development to which Chapter 2, Part 2, Division 1, 5 or 6 or Chapter 5 applies may also be residential apartment development under this chapter.*
- (7) *In this section— underground car parking storey means a storey used for car parking that is—*
 - (a) *below ground level (existing), or*
 - (b) *less than 1.2m above ground level (existing).*

Officer Comment

The proposal satisfied the definition as it is for a 10 storey shop top housing and residential flat building development, the provisions of *State Environmental Planning Policy (Housing) 2021* apply.

145 Referral to design review panel for development applications

- (1) *This section applies to a development application for residential apartment development, other than State significant development.*
- (2) *Before determining the development application, the consent authority must refer the application to the design review panel for the local government area in which the development will be carried out for advice on the quality of the design of the development.*
- (3) *This section does not apply if—*
 - (a) *a design review panel has not been constituted for the local government area in which the development will be carried out, or*
 - (b) *a competitive design process has been held.*
- (4) *In this section— competitive design process means a design competition held in accordance with the Design Competition Guidelines published by the Department in September 2023.*

Officer Comment

Council does not have a design review panel; the application was considered by Council's Urban Designer.

146 Referral to design review panel for modification applications

- (1) *This section applies to a modification application for residential apartment development, other than State significant development.*
- (2) *If the statement by the qualified designer required to accompany the modification application under the Environmental Planning and Assessment Regulation 2021, section 102(1) does not verify that the qualified designer designed, or directed the design of, the original development, the consent authority must refer the modification application to the relevant design review panel for advice before determining the modification application.*
- (3) *The consent authority may also refer a modification application for residential apartment development to the relevant design review panel for advice before determining the modification application.*
- (4) *The design review panel must advise whether the modification—*
 - (a) *diminishes or detracts from the design quality of the original development, or*
 - (b) *compromises the design intent of the original development.*
- (5) *Subsection (2) does not apply if—*
 - (a) *a design review panel has not been constituted for the local government area in which the development will be carried out, or*
 - (b) *a competitive design process has been held.*

- (6) *In this section—competitive design process means a design competition held in accordance with the Design Competition Guidelines published by the Department in September 2023. Relevant design review panel means the design review panel for the local government area in which the development will be carried out.*

Officer Comment

Non applicable as the proposal is for a Development Application.

147 Determination of development applications and modification applications for residential apartment development

- (1) *Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following—*
- (a) *the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,*
 - (b) *the Apartment Design Guide,*
 - (c) *any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.*
- (2) *The 14-day period referred to in subsection (1)(c) does not increase or otherwise affect the period in which a development application or modification application must be determined by the consent authority.*
- (3) *To avoid doubt, subsection (1)(b) does not require a consent authority to require compliance with design criteria specified in the Apartment Design Guide.*
- (4) *Subsection (1)(c) does not apply to State significant development.*

Officer Comment

The criterion of the *Apartment Design Guide* remained unchanged but its movement from SEPP 65 to the *Housing SEPP*.

The application was assessed against the respective relevant criteria set out in the *Apartment Design Guide* which was outlined in the report previously forwarded to the Panel and remains unchanged by this memo.

148 Non-discretionary development standards for residential apartment development—the Act, s 4.15

- (1) *The object of this section is to identify development standards for particular matters relating to residential apartment development that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

Note— See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

- (2) *The following are non-discretionary development standards—*

- (a) *the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,*
- (b) *the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,*
- (c) *the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.*

Officer Comment

Noted, no more onerous provisions have been applied in this assessment.

149 Apartment Design Guide prevails over development control plans

- (1) *A requirement, standard or control for residential apartment development that is specified in a development control plan and relates to the following matters has no effect if the Apartment Design Guide also specifies a requirement, standard or control in relation to the same matter—*
 - (a) *visual privacy,*
 - (b) *solar and daylight access,*
 - (c) *common circulation and spaces,*
 - (d) *apartment size and layout,*
 - (e) *ceiling heights,*
 - (f) *private open space and balconies,*
 - (g) *natural ventilation,*
 - (h) *storage.*
- (2) *This section applies regardless of when the development control plan was made.*

Officer Comment

Noted. An assessment of the *Apartment Design Guide* criterion is outlined in the report previously provided to the Panel. All compliance and non-compliances are contained in the report. No changes to the assessment of the application against the *Apartment Design Guide* criterion is required in this memo.

As a result of the assessment of the application against *State Environmental Planning Policy (Housing) 2021*, the recommendation and reasons of refusal previously provided to the Panel are to be replaced by the following:

DETERMINATION

Pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 (as amended) it is recommended that the Southern Sydney Planning Panel refuses DA2023/0222 the demolition of existing structures, lots consolidation, construction of a 10 storey shop top housing development and residential flat building development containing 102 residential apartments, 3 x commercial

tenancies, one office suite above two (2) levels of basement containing 53 car parking spaces, tree removal, landscaping and site works at 1-5 Stanley Street and 1-11 Princes Highway, Kogarah for the reasons outlined below.

Reasons for Refusal

1. Refusal Reasons - Environmental Planning Instrument

Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to demonstrate compliance with the requirements of *State Environmental Planning Policy – (Building Sustainability Index: BASIX) 2004*. In particular:

- a) The application failed to provide an updated BASIX Certificate for the residential component of the development based on the amended design demonstrating that the proposal satisfies the minimum requirements of BASIX in terms of water, thermal comfort and energy efficiency as required.

2. Refusal Reasons - Environmental Planning Instrument

Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to demonstrate compliance with the requirements of *State Environmental Planning Policy (Housing) 2021, Chapter 4 Design of residential apartment development*. The following requirements of the *Apartment Design Guide*:

- a) 3H - Vehicle Access – The partial protrusion of the vehicular access proud of the western facade draws the eye to the roller shutter garage door detracting from the streetscape presentation and is not consistent with Objective 3H - 1, which requires developments to create high quality streetscapes.
- b) 3J - Bicycle and carparking - The proposal fails to demonstrate that:
 - i. An adequate number of car parking spaces have been provided to comply with the ADG/RMS car parking minimum requirements even factoring in the reduced rate afforded to location in close proximity to public transport. The proposal is deficient 62 car parking spaces.
 - ii. Adequate loading and waste collection arrangements have been made in the basement for the collection of commercial waste.
- c) 4A - Solar and daylight access - The proposal fails to demonstrate:
 - i. That 70% of living rooms and private open spaces of apartments will receive a minimum of 2 hours direct sunlight between 9am and 3pm during mid-winter.
 - ii. That a maximum of 15% apartments in a building receive no direct sunlight between 9am and 3pm in midwinter
- d) 4B - Natural Ventilation- The proposal fails to demonstrate that at least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.
- e) 4D - 2 Apartment size and layout - The proposal fails to demonstrate that all apartments satisfy the minimum internal area requirements.
- f) 4E - Private Open space and balconies - The proposal fails to demonstrate that all apartments achieve the minimum required private open space areas once the area for the planter boxes is excluded, some balconies are triangular in shape reducing their functionality.

- g) 4M – Facades - The proposal fails to demonstrate well resolved façade treatments with an appropriate scale and proportion to the streetscape and human scale appropriate for the setting.
 - i. The repetition of the solid white painted panels and face brick especially on the southern and eastern façades is too dominant and emphasises horizontality.
 - ii. The western façade is considered too bulky, and the materiality treatment is considered cosmetic especially since the windows proposed are non-essential windows, which may be removed in the future if required. The façade lacks the required articulation that provides depth to the façade and not just a change of materiality.
 - iii. The feasibility of the green wall is questioned once the site to the west is developed as it will likely cast a heavy shadow on the green wall impacting plant growth.
 - iv. The green wall does not provide massing variation for it to be defined as a base/podium with a tower above.
 - v. The western façade lacks articulation and fails to provide the required 6m setback for levels G to 4 storeys and 9m for levels above 4 storeys to the western boundary setback.
- h) 4O – Landscape Design - The proposal fails to demonstrate an acceptable landscape design outcome for the site.
- i) 4U – Energy Efficiency - The proposal fails to demonstrate compliance with the requirements of BASIX in terms of energy efficiency, water saving and thermal comfort.
- j) 4W – Waste Management - The proposal fails to demonstrate an acceptable waste management plan and specific waste collection arrangements.

3. Refusal Reasons - Environmental Planning Instrument

Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to demonstrate compliance with the requirements of *Georges River Local Environmental Plan 2021*. In particular:

- a) 4.3 Height of Buildings - the application has not demonstrated compliance with the maximum building height of 33m for the subject site.
- b) 4.6 Exceptions to development standards - the application has not provided a 4.6 Variation request to the non-compliance with clause 4.3 Height of Buildings that demonstrates that:
 - i. compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - ii. there are sufficient environmental planning grounds to justify the contravention of the development standard.
- c) 6.10 Design Excellence - the proposal has numerous unresolved issues and is not supported from an urban design perspective as it has not demonstrated design excellence as required by the clause.
- d) 6.11 Environmental sustainability – the proposal has not demonstrated that it has achieved the minimum level of environmental sustainability as the proposal does not include a BASIX certificate for the residential apartments.

4. **Refusal Reasons – Development Control Plan**

Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the application fails to demonstrate compliance with the following requirements:

- a) 3.3 Landscaping - the proposal has not demonstrated a satisfactory landscape outcome for the site or the vegetation on adjoining properties.
- b) 3.11 Ecologically Sustainable Development – Residential Buildings - the proposal has not demonstrated compliance with the minimum requirements of SEPP (Building Sustainability Index: BASIX) 2004 in terms of water saving, thermal comfort and energy efficiency.
- a) 10.1.6(1) Kogarah North Precinct - Siting and Consolidation of Development Sites - The design fails to provide a defined podium level through setbacks on the western side reducing the building articulation which is not supported by Council's Urban Designer as an acceptable design outcome.
- b) 10.1.6(1) Kogarah North Precinct - Siting and Consolidation of Development Sites – The applicant fails to provide documentary evidence in the application of 2 written valuations and the written response by the owner of 7 Stanley Street to the written offers to purchase the site as required by the development control plan to demonstrate that appropriate measures have been undertaken to acquire the site.
- c) 10.1.6(1) Kogarah North Precinct - Siting and Consolidation of Development Sites – The application fails to demonstrate the viability of redeveloping the isolated sites (7,9, 9A Stanley Street) without relying upon significant variations to the relevant planning controls as required by the development control plan.
- d) 10.1.6(4)(2) Kogarah North Precinct – setbacks - the proposal has not provided an adequate setback to the western boundary leaving little opportunity for the planting of canopy trees.
- e) 10.1.6(4)(3) Kogarah North Precinct – setbacks - the proposal has not provided an adequate setback of the basement level to the front boundary which reduces the opportunity for deep soil planting within the front setback.
- f) 10.1.6(4)(4) Kogarah North Precinct – setbacks – the proposal fails to demonstrate that all ground floor dwellings are equal to or above street level.
- g) 10.1.6(4)(4) Kogarah North Precinct – setbacks - the proposal fails to demonstrate that the western boundary setbacks are compliant with the relevant controls.
- h) 10.1.6(4)(7) Kogarah North Precinct – setbacks – the western elevation features a largely blank wall dressed up with some false windows and curved white painted concrete that Council's Urban Designer finds unacceptable.
- i) 10.1.6(10) Kogarah North Precinct - Impact of Development on the Road/Pedestrian Network - the proposal fails to demonstrate adequate onsite car parking and that the proposal will not have an unacceptable negative impact upon on street carparking availability in the locality.

- j) 10.1.6(12) Kogarah North Precinct - Vehicular Access and Car parking - the proposal fails to demonstrate adequate onsite car parking and that the proposal will not have an unacceptable negative impact upon on street carparking availability in the locality.
- k) 10.1.6(13) Kogarah North Precinct - Architectural Articulation – Façade – the proposal fails to demonstrate an acceptable level of articulation in the design of the building along the western façade.
- l) 10.1.6(23) Kogarah North Precinct - Architectural Articulation – Balconies – the proposal fails to incorporate balconies into the western façade and some of the balconies proposed on other facades are not functional due to their triangular shapes and planter boxes.

5. Refusal Reasons – Likely Environmental Impacts

Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the application fails to demonstrate that it will not lead to adverse environmental impacts on both the natural and built environment in the locality.

- a) The proposal has not demonstrated that it will make a positive contribution to the streetscape and the character of the area as the siting, scale, bulk, massing, architectural language and design elements of the development is generally inconsistent from an urban design perspective. The proposal fails to accord with multiple planning controls and represents an inappropriately designed development that is not supported.

6. Refusal Reasons – Suitability of the Site

Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the application fails to demonstrate that suitability of the site for the proposed development. In particular:

- a) The proposal fails to comply with multiple planning controls and represents an inappropriately designed development that is not suitable for the site.

7. Refusal Reasons – Public Interest

Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development has failed to demonstrate compliance with the relevant planning policies and that it will not cause an unacceptable negative impact in the locality. The proposed development is not considered to be in the public interest and is likely to set an undesirable precedent if approved.