

<b>DATE OF DETERMINATION</b>	8 September 2022
<b>DATE OF PANEL DECISION</b>	7 September 2022
<b>DATE OF PANEL MEETING</b>	30 August 2022
<b>PANEL MEMBERS</b>	Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, David Brown and Michael Mantei
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

Determination briefing held by teleconference on 30 August 2022, opened at 10:30 and closed at 11:30am. Papers circulated electronically on 17 August 2022.

#### **MATTER DETERMINED**

PPSSTH-117 – Wollongong – DA2021/1000 at 35-45 Flinders Street Wollongong - *Residential - demolition of existing structures, tree removal, remediation and construction of a 7 to 9 storey shop top housing development containing ground floor commercial tenancies and 201 apartments, above 2 basement levels containing 230 parking spaces (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 briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel had the benefit of an initial and final briefing from Council.

The Panel noted the following key issues associated with this application are:

- Unresolved traffic and car parking matters.
- The developments lack of consistency with the design quality principles of SEPP 65, including bulk, scale, view loss, overshadowing, and privacy impacts.
- Unjustified departures from the controls and design objectives of the Apartment Design Guide.
- The failure of the development to exhibit design excellence as required by Clause 7.18 of WLEP 2009.
- Inadequate information to support variations sought in relation to WLEP 2009 and WDCP controls.
- Inadequate documentation to enable a proper assessment of stormwater management and the requirements of clause 7.3 of the WLEP in relation to flood planning.
- Lack of support for the proposal in its current form from Transport for NSW, the DRP, and Council's Architect each noting a significant redesign was required.

The Panel notes that the Council requested additional information in response to the identified issues, and a response was not provided. The Panel was not satisfied that these key issues had been adequately addressed, nor was it satisfied that these issues could be resolved through the implementation of conditions of consent.

## **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:

- Traffic and parking concerns
- Building location,
- Solar access and overshadowing
- Building density, bulk and scale,
- View loss and privacy
- Acoustic issues around traffic
- Construction impacts
- Geotechnical and flooding
- Economic impacts on property values
- Tree removal

### **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 the Council Assessment Report and as reproduced below:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the development is not acceptable when evaluated having regard to the design quality principles outlined in Schedule 1 of State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposal does not satisfy the relevant design criteria objectives of the Apartment Design Guide, particularly in regard to site analysis, orientation, public domain interface; communal and public open space; deep soil zones, visual privacy, bicycle and car parking, solar and daylight access, natural ventilation, ceiling heights, apartment size and layout, private open space and balconies, common circulation and spaces, storage, acoustic privacy, apartment mix, facades, roof design, landscape design, universal design, awnings and signage, water management and conservation, waste management and building maintenance.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development is unsatisfactory with regard to the matters for consideration in Clause 2.119 and 2.120 of State Environmental Planning Policy (Transport and Infrastructure) 2021.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, in the opinion of Council, the proposed development does not exhibit design excellence and therefore consent cannot be granted pursuant to Clause 7.18 of Wollongong Local Environmental Plan 2009.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, in the opinion of Council, the proposed development does not adequately address matters for consideration relating to flood planning and consent cannot be granted pursuant to Clause 7.3 of Wollongong Local Environmental Plan 2009.

6. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development does not comply with the provisions of Wollongong Development Control Plan 2009 in relation to the following chapters:
- B1 Residential Development;
  - B4 Development in Business Zones;
  - D13 Wollongong City Centre;
  - E2 Crime Prevention Through Environmental Design;
  - E3 Car parking, Access, Servicing/loading Facilities and Traffic Management;
  - E6 Landscaping;
  - E7 Waste Management;
  - E13 Floodplain Management;
  - E14 Stormwater Management.
7. Pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, the impact of the development on trees to be retained within the site and on trees on adjoining properties has not been fully assessed. Requested information has not been provided.
8. Pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, the impact of the development on floodplain management has not been fully assessed. Requested information has not been provided.
9. Pursuant to Section 4.15(1)(b) and (e) of the Environmental Planning & Assessment Act 1979, having regard to the above matters, particularly the concerns raised in relation to bulk and scale, view loss, overshadowing and privacy impacts, the proposal represents an overdevelopment of the site and approval of the application would not be in the public interest.
10. Pursuant to the provisions of Section 4.15 (1)(e) of the Environmental Planning and Assessment Act, 1979, it is considered in the circumstances of the case approval of the development would not be in the public interest.

PANEL MEMBERS	
 Chris Wilson (Acting Chair)	 Renata Brooks
 Tim Fletcher	 David Brown
 Michael Mantei	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-117 – Wollongong City Council – DA-2021/1000
2	PROPOSED DEVELOPMENT	‘Residential - demolition of existing structures, tree removal, remediation and construction of a 7 to 9 storey shop top housing development containing ground floor commercial tenancies and 201 apartments, above 2 basement levels containing 230 parking spaces’
3	STREET ADDRESS & LEGAL DESCRIPTION (LOT/DP)	35-43 Flinders Street Wollongong
4	APPLICANT/OWNER	Applicant - Mr George O'Donovan (Level 33) Owner: Ernest Sidney Dion Pty Limited, Edward Dion Pty Limited, Thomas Dion Pty Limited, Charles Dion Pty Limited, Leslie Frank Dion Pty Limited, Dion Investments Pty Limited, Rose Dion Pty Limited
5	TYPE OF REGIONAL DEVELOPMENT (Schedule 7; SRD SEPP 2011)	General development over \$30 million
6	MATTERS FOR CONSIDERATION (s 4.15(1) of the EP&A Act)	<p>a) The provisions of</p> <p>(i) Environmental planning instruments (s4.15(1)(a)(i)):</p> <ul style="list-style-type: none"> <li>Wollongong Local Environmental Plan 2009</li> <li>State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development)</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 (Building Sustainability Index:BASIX) 2004</li> <li>State Environmental Planning Policy (Koala Habitat Protection) 2021</li> </ul> <p>(ii) Draft environmental planning instruments (s4.15(1)(a)(ii)):</p> <ul style="list-style-type: none"> <li>N/A</li> </ul> <p>(iii) Development control plans (s4.15(1)(a)(iii)):</p> <ul style="list-style-type: none"> <li>Wollongong Development Control Plan 2009</li> </ul> <p>(iv) Planning agreements (s4.15(1)(a)(iiia)):</p> <ul style="list-style-type: none"> <li>N/A</li> </ul> <p>(v) the <i>Environmental Planning and Assessment Regulation 2000</i> (s4.15(1)(a)(iv)):</p> <ul style="list-style-type: none"> <li>demolition of a building proposed - provisions of AS 2601;</li> </ul> <p>b) The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p> <p>c) The suitability of the site for the development</p> <p>d) Any submissions made in accordance with the Act or regulations</p> <p>e) The public interest</p>

<b>7</b>	<b>MATERIAL CONSIDERED BY THE PANEL</b>	<ul style="list-style-type: none"> <li>a) Council assessment report: 17 August 2022</li> <li>b) Information included in the development application pursuant to Clause 50 of the Regulations including: <ul style="list-style-type: none"> <li>(i) Architectural plans prepared by Level 33 Architectural Division dated 15/09/2021;</li> <li>(ii) Statement of Environmental Effects prepared by Sutherland &amp; Associates Planning dated August 2021;</li> <li>(iii) Design Verification Statement prepared by Level 33 Architectural Division undated;</li> </ul> </li> <li>c) Written submissions during public exhibition: 8</li> <li>d) Total number of unique submissions received by way of objection: 7</li> </ul>
<b>8</b>	<b>MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• Site inspection: Tuesday, 22 February 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, David Brown and Michael Mantei</li> <li>○ <u>Council assessment staff</u>: Anne Starr, Pier Panozzo, Mark Adamson</li> </ul> </li> <li>• Briefing: Thursday, 3 March 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, David Brown and Michael Mantei</li> <li>○ <u>Council assessment staff</u>: Anne Starr and Pier Panozzo</li> </ul> </li> <li>• Final briefing to discuss council's recommendation: Tuesday, 30 August 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, Cr David Brown and Michael Mantei</li> <li>○ <u>Council assessment staff</u>: Pier Panozzo, Mark Adamson, Anne Starr</li> <li>○ <u>Applicant representatives</u>: Nil</li> </ul> </li> </ul>
<b>9</b>	<b>COUNCIL RECOMMENDATION</b>	Refusal
<b>10</b>	<b>DRAFT CONDITIONS</b>	Attached to the Council Assessment Report and as outlined above