

DATE OF DETERMINATION	13 September 2022
DATE OF PANEL DECISION	19 September 2022
DATE OF PANEL MEETING	13 September 2022
PANEL MEMBERS	Helen Lochhead (Chair), Stuart McDonald, Heather Warton, Carol Provan, Kent Johns
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 13 September 2022, open at 9.45am and closed at 11:04am

MATTER DETERMINED

PPSSSH-78 – SUTHERLAND – DA – 21/0562 - 3 – 23 Kingsway, Cronulla 2230 - Demolition of existing structures and construction of a nine-storey mixed use development and three levels of basement parking.

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 Shire Local Environmental Plan 2015 (SSLEP 2015), that has demonstrated that:

- compliance with clause 4.3(2) – Height of building of SSLEP 2015 is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard

the panel is satisfied that:

- the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- the development is in the public interest because it is consistent with the objectives of clause 4.3(2) – Height of building of SSLEP 2015 of the LEP and the objectives for development in the B3 zone (Commercial Core); and
- the concurrence of the Secretary has been assumed.

Development application

The panel determined to approve 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 uphold the Clause 4.6 variation to building height; and approve the application for the reasons outlined in the council assessment report, notably the breach of height constitutes only minor breaches of the building height that have no additional impacts on the development or the surrounding area.

CONDITIONS

The development application was approved subject to the conditions in the council assessment report with the following amendments .

- Condition 2 to be amended to include the following:

B. Prior to Lodgement of a Construction Certificate

Amended plans incorporating the following design amendments are to be submitted to the satisfaction of Council's Director of Shire Planning:

- A continuous awning along the Kingsway and Croydon St to provide continuous pedestrian shelter over the width of the footpath and aligned with the kerb.
- Public amenities to be provided on the ground floor to serve the general public and retail commercial tenancies.
- Condition 13. Basement Car Park Design & Construction, part A. Design, subsection (ii) to be amended to read as follows:
 - (ii) Parking bays must not be enclosed, caged or doors provided, with the exception of designated parking for Units A8.01 – A8.03 and Units B8.01 – B8.03, inclusive.
- Condition 16 – Design of Structures Adjoining Drainage Easements to be deleted as it was included in error
- Condition 20 – Lot Consolidation to be amended to read as follows:

A. Before Construction

Prior to the issue of a construction certificate the application for the Plan of Subdivision for the consolidation of Lots 13, 14 & 15 DP205207, Lots 1 & 2 DP700935, Lot 1 DP 5239, Lot 1 DP1004748, Lot 61 DP319303 and Lots A & B DP314601 into one lot, is to be lodged with NSW Land Registry Services and registered prior to the issue of an occupation certificate. This will also include the expungement of any redundant easements, and/or covenants.

- Conditions 39 – Dilapidation Report to be amended to include "1 Abel Place"
- Condition 50 - Car parking Areas amended to read-

A. Ongoing

To ensure that the car parking area satisfies the demands of the development:

- i) All retail car parking must be made available for a 90-minute period, free of charge for employees' and customers' vehicles. A Plan of Management to address the operations of the carpark for the exclusive use of occupants and users of the development be provided to Council for approval.
- ii) Any residential car parking nominated as visitor parking must be continually available as common property in any future subdivision.
- iii) All commercial car parking must be continually available to the allocated tenancy.
- Condition 54 – to be deleted and replaced with the following:

54. Hours of Operation and Use Liquor Shop

A. Ongoing

Hours of Operation

- i) The liquor store must only operate between the hours of
 - Monday to Thursday: 9am to 9pm
 - Friday and Saturday: 9am to 9pm
 - Sunday: 10am to 8pm
- ii) The premises must not be occupied by staff or contractors beyond 1 hour before trading or after the cessation of trading on any day.

Sale of Liquor

- iii) The sale and supply of liquor in the licensed premises must be in accordance with the terms and conditions of an approved licence issued by the Office of Liquor Gaming and Racing (or subsequent amending department or authority).
- iv) The primary use of the premises must be that of a packaged liquor outlet.
- v) Any liquor supplied or sold must not be consumed on the premises.
- vi) The operation of the premises must be in accordance with the Plan of Management submitted with and as required by Condition 2 of this consent as approved by Council and the NSW Police Force.

Copies of Consent, Register and Management Plans

A full copy of all current development consents (including approved plans) for the operation of the premises, any registers required, and the Plan of Management must be kept on the premises and made available for inspection immediately upon request by Council officers, Police officers and / or Office of Liquor Gaming and Racing Authorised Officers.

Signage

- vii) No signage approval is granted for any signage associated with the use. A separate development application must be lodged for the erection of any signage associated with the premises unless the signage falls within the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
 - viii) All the glazed area within the shopfront (in both Abel Place and Kingsway) must retain a minimum of 80% of the glazed area free from signage. This includes any internal signage attached to the glazing.
- Add a new Condition 56 as follows:
56.Hours of Use Common Open Space Areas
A. On-Going
The common open space areas on the first and second levels must cease use between the hours of 10pm through to 7am daily.






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:

- Traffic, access and parking.
- Built form issues related to building height, bulk and scale, and overshadowing.
- Amenity impacts related to noise, visual, privacy and construction impacts.
- Safety and security

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. The panel notes that in addressing these issues the orientation of the building poses limitations to meet full solar amenity. Notwithstanding the site constraints, appropriate conditions have been imposed notably,

- Increased setbacks from neighbouring properties to the north and landscaped areas to improve privacy and amenity
- Minor changes by way of conditions to the frontages on Kingsway and Croydon Street to provide a continuous shelter along the footpaths.
- Specific conditions to manage construction impacts including a vibration management plan already submitted.
- All commercial vehicles (95% of traffic) to access the development from Croydon Street.

PANEL MEMBERS	
Helen Lochhead (Chair) 	Stuart McDonald 
Heather Warton 	Carol Provan 
Kent Johns 	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSSH-78 - SUTHERLAND – DA-21/0562
2	PROPOSED DEVELOPMENT	Demolition of existing structures and construction of a nine-storey mixed use development and three levels of basement parking.
3	STREET ADDRESS	3 – 23 Kingsway, Cronulla 2230
4	APPLICANT/OWNER	Applicant: Paul Buljevic Owner: CCIG Pty Ltd, Sam's Food Bar Pty Ltd, Helen Karageorge, Jenell Milsted, Paul Milsted, LP Family Pty Ltd, GL Family Pty Ltd, Antonietta Palumbo, John Palumbo
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"> State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 Sutherland Shire Local Environmental Plan 2015 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Sutherland Shire Development Control Plan 2015 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil 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: 29 August 2022 Clause 4.6 variation request – Building Height Written submissions during public exhibition: 79 Verbal submissions at the public meeting: <ul style="list-style-type: none"> James MacLachlan Raymond Cowin Gaille McPhee Greg Brandtman Council assessment officer – Amanda Treharne On behalf of the applicant – Tina Christy Total number of unique submissions received by way of objection: 30
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 30 August 2021 <ul style="list-style-type: none"> Panel members: Helen Lochhead (Chair), Stuart McDonald, Heather Warton, Carol Provan, Kent Johns

		<ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Carine Elias, Mark Adamson • Final briefing to discuss council's recommendation: 14 June 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Helen Lochhead (Chair), Stuart McDonald, Heather Warton, Carol Provan, Kent Johns ○ <u>Council assessment staff</u>: Thomas Walters, Carine Elias, Clare Brown (Urbis), Beth Morris, Amanda Treharne
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report