

DATE OF DETERMINATION	17 July 2023
DATE OF PANEL DECISION	14 July 2023
DATE OF PANEL MEETING	12 July 2023
PANEL MEMBERS	Peter Debnam (Chair), Brian Kirk, Marcus Sainsbury, John Brockhoff
APOLOGIES	Graham Brown, Annelise Tuor, Nicole Gurran
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 12 July 2023, opened at 10.06am and closed at 11.06am.

MATTER DETERMINED

PPSSNH-304 - DA2022/0145, Northern Beaches, Lot CP SP 32072, 812 Pittwater Road and Lot CP SP 32071, 4 Delmar Parade DEE WHY, Demolition works and construction of a mixed-use development comprising a residential flat building and shop top housing, basement parking, lot consolidation and stratum subdivision (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 listed at item 8 in Schedule 1.

Application to vary a development standard

Following consideration of (4) written request (*) as below from the applicant, made under cl 4.6 (3) of the Warringah Local Environmental Plan 2011 (LEP), that has demonstrated that:

- a) compliance with cl. 4.3 Minimum Site Area is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

The Panel is satisfied that:

- a) the Applicant’s written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of clauses 4.6 and 7.1 of the LEP and the objectives for development in the B4 Mixed Use Zone; and
- c) the concurrence of the Secretary has been assumed.

* Clause 4.4 of WLEP 2011 – Floor Space Ratio

* Clause 6.7 of WLEP 2011 – Residential Flat Buildings in Zone B4 Mixed Use

* Clause 7.6A of WLEP 2011 – Podium Heights

* Clause 7.12(2)(c) of WLEP 2011 – Provisions promoting retail activity

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The Panel’s determination was a majority decision with John Brockhoff dissenting.

REASONS FOR THE DECISION

The Panel (P Debnam, B Kirk, M Sainsbury) majority approved the proposal for the reasons below and in Council's comprehensive Assessment Reports.

The Panel majority concurs with Council that the site presented unique challenges and constraints, which were key drivers in the evolution of the design and the proposal over recent years. It is the southern most site in the Town Centre Area and is directly adjacent to land zoned for R2 Low Density Residential. The site also sits immediately to the north of the Stony Range Botanical Reserve. Additionally, the site has a slope falling from south to north by up to 5m and is burdened by significant flooding constraints, a public stormwater pipe and overland flow path. These constraints determined that the form of the building and the arrangement of land uses differ from that envisaged by the WLEP and WDCP.

As a result, the proposal includes four written requests for 4.6 variations including the arrangement of land uses on the ground and first floors of the building and seeks to provide residential accommodation behind at the ground level and for the entire first level and above. The other two Clause 4.6 variation requests pertain to Podium Heights of the building at the street frontages and a variation to FSR.

With regard to land use variations, the Applicant argued the B4 Mixed Use zoning permits development for the purposes of residential flat buildings and the separation of the building from the core of the Town Centre means the site is not suitable for intensive commercial floor space. The applicant further notes that given the adjacent R2 zoning and existence of low density housing, having two stories of commercial floorspace down the side of the site would be deleterious to the amenity of neighbours and provide an inferior planning outcome. The Panel majority concurs with Council that the Applicant's rationale for the variation is well founded and logical in the circumstances. While the proposal does not provide the preferred amount of commercial floorspace, it does provide an appropriate level of commercial activation of the street frontages and provides much-needed apartment type housing. Consequently, the Panel majority concurs with Council that the variations to the location and amount of commercial use are acceptable in the circumstances.

In relation to the podium heights, the Panel majority concurs with Council that the proposed heights are consistent with that already established in the Town Centre and as a Gateway building it warrants an increased visual presence. In terms of FSR, the site has two different FSR controls and does not comply with one. However, when the total area of floor space is combined, it is less than the maximum allowed by the controls if the two areas were combined. The Panel majority concurs with Council that in the circumstances the FSR variation is also acceptable.

The Development Application was originally considered by the Panel on 11th May and at that time the Panel resolved to defer the determination to seek further information from the Applicant and Council as detailed in the notice of deferral. The requested information was provided then further assessed by Council with the provision of a Supplementary Assessment Report. The Panel reconvened in a public meeting on 12th July to consider the proposal.

No material amendments were made to the proposal between the May and July Panel meetings and Council's planning assessment effectively remained unchanged with again a recommendation for Approval.

The period of deferral did result in further detailed analysis and consideration of shadow diagrams and the extent of their impact on Stony Range Botanical Reserve. After detailed review of this information, the majority of the Panel accepts that the extent of overshadowing of the Reserve is limited and given the balance of expectations for development on the site, the constraints of the site and importance of the proposal to the Council's Town Centre strategy, the limited overshadowing is reasonable.

The majority of the Panel further notes the proposal evolved over several years of intense negotiation between the Applicant and Council and provides a good design outcome for a very challenging site. Additionally, the provision of a substantial green corridor from Delmar Parade down to Stony Range Botanical Reserve will accommodate significant numbers of native trees to improve the urban canopy and provide substantial green infrastructure with visual and environmental benefit to the community.

In summary, the majority of the Panel concur with Council that the proposal has been properly assessed against relevant planning controls and approval is in the community interest.

Panel member John Brockhoff disagreed with the majority decision and recommended refusal because of the significant impact (by overshadowing) of the design of the proposal on the recreational amenity of a portion of Stony Range Reserve used for play, picnics and BBQs.

WDCP (Pt D, Control 6, 1.) notes: *'Development should avoid unreasonable overshadowing (of) any open space'*. The Stony Range Reserve is understood as open space - and that the portion most used for play/picnics/BBQs (an area in centre along northern boundary) has both high recreational value and is most sensitive to the implications of overshadowing (eg. damp earth and grass, colder, less light). It is noted that the recreational (& educational) value of space for play, picnics, BBQs is increased by the growing population intensity of Dee Why and the several schools nearby.

The suggestion that conformance with height and other building controls (derived from the Dee Why Master Plan) represents 'reasonable overshadowing' is not accepted. It is conceivable that the Master Plan did not include detailed consideration of overshadowing implications on the recreational amenity of specific use areas within the Reserve.

A pragmatic interpretation of 'reasonable overshadowing' would be that less than half of the play/picnic/BBQ area should be overshadowed by the proposed development during the middle of the day (eg. 10am-2pm) when that area would be most enjoyed. The available shadow diagrams indicate that overshadowing would occur over much of the play/picnic/BBQ area across the middle of the day in winter and also but to a lesser extent in autumn and spring.



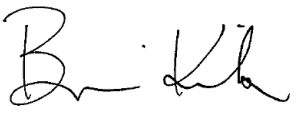
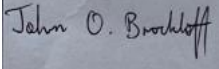
Therefore, the development does not avoid 'unreasonably overshadowing' a part of the reserve that makes a substantial contribution to its' recreational amenity.

CONDITIONS

The Development Application was approved subject to the conditions in Council's two Assessment Reports with Supplementary Memo (Part 1) dated 5 May 2023 in relation to developer contributions condition to update and reflect the new figures as quoted in the memo.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered 3 written submissions made during public exhibition, late submissions and also heard from members of the public who wished to address the July public meeting. Issues of concern included floor space ratio, building height, shadowing, site isolation, flooding, design and impacts on the heritage conservation area. The majority of the Panel considers that concerns raised by the community have been adequately addressed in Council's two Assessment Reports.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Marcus Sainsbury
 Brian Kirk	 John Brockhoff

SCHEDULE 1

1	PANEL REF – LGA – DA NO.	PPSSNH-304 - DA2022/0145, Northern Beaches
2	PROPOSED DEVELOPMENT	Demolition works and construction of a mixed-use development comprising a residential flat building and shop top housing, basement parking, lot consolidation and stratum subdivision
3	STREET ADDRESS	Lot CP SP 32072, 812 Pittwater Road and Lot CP SP 32071, 4 Delmar Parade DEE WHY
4	APPLICANT/OWNER	Landmark Group Australia Pty Ltd The Owners Of Strata Plan 32071
5	TYPE OF REGIONAL DEVELOPMENT	Capital Investment Value > \$30M
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: • State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) • SEPP (Building Sustainability Index: BASIX) 2004 • SEPP (Transport and Infrastructure) 2021 • SEPP (Resilience and Hazards) 2021 • Warringah Local Environmental Plan 2011 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Warringah Development Control Plan 2011 (WDCP) • Planning agreements: Nil • Relevant provisions of the Environmental Planning and Assessment Regulation 2021 • 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 Supplementary Report • Attachment 1 – Sutherland and Associates Planning Shadow Diagrams and Planners Letter (31 May 2023). • Attachment 2 – Visual Impact Assessment. • Attachment 3 – Heritage Impact Statement. • Attachment 4 – GFA Plan for 4 Delmar and GFA Plan for 812 Pittwater Road. • Attachment 5 – Applicants Legal Advice regarding clause 6.7 of the WLEP 2011). • Attachment 6 - Stony Range Flora Reserve Final Management Strategy Plan 1994. • Attachment 7 - Flora and Fauna Assessment Report for Stony Range Flora

		<p>Reserve.</p> <ul style="list-style-type: none"> • Attachment 8 – Sutherland and Associates Planning Letter Shadow Impacts (14 June 2023). • Attachment 9 – Potential GFA calculations by Applicant. • Attachment 10 – Submission by Stony Range Botanic Gardens Committee • Written submissions during public exhibition: 3 and late submissions • Verbal submissions at the public meeting: <ul style="list-style-type: none"> • Members of the community – Graham West (on behalf of Stony Range Regional Botanic Garden), Dale Branch, Robert Corkery, Cleveland Rose, Paul Ferrari • Council Assessment Officers – Steven Findlay, Peter Robinson • On behalf of the applicant – Angus Nguyen, Ben Pomroy, Aaron Sutherland, Joe Scuderi, Adam Martinez, Paul Burcher, Rebecca Zulaikha.
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • 11 May 2022 - Briefing • 08 May 2023 – Electronic Determination (Deferred): <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam, Nicole Gurran, Brian Kirk, Annelise Tuor ○ <u>Council assessment staff</u>: Steven Findley and Peter Robinson ○ <u>Applicant</u>: Adam Martinez, Joseph Scuderi, Ben Pomroy, Aaron Sutherland, Jenna Colombini • 12 July 2023 - Final briefing to discuss council's recommendation: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam, Brian Kirk, Marcus Sainsbury, John Brockhoff ○ <u>Council assessment staff</u>: Steven Findley and Peter Robinson
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Supplementary Report