



**REZONING REVIEW  
RECORD OF DECISION**

STRATEGIC PLANNING PANEL of the  
SYDNEY NORTH PLANNING PANEL

|                                 |   |
|---------------------------------|---|
| <b>DATE OF DETERMINATION</b>    | 8 June 2024   |
| <b>DATE OF DECISION</b>         | 29 May 2024   |
| <b>PANEL MEMBERS</b>            | Peter Debnam (Chair), Blake Cansdale, Stephen O'Connor & James Harrison   |
| <b>APOLOGIES</b>                | Tanya Taylor  |
| <b>DECLARATIONS OF INTEREST</b> | Philippa Hayes advised she had considered the Planning Proposal as a member of the Willoughby Local Planning Panel on 11 July 2023 and therefore decided to conflict herself out of this Panel. |

**REZONING REVIEW**

**RR-2023-32 – Willoughby LGA – PP-2022-4316**

3 McIntosh Street, 2 Day Street & 40-42 Anderson Street, Chatswood (As described in Schedule 1).

Reason for Review:

- The council has notified the proponent that the request to prepare a planning proposal has not been supported.
- The council has failed to indicate its support 115 days after the proponent submitted a request to prepare a planning proposal.
- The council has not submitted the planning proposal for a Gateway determination within 28 days of indicating its support for the planning proposal.

**PANEL CONSIDERATION AND DECISION**

The Panel considered the material listed at item 4 and the matters raised and/or observed at the briefings listed at item 5 in Schedule 1.

Based on this review, the Panel recommends that the Planning Proposal:

- should** be submitted for a Gateway determination because the Planning Proposal has demonstrated strategic and subject to changes site specific merit
- should not** be submitted for a Gateway determination because the Planning Proposal has:
  - not demonstrated strategic merit
  - demonstrated strategic merit but not site specific merit

The decision was 3:1 in favour, with Mr Blake Cansdale considering the Planning Proposal did not have strategic merit.

**REASONS FOR THE DECISION**

The Panel considered the documentation, was briefed by the Department of Planning, Housing and Infrastructure, and heard extensively from Willoughby City Council (Council) and the Proponent, Mecone.

The Panel notes that the Planning Proposal was lodged on 20 December 2022, prior to the notification of the Willoughby Comprehensive LEP Amendment 34 on 30 June 2023. The Willoughby Comprehensive LEP Review Planning Proposal had received a Gateway determination in December 2021 to amend provisions for zoning, maximum height of building (HOB), floor space ratio (FSR) and minimum lot size (MLZ) and a 4%, 7% or 10% affordable housing rate for selected sites.

**Planning Panels Team**

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The Planning Proposal before the Panel includes proposed provisions for zoning, HOB and FSR for the site, which are consistent with the Willoughby Comprehensive LEP Amendment 34. Consequently, the Proponent's Rezoning Review request of 19 February 2024, sought to amend only the affordable housing contribution rate from 10% to 4%.

### **Strategic Merit**

The majority of the Panel consider the Planning Proposal has Strategic Merit given:

- The Planning Proposal is generally consistent with applicable strategic planning documents, including the Greater Sydney Regional Plan (2018), North District Plan (2018), Chatswood CBD Planning and Urban Design Strategy 2036, Willoughby Local Strategic Planning Statement, Willoughby Local Housing Strategy, Willoughby Affordable Housing Strategy 2020 and Willoughby Development Control Plan 2023; and
- Delivering affordable housing supply is a priority issue for Sydney for all levels of Government.

### **Site Specific Merit**

The majority of the Panel agreed the planning proposal has Site Specific Merit subject to adopting an affordable housing rate of 7%.

The Panel accepts that the provision of affordable housing had been an apparent point of agreement between the Proponent and Council for this site since 2018 with the Proponent always intending to offer affordable housing at a rate of 4%. The Panel accepts that as late as the last few months of 2022, Council had indicated in writing to the Proponent that a 4% affordable housing rate was the level under consideration.

However, the Panel notes that despite ongoing affordable housing discussions over many years, a misunderstanding and communication lapse between Council and the Proponent meant the Proponent failed to understand the need to formally seek an exemption for the 4% provision and, as a result, the site was not included in a list of 4% sites when Council finalised the list of sites that would benefit from the savings provisions in December 2022.

The Panel also notes Council had encouraged the Proponent to amalgamate 38 Anderson Street and in due course this was achieved. The Panel further notes the Proponent's advice that lodgement of the Planning Proposal had been delayed due to negotiations to amalgamate 38 Anderson Street, however once amalgamation was achieved, that property had not been included in the "Affordable Housing" Planning Proposal before the Panel.

In the circumstances, the Panel majority considers it reasonable to discount Council's 10% rate for this site to 7% reflecting a balance between the need to increase affordable housing and to acknowledge an apparent misunderstanding and an unfortunate lack of clear communication between the Council and Proponent relating to the intended 4% rate.

### **Panel recommendations**

The majority of the Panel recommends that prior to submitting the Planning Proposal for a Gateway determination, the Planning Proposal is to be revised to:

- Remove the provisions to rezone the site from R3 Medium Density to MU1 Mixed Use, increase the maximum Height of Building (HOB) from 12m to 90m, and increase the Floor Space Ratio (FSR) from 0.9:1 to 6:1. These planning provisions have already been implemented by the Willoughby LEP 2012 Amendment Number 34;
- Update the provision to decrease the affordable housing contribution rate from the currently mapped Area 3 - 10% to Area 2 - 7%;
- Update the Affordable Housing Map to change the site from Area 3 – 10% to Area 2 - 7%; and
- Update the planning proposal in accordance with the above points and the LEP Making Guideline (August 2023) to reflect the Panel's decision.

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Willoughby City Council did not support the Planning Proposal. In accordance with Section 3.32(1) of the *Environmental Planning and Assessment Act 1979*, the Planning Panel as delegate of the Minister for Planning has determined to appoint itself as the Planning Proposal Authority (PPA) for this Planning Proposal.

The Panel requires confirmation from the Proponent within two weeks of this determination, that they agree to revise the Planning Proposal to be consistent with the Panel's recommendations and pay the PPA fee. Should the proponent not agree to revise their Planning Proposal, then the Panel will reconvene to determine that the Planning Proposal does not have site specific merit and will not be submitted for a Gateway determination. Should the Proponent fail to pay the PPA fee by the designated date, then the Panel will no longer proceed with the Planning Proposal and the making of a local environmental plan amendment.

### **REASONS FOR THE DISSENTING DECISION**

Panel member, Mr Blake Cansdale, does not consider that the Planning Proposal has strategic merit. Mr Cansdale has come to this conclusion on the following facts:

- The only matter that the Panel is being asked to consider is whether there is strategic and site-specific merit in the Planning Proposal to reduce the applicable affordable housing contribution for this site from 10% to 4%.
- The Planning Proposal to reduce the applicable affordable housing contribution for the site is inconsistent with the following strategic and statutory planning instruments, which all seek to maximise the provision of affordable housing for this site:
  - *Willoughby Local Environmental Plan 2012*, namely clause 6.8 which requires a 10% affordable housing contribution. This rate was introduced via an amending comprehensive LEP notified on 30 June 2023 and was based on the Willoughby Affordable Housing Feasibility Report prepared for Willoughby Council by SGS Economics and Planning dated 30 August 2021.
  - *Greater Sydney Regional Plan, A Metropolis of Three Cities 2018*, objective 11 which states an affordable housing target generally in the range 5-10%.
  - *North District Plan*, which identifies a 5-10% affordable rental housing target.
  - *Willoughby City Local Strategic Planning Statement 2020*, namely priority two which sets a target of 7% affordable housing by 2021 and 10% affordable housing by 2026.
  - *Willoughby Affordable Housing Strategy 2020-2026*, namely outcome one wherein one of the measures of this outcome was to increase the affordable housing targets in the *Willoughby LEP 2012* to 10%.
  - *Our Future Willoughby 2028*, which committed to increasing the affordable housing contribution requirements in the *Willoughby LEP 2012* to 7% by 2023 and to 10% by 2026.
- The proposal to reduce the applicable affordable housing contribution for the site runs contrary to the NSW Government's current priority to maximise the provision of affordable housing during a dual housing crisis and cost-of-living crisis.
- Other than the current housing crisis and cost-of-living crisis, there is no other change of circumstance of the kind considered in the test for strategic merit in part 3 of the *Local Environmental Plan Making Guideline 2023*.

**PANEL MEMBERS**



Peter Debnam (Chair)



Blake Cansdale



Stephen O'Connor



James Harrison

| SCHEDULE 1 |  |   |
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| 1          | <b>PANEL REF – LGA –<br/>DEPARTMENT REF - ADDRESS</b>  | RR-2023-32 – Willoughby LGA – PP-2022-4316 – at 3 McIntosh Street, 2 Day Street & 40-42 Anderson Street, Chatswood  |
| 2          | <b>LEP TO BE AMENDED</b>                               | Willoughby Local Environmental Plan (LEP) 2012  |
| 3          | <b>PROPOSED INSTRUMENT</b>                             | The Planning Proposal seeks to: <ul style="list-style-type: none"> <li>• rezone from R3 Medium Density Residential to MU1 Mixed Use;</li> <li>• increase the maximum height of buildings from 12m to 90m;</li> <li>• increase the maximum FSR from 0.9:1 to 6:1; and</li> <li>• include a 4% affordable housing contribution rate.</li> </ul>   |
| 4          | <b>MATERIAL CONSIDERED BY<br/>THE PANEL</b>            | <ul style="list-style-type: none"> <li>• Rezoning review request documentation</li> <li>• Department of Planning, Housing and Infrastructure, Rezoning Review Briefing Report, 8 May 2024</li> <li>• Slide presentations from DPHI, 28 May 2024; Willoughby Council, 27 May 2024; and Mecone, 28 May 2024</li> </ul>  |
| 5          | <b>SITE INSPECTIONS AND<br/>BRIEFINGS BY THE PANEL</b> | <ul style="list-style-type: none"> <li>• <b>No site inspections</b> were held as sufficient background information was provided to all Panel members and the only issue being considered was the provision of affordable housing which is not an issue that a site inspection would have offered any meaningful insights.</li> <li>• <b>Briefing with Department of Planning, Housing and Infrastructure (DPHI):</b> 9:30am – 9:58am, 29 May 2024 <ul style="list-style-type: none"> <li>○ Panel members in attendance: Peter Debnam (Chair), Blake Cansdale, Stephen O’Connor &amp; James Harrison</li> <li>○ DPHI staff in attendance: Eleanor Robertson, Alex Galea, Shruthi Sriram, Michael Tran, Lisa Kennedy, Taylah Fenning</li> <li>○ Key issues discussed: <ul style="list-style-type: none"> <li>• Proposed concept development scheme for the site and lodgment of development application with Willoughby Council which includes 38 Anderson Street.</li> <li>• History of the affordable housing contribution rate in the Willoughby Comprehensive LEP Review Planning Proposal, Willoughby LEP 2012 Amendment No. 34 notified on 30 June 2023 and for the site, including the supporting feasibility analysis prepared by SGS, DPHI’s Gateway and finalisation assessments; history &amp; nature of Council’s communication of proposed and adopted 10% rate; savings provision &amp; listing of sites with lodged Planning Proposal.</li> <li>• Confirmation that 38 Anderson Street is not included in the Planning Proposal and a contribution rate of 10% applies to the site.</li> <li>• Whether the contribution rate of 10% is a development standard and Clause 4.6 could subsequently apply.</li> </ul> </li> </ul> </li> <li>• <b>Briefing with Willoughby City Council:</b> 9:58am – 10:34am, 29 May 2024</li> </ul> |

- Panel members in attendance: Peter Debnam (Chair), Blake Cansdale, Stephen O'Connor & James Harrison
- DPHI staff in attendance: Eleanor Robertson, Alex Galea, Shruthi Sriram, Michael Tran, Lisa Kennedy & Taylah Fenning
- Council representatives in attendance: Dyalan Govender & Mitchell Noble
- Key issues discussed:
  - History of the affordable housing contribution rate in the Willoughby Comprehensive LEP Review Planning Proposal, Willoughby LEP 2012 Amendment No 34 notified on 30 June 2023 and for the site – alignment of rates with the Willoughby Affordable Housing Feasibility Report, SGS Economics and Planning 30 August 2021.
  - Savings provisions – when included in the LEP; how communicated to landholders and public during the LEP process; proponent did not make a submission on the proposed 10% rate during public exhibition.
  - Affordable housing contribution tied to Floor Space Ratio and maximum Height of Building uplift/bonuses and carparking rates in the Development Control Plan.
  - Council's concern that the Proponent needs to justify the strategic merit of adopting a 4% contribution rate.
  - Consolidation of the site with 38 Anderson Street & application of 10% contribution rate on 38 Anderson Street.
  - Council's concern that the Proponent's questioning of the making of the Willoughby LEP in this rezoning review creates a precedent for other sites.
- **Briefing with Mecone (Proponent): 10:45am – 11:25am, 29 May 2024**
  - Panel members in attendance: Peter Debnam (Chair), Blake Cansdale, Stephen O'Connor & James Harrison
  - DPHI staff in attendance: Eleanor Robertson, Alex Galea, Shruthi Sriram, Michael Tran, Lisa Kennedy & Taylah Fenning
  - Proponent representatives in attendance: Ian Cady, Gemma Bassett, Harry Vakili, Reza Vakili & Polina Pavlenko
  - Key issues discussed:
    - Status of concept development application for the site and in the process of undertaking a design competition.
    - Planning context in the locality – surrounding cluster of lots have a 4% contribution rate; seeking equitable application of planning provisions.
    - Project timeline in developing the concept proposal, consultation with Council, seeking the purchase of 38 Anderson Street and lodgment of a planning proposal.
    - Communication from Council on proposed change from 4% contribution rate to 10% - history & nature of Council's communication; savings provision & listing of sites with 4%

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|  |  | <p>rate; discussions with Council and letters/minutes from meetings and discussions.</p> <ul style="list-style-type: none"><li>• Proponent didn't make a submission on the proposed 10% contribution rate during the public exhibition period.</li><li>• Proponent is not including 38 Anderson Street in the Planning Proposal. Contribution rate would probably be applied proportionally across the site and 38 Anderson Street.</li><li>• Proponent considers the Planning Proposal has strategic merit as it is implementing the Chatswood CBD Planning and Urban Strategy 2036; and would have viability issues if a 10% rate is required.</li><li>• Proponent considers Planning Proposal has site specific merit as development of the site would become unviable the 10% rate is retained. The Proponent has acted in good faith in preparing a Planning Proposal based on a 4% contribution rate.</li><li>• North District Plan states 5-10% affordable housing contribution rate – Proponent would agree to a 5% rate.</li></ul> <ul style="list-style-type: none"><li>• <b>Panel Discussion:</b> 11:25am – 11:48am, 29 May 2024<ul style="list-style-type: none"><li>○ Panel members in attendance: Peter Debnam (Chair), Blake Cansdale, Stephen O'Connor &amp; James Harrison</li><li>○ DPHI staff in attendance: Eleanor Robertson, Alex Galea, Shruthi Sriram, Michael Tran, Lisa Kennedy &amp; Taylah Fenning</li></ul></li></ul> |
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