

DATE OF DETERMINATION	28 March 2024
DATE OF PANEL DECISION	28 March 2024
PANEL MEMBERS	Annelise Tuor (Chair), Penelope Holloway, Glennis James, Carol Provan and Luke Murtas
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Panel Briefing held by teleconference on 25 March 2024, opened at 10:40am and closed at 11.50pm. Papers circulated electronically on 18 March 2024. Prior to the meeting, the applicant had been invited to attend and had accepted, however, at the meeting, stated that he was unaware of the meeting prior to attending. The Applicant indicated that this may have resulted from a technical IT issue at his end. Nevertheless, the applicant provided a verbal briefing. The Panel notes that the application is subject to a Land and Environment Court appeal.

MATTER DETERMINED

PPSSSH-145 – Sutherland – DA23/0420 at 6-20 Hinkler Avenue and 319-333 Taren Pont Road, Caringbah – Mixed use development (health service facility and residential units) with Torrens title and stratum subdivision.

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 site inspections 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* (SLEP 2015), that sought to demonstrate:

- a) compliance with cl. 4.3 Height of Buildings of SLEP 2015 is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard,

the panel is not satisfied that:

- a) the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 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*.

The decision was unanimous.

REASONS FOR THE DECISION

The panel determined to reject the clause 4.6 variation to building height, and refuse the application for the reasons outlined in the council assessment report, as indicated below:

1. The application is considered unacceptable pursuant to the provisions of Section

4.15(1)(a)(i) of the NSW *Environmental Planning and Assessment Act 1979* (EP&A Act,) as it fails to satisfy Clause 4.6 of the *Sutherland Shire Local Environmental Plan 2015* (SSLEP 2015), by not adequately demonstrating that compliance with the maximum height of building development standard in Clause 4.3 of SSLEP 2015 is unreasonable or unnecessary, and that there are sufficient environmental grounds, and by not demonstrating that the proposal will be in the public interest.

2. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the NSW *Environmental Planning and Assessment Act 1979* (EP&A Act,) as it exceeds the Floor Space Ratio control in Clause 4.4 of the *Sutherland Shire Local Environmental Plan 2015* (SSLEP 2015), as varied by the provisions of section 17(1) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) as applicable at the date of lodgement, and no clause 4.6 exception request has been submitted under SSLEP 2015. The application must therefore be refused.
3. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as it fails to satisfy the non-discretionary development standard of Section 18(2)(e) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) (relevantly being the provisions applying at the date of lodgement) , which requires living rooms and private open spaces in at least 70% of the dwellings to receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter, and no clause 4.6 exception request has been submitted under SSLEP 2015 as is required by virtue of section 4.15(3) of the EP & A Act and clause 4.6 of SSLEP 2015. The application must therefore be refused.
4. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as it fails to satisfy the non-discretionary development standard of Section 18(2)(d) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) (relevantly being the provisions applying at the date of lodgement) , which requires at least 15% of the site area to be deep soil with a minimum dimension of 3m, and no clause 4.6 exception request has been submitted under SSLEP 2015 as is required by virtue of section 4.15(3) of the EP & A Act and clause 4.6 of SSLEP 2015. The application must therefore be refused.
5. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as it fails to satisfy Section 19(3)(a) of the Housing SEPP (relevantly being the provisions applying at the date of lodgement), as the proposal fails to demonstrate that the residential development is compatible with the desired future character of the precinct.
6. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as it fails to satisfy various objectives and design guidance controls in the Apartment Design Guide made pursuant to *State Environmental Planning Policy no. 65 – Design Quality of Residential Flat Buildings* (SEPP 65) and Chapter 4 of the Housing SEPP, leading to poor amenity, including in relation to:
 - (a) Part 3B Overshadowing on neighbouring properties
 - (b) Part 3C Public domain interface
 - (c) Part 3D Communal and public open space
 - (d) Part 3F Visual privacy
 - (e) Part 3G Pedestrian access and entries
 - (f) Part 3H Vehicle access
 - (g) Part 4A Solar and daylight access

- (h) Part 4B Natural ventilation
 - (i) Part 4D Apartment size and layout
 - (j) Part 4E Private open space and balconies (particularly objective 4E-2 in relation to the ground level private open spaces)
 - (k) Part 4G Storage
 - (l) Part 4L Ground floor apartments
 - (m) Part 4M Facades
 - (n) Part 4O Landscape design
 - (o) Part 4W Waste
7. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as it fails to satisfy the fifth objective of the R4 High Density Residential zone in SSLEP 2015 in relation to providing a high standard of urban design and residential amenity in a high quality landscape setting.
 8. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as it fails to satisfy Clause 6.15 Energy efficiency and sustainable building techniques for commercial and industrial developments of SSLEP 2015, as the proposal fails to demonstrate that the considerations in clause 6.15(2)(a), and (b) have been achieved to an acceptable level.
 9. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as it fails to satisfy Clause 6.16 Urban design - general of SSLEP 2015, as the proposal fails to demonstrate that the considerations in clause 6.16(1)(a), (b), (c), (e) and (g) have been achieved to an acceptable level.
 10. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as it fails to satisfy Clause 6.17 Urban design – residential accommodation of SSLEP 2015, as the proposal fails to demonstrate that the considerations in clause 6.17(b), (c), (d), (e), (f) have been achieved to an acceptable level.
 11. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as it fails to satisfy the objectives of Clause 6.21(1)(d) Caringbah Medical Precinct of SSLEP 2015, by not ensuring that there are high quality areas of private and public domain, with deep soil setbacks for the planting of substantial landscaping including large scale indigenous trees which will complement the scale of buildings up to 6 storeys.
 12. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) of the EP&A Act, as it fails to satisfy the objectives and controls of section 9 Streetscape and Built Form of Chapter 9 of *Sutherland Shire Development Control Plan 2015* (SSDCP 2015), in relation to objectives 9.1.1, 9.1.2, 9.1.5 and 9.1.6 and in relation to controls 9.2.1, 9.2.4, 9.2.5, 9.2.8, 9.2.9, 9.2.10 and 9.2.13.
 13. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) of the EP&A Act, as it fails to satisfy the objectives and controls of section 10 Street Setbacks of Chapter 9 of SSDCP 2015, in relation to objectives 10.1.3, 10.1.4 and 10.1.5 and control 10.2.3, 10.2.4, 10.2.5, and 10.2.4 (stet).

14. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) of the EP&A Act, as it fails to satisfy the objectives and controls of section 11 Side and Rear Setbacks of Chapter 9 of SSDCP 2015, by failing to comply with the setback requirements of the Health Services Facility to the northern boundary and the side setbacks to Hinkler Avenue and Taren Point Road and by failing to achieve the required building separation for buildings under the ADG. It also fails to comply with control 11.2.4.
15. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) of the EP&A Act, as it fails to satisfy the objectives of section 12 Landscape Design of Chapter 9 of SSDCP 2015, in relation to objective 12.1.2 and 12.1.5, and in relation to controls 12.2.1, 12.2.9, 12.2.10, 12.2.12.
16. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) of the EP&A Act, as it fails to satisfy the objectives of section 13 Building Layout and Private Open Space of Chapter 9 of SSDCP 2015, in relation to objective 13.1.1, 13.1.2, 13.1.3 and 13.1.6, by providing poor quality private open space to the ground level apartments which are significantly below natural ground level and having inadequate waste management facilities for Building B and the Health Services Facility. It also fails to comply with control 13.2.3.
17. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) of the EP&A Act, as it fails to satisfy the objectives of section 17 Safety and Security of Chapter 9 of SSDCP 2015, in relation to objective 17.1.2 and 17.1.4.
18. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(b) of the EP&A Act, as it fails to provide adequate information and an adequate design for the loading facilities for Building B and the Health Services Facility (HSF).
19. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(b) of the EP&A Act, as the location of the hydrant booster will require a loss in on-street parking.
20. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(b) of the EP&A Act, as neither the blind aisles in the Basements nor the accessible parking spaces are in accordance with the relevant Australian Standards.
21. The application is considered unacceptable because further information is required about a number of key matters including the location of the hydrant booster, inconsistency between plans, the landscape resolution between the subterranean units and the public domain, detailing in the car parks and loading docks, dimensions of private open spaces, a correct calculation of the common open space and storage volumes, and privacy treatments to the Health Services Facility.
22. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(b) and (e) of the EP&A Act, as it represents as an overdevelopment of the site by virtue of the exceedance of the floor space ratio and height control, the poor relationship of the ground floor apartments to the natural ground level which leads to a poor landscaping presentation to the streetscape, the poor internal amenity of the units regarding solar access, the poor entry identification for the residential buildings, the unresolved location of the hydrant booster, the inadequate loading docks in the HSF/Building B car park, insufficient information in relation to driveway sections, inadequate compliance with accessible parking layouts and the blind aisle

in the Basements, and insufficient information about a number of other matters.
The proposal is therefore not in the public interest.

CONDITIONS

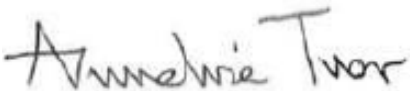




Council recommended refusal and therefore no conditions of consent were prepared.

CONSIDERATION OF COMMUNITY VIEWS

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

- Parking and traffic impacts (at both construction stage and ongoing) with regard to adequacy of the surrounding road network
- Inadequate Traffic assessment and lack of information on the type of medical uses proposed
- Overdevelopment (including building height, density, scale etc.)
- Impact to amenity including traffic noise, noise due to 24hr use, pollution, privacy and solar access
- Noise and environmental issues (including contamination)
- Adequacy of communal open space/facilities
- Stormwater management
- Health Services Facilities are not located at the ground level of each building as required
- Does not provide a long-term solution to rental housing needs
- Accessibility
- Capacity of local schools
- Cumulative impacts
- Adequacy of the notification period
- Property values

The panel considers that concerns raised by the community have been adequately addressed in the assessment report.

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

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSSH-145 – Sutherland – DA23/0420
2	PROPOSED DEVELOPMENT	Demolition of existing structures and construction of a mixed use development (health service facility and residential units) with Torrens title and stratum subdivision
3	STREET ADDRESS	6-20 Hinkler Avenue and 319-333 Taren Pont Road, Caringbah
4	APPLICANT/OWNER	Joseph Scuderi / The Trustee for Hinkler Ave 1 Unit Trust
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"> ○ <i>State Environmental Planning Policy (Planning Systems) 2021</i> - Chapter 2 State and Regional Development. ○ <i>State Environmental Planning Policy (Housing) 2021</i> - Chapter 2 and Chapter 4 ○ <i>State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development</i> (SEPP 65) (despite its repeal and inclusion in the Housing SEPP made on 14 December 2023) ○ <i>State Environmental Planning Policy (Sustainable Buildings) 2022</i> ○ <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> ○ <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021:</i> <ul style="list-style-type: none"> - Chapter 6 Water Catchments - Chapter 2 Vegetation in non-rural areas ○ <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> - Chapter 4 – Remediation of Land. ○ <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> <ul style="list-style-type: none"> - Chapter 2 Infrastructure ○ <i>Sutherland Shire Local Environmental Plan 2015</i> (SSLEP 2015) • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ <i>Sutherland Shire Development Control Plan 2015</i> (SSDCP 2015) • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> • 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
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 18 March 2024 • A supplementary memo provided (received 25 March 2024) and an email from Ros Read, Council's consultant planner, (dated 26 March 2024) addressing Chapter 4 of the Housing SEPP • Clause 4.6 – Building Height

		<ul style="list-style-type: none"> • Written submissions during public exhibition: 6 • Total number of unique submissions received by way of objection: 6
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Preliminary Briefing: 28 August 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Annelise Tuor (Chair), Penny Holloway, Glennis James, Carol Provan and Stephen Nikolovski ○ <u>Council staff</u>: Sue McMahon and Amanda Treharne • Site inspection: 6 September 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Annelise Tuor, Glennis James, Penelope Holloway and Carol Provan • Determination Briefing: 25/03/2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Annelise Tuor (Chair), Penny Holloway, Glennis James, Carol Provan and Luke Murtas ○ <u>Council staff</u>: Ros Read (consultant), Sue McMahon and Amanda Treharne ○ <u>Applicant representatives</u>: Joseph Scuderi
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	No draft conditions provided as recommended for refusal.