

<b>DATE OF DETERMINATION</b>	5 December 2024
<b>DATE OF PANEL DECISION</b>	4 December 2024
<b>DATE OF PANEL MEETING</b>	3 December 2024
<b>PANEL MEMBERS</b>	Annelise Tuor (Chair), Penelope Holloway, Carol Provan, Elizelle Cilliers
<b>APOLOGIES</b>	Glennis James
<b>DECLARATIONS OF INTEREST</b>	None

Public meeting held by videoconference on 3 December 2024, opened at 10:40am and closed at 11.02am.  
Papers circulated electronically on 20 November 2024.

#### **MATTER DETERMINED**

PPSSSH-161– Sutherland – DA24/0086 at 9-13 Shackel Road, Bangor 2234 – Health Service Facility - Construction of a new two storey health services facility (hospital) with associated landscaping works (as described in Schedule 1).

#### **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.

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

Following consideration of a written requests from the applicant, made under cl 4.6 (3) of the Sutherland Local Environmental Plan 2015 (LEP), the Panel is **not** satisfied that the applicant has demonstrated that:

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

#### **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 following reasons:

- a. The application is unacceptable pursuant to the provisions of Part 1.3 of the Environmental Planning and Assessment Act 1979 – Objects of Act. The development does not demonstrate orderly development of the land due to the site not being suitable for the proposed sensitive land use given the unresolved matters in relation to bushfire and flood risk and a substantial number of unresolved urban design and environmental planning concerns.
- b. The application is unacceptable pursuant to the provisions s4.47 of the Environmental Planning and Assessment Act 1979 as the land use, being classified as integrated development, has failed to obtain General Terms of Approval from the NSW Rural Fire Service being for a land use identified as for a Special Fire Protection Purpose under Section 100b of the Rural Fires Act.

- c. The application is unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as follows:
- i. The proposal is inconsistent with the R2 – Low Density Residential objectives as outlined in Sutherland Shire Local Environmental Plan 2015. The proposal fails to protect and enhance existing vegetation and when considered in the context of a multi dwelling housing typology, the proposal fails to ensure the single dwelling character, landscaped character, neighbourhood character and streetscapes of the zone is maintained and not diminished by the cumulative impact of the development.
  - ii. The proposal fails to comply with the maximum 8.5m building height development standard as set out in Clause 4.3 of Sutherland Shire Local Environmental Plan 2015 and applicable objectives of the clause. The height and scale of the non-residential building in the low density residential zones is not compatible with adjoining development, and the desired scale and character of the street and locality. Impacts on nearby properties (including from visual intrusion) have not been minimised.  
The submitted justification is not accurate nor well founded and the provisions of clause 4.6(3) have not been achieved and the exception to the development standard is therefore not supported.
  - iii. The proposal fails to comply with objectives for floor space ratio as set out in Clause 4.4 of Sutherland Shire Local Environmental Plan 2015. The proposal is not in keeping with the characteristics of the site and the local area, the bulk and scale of the new building is not compatible with the context of the locality. The density and intensity of the land use fails to take into account the environmental constraints and values of the site, the amenity of adjoining land and the public domain, availability of infrastructure to service the site, and the capacity of the road network to accommodate the vehicular and pedestrian traffic the development will generate.
  - iv. The proposal fails to comply with the minimum 35% landscaped area required under Clause 6.14 of Sutherland Shire Local Environmental Plan 2015 and the applicable objectives of the clause. The deficiency in landscaped area within the site inhibits the ability for the development to reinforce the desired landscape setting of the locality or provide suitable landscape treatment and landscaped relief between properties. The proposal further presents unacceptable encroachments to trees within and on adjoining lands adversely impacting their health and viability for retention.  
The submitted justification is not accurate nor well founded and the provisions of clause 4.6(3) have not been achieved and the exception to the development standard is therefore not supported.
  - v. The proposal fails to satisfy the relevant Urban Design objectives of Clause 6.16 and 6.18 of Sutherland Shire Local Environmental Plan 2015 in that high quality design and development outcome for the urban environment of Sutherland Shire has not been attained nor that the natural environment adequately protected. The development fails to adequately acknowledge and fit appropriately within the established low density residential context.
  - vi. The proposal fails to satisfy the objectives of Clause 5.21 / 5.22 (Flood Planning / Special Flood Considerations), along with Clause 6.4 (Stormwater Management) of Sutherland Shire Local Environmental Plan 2015. The application fails to demonstrate the suitability of the site for the proposed sensitive land use or provide suitable information to demonstrate acceptable impacts (both within the site and adjoining properties) during critical design storm/flood events.

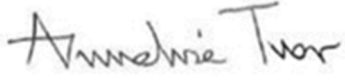



- d. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that it fails to comply with the relevant provisions of Sutherland Shire Development Control Plan 2015 with respect to the following chapters:
- Chapter 5 – Multi Dwelling Housing
  - Chapter 36 – Vehicular Access, Traffic, Parking and Bicycles
  - Chapter 38 – Stormwater Management
  - Chapter 39 – Natural Resource Management (Greenweb / Tree and Bushland Vegetation)
  - Chapter 40 – Flood Risk Management
- e. The application is deficient of information to enable Council to carry out a proper and complete assessment. The following information is missing from the application or is considered to be inadequate to enable a complete assessment of the development application.
- Further analysis of the surrounding road network and potential traffic generation / traffic study including car parking provision.
  - Further modelling / detailed Overland Flow and Flood Analysis.
  - Further information in relation to the protection of trees on site and adjoining lands.
  - Hydraulic assessment / design advice, with the support of NSW Fire and Rescue (NSWFR).
  - Further detail relating to the operational aspects of the land use including a detailed operational Plan of Management (POM).
  - Full detailed revised architectural / landscape plans including site plan, floor space ratio and landscaped area calculations.
  - Revised / accurate written requests to vary the development standards for building height and landscaped area under Clause 4.6 of Sutherland Shire Local Environmental Plan 2015.
- f. Pursuant to the provisions of Section 4.15(e) of the Environmental Planning and Assessment Act 1979, it is considered that in the circumstances of the case approval of the development would set an undesirable precedent for similar inappropriate development. Due to impacts espoused in this refusal the application is not in the public interest.

### **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:

- Proposal inconsistent with surrounding low density residential context and zone.
- Site suitability and inappropriate intensity of the land use.
- Building bulk and scale and visual impacts presented to the neighbouring properties.
- Non-compliance with development standards and controls, including permissibility under the LEP.
- Bushfire Safety concerns including resident / neighbourhood evacuation, emergency vehicle access, increased risk to locality.
- Parking and traffic congestion and impact on surrounding road network. Pedestrian safety concerns from increased traffic movements.
- Noise and amenity impacts from operation of the hospital including from 24 hour operation (including light spill, privacy / overlooking and view loss).
- Environmental / ecological concerns including impacts on native wildlife, removal of trees and greenspace.
- Property devaluation.
- Impacts to surrounding neighbourhood during construction.

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
 Carol Provan	 Elizelle Cilliers

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSSH-161– Sutherland – DA24/0086
2	PROPOSED DEVELOPMENT	Construction of a new two storey health services facility (hospital) with associated landscaping works
3	STREET ADDRESS	9-13 Shackel Road, Bangor 2234
4	APPLICANT/OWNER	Grimshaw Architects (Michael Jeneke) / Bangor 9 Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 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 (Planning Systems) 2021</li> <li>○ State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>○ State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>○ State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>○ State Environmental Planning Policy (Sustainable Buildings) 2022</li> <li>○ Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015)</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Sutherland Shire Development Control Plan 2015 (SSDCP 2015).</li> <li>○ Section 7.12 Development Contribution Plan 2016 - Sutherland Shire.</li> </ul> </li> <li>• Planning agreements: Nil</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: 19 November 2024</li> <li>• Variation requests under Clause 4.6 to cl. 4.3 (Height of Building) and cl. 6.14 (Landscaped Area) of SSLEP 2015</li> <li>• Written submissions during public exhibition: 28</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ Craig Farmer, Sharna Sisson, Peter Caleo – objectors</li> <li>○ On behalf of the applicant – Michael Janeke (Grimshaw Architects)</li> </ul> </li> <li>• Total number of unique submissions received by way of objection: 21</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Briefing: 22 April 2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Annelise Tuor (Chair), Penelope Holloway, Carol Provan, Elizelle (Jua) Cilliers</li> <li>○ <u>Council assessment staff</u>: Evan Phillips, Sue McMahon</li> <li>○ <u>Applicant representatives</u>: Michael Janeke (Grimshaw Architects)</li> <li>○ <u>Other</u>: Joel Burgess (DPHI)</li> </ul> </li> <li>• Site inspection: 24 June 2024</li> </ul>

		<ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Annelise Tuor (Chair), Glennis James, Penelope Holloway, Carol Provan, Elizelle (Jua) Cilliers</li> <li>○ <u>Council assessment staff</u>: Evan Phillips, Slavco Bujaroski, Sue McMahon, Timothy Jennings</li> </ul> <ul style="list-style-type: none"> <li>● Briefing: 26 August 2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Annelise Tuor (Chair), Penelope Holloway, Glennis James, Stephen Nikolovski, Elizelle (Jua) Cilliers</li> <li>○ <u>Council assessment staff</u>: Evan Phillips, Slavco Bujaroski</li> <li>○ <u>Applicant representatives</u>: Michael Janeke (Grimshaw Architects), Jeff Mead (Planning Ingenuity), Susan Chen (Grimshaw Architects)</li> <li>○ <u>Other</u>: Joel Burgess (DPHI), Tim Mahoney (DPHI)</li> </ul> </li> <li>● Final briefing to discuss council's recommendation: 3 December 2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Annelise Tuor (Chair), Penelope Holloway, Carol Provan, Elizelle (Jua) Cilliers</li> <li>○ <u>Council assessment staff</u>: Evan Phillips, Sue McMahon, Slavco Bujaroski</li> <li>○ <u>Other</u>: Lillian Charlesworth (DPHI), Joel Burgess (DPHI)</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	None