

<b>DATE OF DETERMINATION</b>	30 May 2024
<b>DATE OF PANEL DECISION</b>	30 May 2024
<b>PANEL MEMBERS</b>	Annelise Tuor (Chair), Penelope Holloway, Glennis James, Sam Stratikopoulos, Ashvini Ambihaipahar
<b>APOLOGIES</b>	Sam Stratikopoulos
<b>DECLARATIONS OF INTEREST</b>	None

Panel Briefing held by teleconference on 27 May 2024, opened at 9:10 am and closed at 11:15am.  
Papers circulated electronically on 21 May 2024 and 27 May 2024.

#### **MATTER DETERMINED**

PPSSH-143 – Georges River Council – DA2023/0222 at 1 -5 Stanley Street and 1 – 11 Princes Highway Kogarah – 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.

#### **PANEL CONSIDERATION AND DECISION**

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

#### **Application to vary a development standard**

The application did not include a written request to vary a development standard from the applicant, made under cl 4.6 (3) of the Georges River Local Environmental Plan 2021 (LEP 2021).

#### **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 application for the reasons outlined in council's Assessment Report as updated by the supplementary memo (summarised below and reproduced in full in Schedule 2 ):

- No written request pursuant to clause 4.6 of LEP 2021 was submitted to vary the height of building standard.
- The application failed to provide an updated BASIX Certificate for the residential component of the development.
- Chapter 4 of SEPP (Housing) 2021- Design of residential apartment development issues including: high quality streetscapes, parking deficiency, inadequate waste collection facilities, solar access, natural ventilation, apartment size, minimum private open space, balcony functionality, facades, landscape design, BASIX requirements, and waste management.
- LEP 2021 non-compliance with:
  - clause 4.3 Height of Buildings,
  - clause 4.6,
  - clause 6.10 Design Excellence, and
  - clause 6.11 Environmental Sustainability.
- DCP 2021 non-compliance with:
  - clause 3.3 Landscaping;

- clause 3.11 Ecologically Sustainable Development;
- clause 10.1.6(1) Kogarah North Precinct - Siting and Consolidation of Development Sites,
- clauses 10.1.6(4)(2), 10.1.6(4)(3), 10.1.6(4)(4) and 10.1.6(4)(7) of Kogarah North Precinct—setbacks,
- clause 10.1.6(10) Kogarah North Precinct – Impact of Development on the Road/Pedestrian Network
- clause 10.1.6(12) Kogarah North Precinct – Vehicular Access and Car Parking
- clause 10.1.6(13) Kogarah North Precinct – Architectural Articulation – Façade
- clause 10.1.6(23) Kogarah North Precinct – Architectural Articulation – Balconies
- EP&A Act 1979 issues including:
  - section 4.15(1)(b) – Likely Environmental Impacts
  - section 4.15(1)(c) – Suitability of the Site
  - section 4.15(1)(e) – Public Interest

In particular, the Panel notes that the information provided does not adequately address the potential isolation of the neighbouring site at 7-9A Stanley Street in terms of attempts to amalgamate 7-9A Stanley Street into the development site. Nor does the proposed development have adequate regard to the relationship to the neighbouring site in terms of separation, setbacks, amenity and urban form. Namely, the site isolation study and conceptual drawings provided do not demonstrate that the neighbouring site could achieve the development potential envisaged by the planning controls without variation of these controls. Furthermore, the western setback of the proposed development impinges on the development potential and amenity of future development on 7-9A Stanley Street, the proposed through site link and the appearance of the western facade and the bulk and form of the proposed development.

## **CONDITIONS**

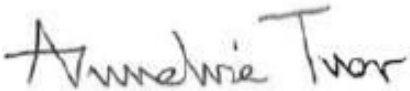

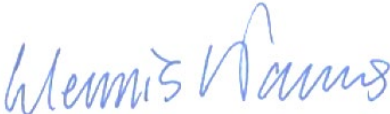

Council recommended refusal and therefore no conditions of consent were prepared.

## **CONSIDERATION OF COMMUNITY VIEWS**

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

- Height
- Overdevelopment
- Overshadowing
- Traffic and Parking
- Solar access
- Privacy
- Amenity
- Pedestrian safety
- Character
- Isolated lots
- Inadequate public transport
- Inadequate community infrastructure

The panel considers that concerns raised by the community have not been adequately addressed in the amended plans.

PANEL MEMBERS	
 Annelise Tuor (Chair)	 Penelope Holloway
 Glennis James	 Ashvin Ambihaipahar

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSSH – 143– Georges River Council– DA2023/0222
2	PROPOSED DEVELOPMENT	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.
3	STREET ADDRESS	1 -5 Stanley Street and 1 – 11 Princes Highway Kogarah
4	APPLICANT/OWNER	Applicant – Mr. Aaron Sutherland Owner – Kogarah Investments No.3 Pty Ltd
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>○ <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i></li> <li>○ <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i></li> <li>○ <i>State Environmental Planning Policy (Building and Sustainability Index:2004)</i></li> <li>○ <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i></li> <li>○ <i>State Environmental Planning Policy (Housing) 2021</i></li> <li>○ <i>State Environmental Planning Policy (Planning Systems) 2021</i></li> <li>○ <i>Georges River Local Environmental Plan 2021</i></li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ <i>Georges River Development Control Plan 2021</i></li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• 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> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Supporting documentation for the DA available on the NSW Planning Portal</li> </ul>

		<ul style="list-style-type: none"> <li>• Council assessment report 19 May 2024</li> <li>• Council supplementary memo dated 27 May 2024</li> <li>• Written submissions during public exhibitions: 29</li> <li>• Total number of submissions received by way of objection: 29</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ Public speaker - Laurie Mac, on behalf of strata for no.6 Stanley Street.</li> <li>○ Council assessment officer – Brendan Leo and Nicole Askew</li> <li>○ On behalf of the applicant – Tony Owen</li> </ul> </li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Preliminary Briefing: 21/08/2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Annelise Tuor (Chair), Penny Holloway, Glennis James, Nick Katris and Sam Stratikopoulos</li> <li>○ <u>Council staff</u>: Nicole Askew, Liam Frayne, Cassandra McFarlane</li> <li>○ <u>Applicant representatives</u>: Tony Owen, Carbel Kazzi, Eddy Haddad</li> <li>○ <u>Planning Panels Team</u>: Lillian Charlesworth, Lisa Foley</li> </ul> </li> <li>• Site Inspection: 6/9/2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Annelise Tuor, Glennis James, Penelope Holloway, Nick Katris and Sam Stratikopoulos</li> <li>○ <u>Council assessment staff</u>: Brendan Leo and Nicole Askew</li> <li>○ <u>Planning Panels Team</u>: Lillian Charlesworth</li> </ul> </li> <li>• Assessment Briefing: 6/11/2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Annelise Tuor (Chair), Penelope Holloway, Glennis James, Sam Stratikopoulos and Ashvini Ambihaipahar</li> <li>○ <u>Applicant representatives</u>: Aaron Sutherland, Tony Owen and Charbel Kazzi</li> <li>○ <u>Planning Panels Team</u>: Lillian Charlesworth</li> </ul> </li> <li>• Determination Briefing and Meeting: 27/05/2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Annelise Tuor (Chair), Penelope Holloway, Glennis James, Sam Stratikopoulos, Ashvini Ambihaipahar</li> <li>○ <u>Council assessment staff</u>: Brendan Leo, Nicole Askew</li> <li>○ <u>Applicant representatives</u>: Tony Owen, Eddy Haddad, Charbel Kazzi (meeting only)</li> <li>○ <u>Planning Panels Team</u>: Lillian Charlesworth, Joel Burgess</li> <li>○ <u>Public Meeting Speakers</u>: Laurie Mac on behalf of strata for no.6 Stanley Street (meeting only).</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	No draft conditions provided as recommended for refusal.

## SCHEDULE 2 – 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.