

DATE OF DETERMINATION	26 February 2025
DATE OF PANEL DECISION	26 February 2025
DATE OF PANEL MEETING	24 February 2025
PANEL MEMBERS	Annelise Tuor (Chair), Penelope Holloway, Glennis James, Fiona Prodromou, Carol Provan
APOLOGIES	None
DECLARATIONS OF INTEREST	Jared Phillips (Design Review Panel for this DA)

Public meeting held by videoconference on 24 February 2025, opened at 11:10am and closed at 11:38am. Papers circulated electronically on 10 February 2025.

MATTER DETERMINED

PPSSSH-171 – Sutherland Shire Council – DA24/0369 - 1323-1329 PRINCES HIGHWAY HEATHCOTE 2233 – Demolition of existing structures and removal of trees. Construction of a mixed-use development comprising retail, a 'cold shell' commercial tenancy suitable for a future pub, and residential flat buildings (labelled as buildings A, B & C) comprising a total of 168 apartments, of which 25 apartments are to be provided as affordable housing. The proposal includes staged construction with Building A being part of Construction Stage 1 and Building B and C being part of Construction Stage 2. (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 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 Local Environmental Plan 2015 (LEP), the panel is **not** satisfied that the applicant has demonstrated that:

- Compliance with cl. 4.3 (Height of Building) 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 not to uphold the clause 4.6 variation to cl. 4.3 (Height of Buildings), and to refuse the application generally for the reasons outlined in the council assessment report as indicated below:

- a) The application is unacceptable pursuant to s4.47 from the Environmental Planning and Assessment Act 1997, as insufficient information has been provided to WaterNSW to satisfy the provisions of the Water Management Act 2000 and general terms of approval have not been provided.
- b) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, as the proposal fails to satisfy the provisions of the State Environmental Planning Policy (Housing) 2021. The application does not provide the minimum gross floor area required to benefit from the gross floor and/or building height bonuses permitted by Sections 16 and 18. Additionally, as the application does not enjoy the benefit of the aforementioned bonuses, the written contravention request lodged pursuant to Clause 4.6 fails to demonstrate that compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard.
- c) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in that the proposed development fails to comply with Clause 4.3(2) – Height of Buildings of Sutherland Shire Local Environmental Plan 2015. The written request fails to demonstrate that compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard.
- d) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, in that the proposed development fails to comply with Clause 4.4(2) – Floor Space Ratio of Sutherland Shire Local Environmental Plan 2015. No written request in accordance with Clause 4.6 in support of contravening Clause 4.4 of the SSLEP 2015 has been submitted for consideration.
- e) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental planning and Assessment Act 1979, as insufficient information has been submitted to satisfy the provisions of Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021. Specifically, the submission of a previous preliminary site investigation report that provides background information and information addressing on site conditions to enable a holistic assessment of onsite contamination.
- f) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) and (iii) of the Environmental planning and Assessment Act 1979, as insufficient information has been submitted to satisfy the provisions of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 and Chapter 38 from the Sutherland Shire Development Control Plan 2015. Specifically, information relating to stormwater management and water measures to ensure the proposal will have minimal impacts upon the receiving waters of the Georges River Catchment and to determine if existing infrastructure has capacity to accommodate the additional stormwater generated by the development and/or establish if upgrades and/or onsite detention is required.
- g) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) and (iii) of the Environmental planning and Assessment Act 1979, as the application fails to satisfy the provisions of the State Environmental Planning Policy (Housing) 2021, Clauses 6.16 and 6.17 of the Sutherland Shire Local Environmental Plan 2015, Chapter 15 of the Sutherland Shire Development Control Plan 2015 and the Apartment Design Guide. Specifically, relating to urban design and form, compatibility with the existing and desired future character of the Heathcote Village, landform alteration, stormwater management, landscaping design outcomes, visual separation and boundary setbacks, vegetation protection, noise and ventilation requirements, solar access and crime prevention through environmental design.

- h) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental planning and Assessment Act 1979, as the application fails to satisfy the provisions of the State Environmental Planning Policy (Transport and Infrastructure) 2021, the NSW Department of Planning's Development Near Rail Corridors and Busy Roads - Interim Guideline, Australian Standard AS2890 and Chapter 36 from the Sutherland Shire Development Control Plan 2015, specifically:
- i. Insufficient information has been provided to satisfy section 2.120 of the TISEPP regarding noise impacts to mitigate impacts from traffic noise,
 - ii. The proposal will have unacceptable traffic impacts on the operation of the local road network, including the Princes Highway.
 - iii. The application has failed to provide a traffic impact assessment report to investigate the impacts of the changes to the local road network, being the prohibition of right turn movements from both Veno and Strickland Streets onto the Princes Highway and the associated impacts of more traffic using other nearby intersections as a result.
 - iv. The proposal will create unacceptable pedestrian safety and will create conflicts with motor vehicles.
- i) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the Environmental planning and Assessment Act 1979, as the proposal fails to satisfy the requirements of Australian Standard AS2890, Chapter 36 from the Sutherland Shire Development Control Plan 2015 and Council's Active Transport Strategy requirements. Specifically vehicular access, manoeuvrability, and circulation into and out of the site, and within the basement does not comply and the design of the access will create conflict between passenger motor and service vehicles.
- j) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the Environmental planning and Assessment Act 1979, as the proposal fails to adequately address the requirements of Australian Standard AS2890, Chapter 36 from the Sutherland Shire Development Control Plan 2015 and the Sutherland Shire Environmental Specification 2020 Waste Collection for New Multi-dwelling Housing and Residential Flat Buildings. Insufficient information has been provided to demonstrate waste collection can be undertaken in an efficient, effective manner, the need for swept paths, details to ensure the minimum vertical clearance for the waste collection vehicle, and clarification on waste collection operations.
- k) The application is considered unacceptable pursuant to the provisions of s4.15(1)(c) of the Environmental Planning and Assessment Act 1979, as the proposed development is not suitable to the development site.
- l) The application is considered unacceptable pursuant to the provisions of s4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that the development would set an undesirable precedent for similar inappropriate development and therefore not in the public interest.

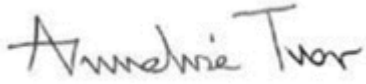
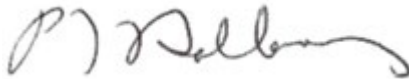
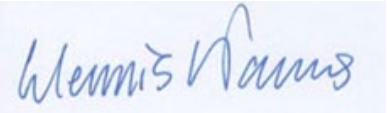


CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition. No members of the community registered to address the panel at the public meeting. The panel notes that issues of concern included:

- Traffic impacts and insufficient parking (including EV charging facilities)
- Excessive building height and overdevelopment of the site
- Development is uncharacteristic with the existing character of the area
- Acoustic impacts to adjoining properties
- Construction timeframes and damage from excavation
- Overshadowing
- Waste management impact to street

- Natural vegetation is not enhanced or maintained
- Lack of open space and landscaping
- Drainage concerns
- Lack of operator for affordable units

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	 Fiona Prodromou
 Carol Provan	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSSH-171 – Sutherland Shire Council – DA24/0369
2	PROPOSED DEVELOPMENT	Demolition of existing structures and removal of trees. Construction of a mixed-use development comprising retail, a 'cold shell' commercial tenancy suitable for a future pub, and residential flat buildings (labelled as buildings A, B & C) comprising a total of 168 apartments, of which 25 apartments are to be provided as affordable housing. The proposal includes staged construction with Building A being part of Construction Stage 1 and Building B and C being part of Construction Stage 2.
3	STREET ADDRESS	1323-1329 Princes Highway HEATHCOTE 2233
4	APPLICANT/OWNER	Kathleen McDowell (Dickson Rothschild) / Heathcote Tavern 1 Pty Ltd and Heathcote Tavern 2 Pty Ltd
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> <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> <i>State Environmental Planning Policy (Sustainable Buildings) 2022</i> <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> <i>State Environmental Planning Policy (Housing) 2021.</i> <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> <i>Sutherland Shire Local Environmental Plan 2015.</i> Other Acts, policies and plans: <ul style="list-style-type: none"> <i>Environmental Planning and Assessment Act 1979</i> <i>Water Management Act 2000</i> Section 7.12 Development Contribution Plan 2016 - Sutherland Shire Building Code of Australia Australian Standards NSW Fire and Rescue Access for Fire Brigade Vehicles and Firefighters. <i>NSW Contaminated Land Management Act (1997)</i> <i>NSW Contaminated Land Management Regulation (2022)</i> <i>Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019</i> NSW EPA, Guidelines for the implementing of the Protection of the Environment (Underground Petroleum Storage Systems) Regulation 2019 (2020) NSW Government Development Near Rail Corridors and Busy Roads – Interim Guideline Sutherland Shire Environmental Specification 2020 Waste Collection for New Multi-Dwelling Housing and Residential Flat Buildings Sutherland Shire Environmental Specification 2009 Stormwater Management NSW Apartment Design Guide (2015)

		<ul style="list-style-type: none"> • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ◦ <i>Sutherland Shire Development Control Plan 2015.</i> • Planning agreements: Nil • Relevant 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, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council Assessment Report: 10 February 2025 • Clause 4.6 Variation requests: <ul style="list-style-type: none"> ◦ Cl. 4.3 (Height of Building) • Written submissions during public exhibition: 18 • Verbal submissions at the public meeting: 0 • Total number of unique submissions received by way of objection: 18
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 26 August 2024 <ul style="list-style-type: none"> ◦ <u>Panel members</u>: Annelise Tuor (Chair), Penelope Holloway, Glennis James, Carol Provan, Jared Phillips ◦ <u>Council assessment staff</u>: Daniel Lukic, Sue McMahon ◦ <u>Applicant representatives</u>: Gavin Duffy, Anthony Vitale, Mark Gladman, Nigel Dickson, Alan Vidler, Kathleen McDowell, Ash Chand ◦ <u>DPIE</u>: Joel Burgess • Site inspection: 21 October 2024 <ul style="list-style-type: none"> ◦ <u>Panel members</u>: Annelise Tuor (Chair), Penelope Holloway, Glennis James, Fiona Prodromou ◦ <u>Council assessment staff</u>: Daniel Lukic, Sue McMahon • Final briefing to discuss council's recommendation: 24 February 2025 <ul style="list-style-type: none"> ◦ <u>Panel members</u>: Annelise Tuor (Chair), Penelope Holloway, Glennis James, Carol Provan, Fiona Prodromou ◦ <u>Council assessment staff</u>: Daniel Lukic, Sue McMahon ◦ <u>Applicant representatives</u>: Kathleen McDowell ◦ <u>DPIE</u>: Amanda Moylan, Nikita Lange, Tracey Gillett
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A