

DETERMINATION AND STATEMENT OF REASONS

WILLOUGHBY LOCAL PLANNING PANEL

DATE OF DETERMINATION	27 February 2024
PANEL MEMBERS	Abigail Goldberg (Chair), Heather Warton, Elizabeth Kinkade and Philippa Hayes
DECLARATIONS OF INTEREST	None

Electronic determination on 27 February 2024.

Papers circulated electronically 21 February 2024. Electronic communication sent between 21 and 27 February 2024.

MATTER DETERMINED

DA-2023/51 at 42 Hampden Road, Artarmon NSW 2064. Demolition of existing structures and construction of new residential flat building with basement car parking and driveway, landscaping and associated works.

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7, the material presented at the meeting and briefings and the matters observed at site inspections listed at item 8 in Schedule 1 of this Determination and Statement of Reasons.

Application to vary a development standard

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the *Willoughby Local Environmental Plan 2012 (WLEP 2012)*, that has demonstrated that:

- compliance with cl. 6.10 (minimum lot size) is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard.

The Panel is not 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 not in the public interest because it is inconsistent with the objectives of cl. 6.10 (minimum lot size) of the *LEP* and the objectives for development in the R3 zone; and
- the concurrence of the Secretary has been assumed.

Development

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 concurs with the assessment made in the Council report.

REASONS FOR REFUSAL

- The Clause 4.6 exception to vary Clause 6.10 of *Willoughby Local Environmental Plan 2012* (Exemptions to minimum lot size requirement) is not supported for the following reasons:
 - The development contravenes the development standards of *WLEP* under Clause 6.10 in respect to the minimum lot size requirement by 38.94%.
 - The submitted Clause 4.6 variation does not adequately demonstrate the non-compliance of minimum lot size on appropriate planning grounds for the variation and failed to adequately satisfy the objectives of the development standard and zone and therefore cannot be supported.
 - The proposal failed to adequately meet the minimum lot size for the development therefore not enabling the site to be sufficient size to provide adequate area for drainage, earthworks, landscaping and separation between buildings for privacy, solar, vehicular access and waste management.
 - The proposal failed to adequately meet the minimum lot size for the development therefore resulting in the isolation of No.40 Hampden Road which is located on the south eastern side of the subject site. The affected property No. 40 will not be able to meet the minimum lot size requirements for redevelopment.

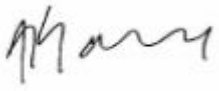



2. The proposed development fails to meet the objective of Clause 6.2 of the *Willoughby Local Environmental Plan 2012 (WLEP 2012)* and its requirement to ensure structural stability in the locality.
3. The proposed development is inconsistent with the minimum 2 hours of solar access to communal open space requirement under Part 3D, building separation requirement under Part 3F, maximum depth of open plan layouts requirements under Part 4D-2, requirement of minimum storage of the units under Part 4G-1 Apartment Design Guide.
4. The proposed development is inconsistent with Clause 6A of the *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* (now contained in *Housing SEPP – 2021* but in force on lodgement date of 23 February 2023 and its requirements for Design Quality principles set out in Schedule 1 of this Policy and Design criteria and guidance set out in Part 3 and 4 of the Apartment Design Guide.
5. The proposed development is inconsistent with Part B.4.3.2, minimum street frontage requirement of *Willoughby Development Control Plan 2023 (WDCP 2023)* under section 4.15 (1) (a) (iii) of the *Environmental Planning and Assessment Act 1979* and does not contribute to the existing or proposed streetscape character.
6. The proposed development is inconsistent with Part D.2.7, maximum site coverage requirement of *Willoughby Development Control Plan 2012 (WDCP 2012)* under section 4.15 (1) (a) (iii) of the *Environmental Planning and Assessment Act 1979*.
7. The proposed development is inconsistent with water management standards under Part C.5.1.1 of the *Willoughby Development Control Plan 2012 (WDCP 2012)* under section 4.15 (1) (a) (iii) of the *Environmental Planning and Assessment Act 1979*.
8. The proposed development is inconsistent with the control C.4.5 of *Willoughby Development Control Plan 2012* and its requirement for driveway compliance with Australian Standard AS2890.
9. The proposal is inconsistent with *Willoughby Development Control Plan 2023*, including Waste Management Technical Guide and Development Controls by North Sydney Regional Organisation of Councils for multi dwelling housing, residential flat buildings and mixed-use developments (NSROC, 2018).
10. The proposed development is inconsistent with the control of G.6 of the *Willoughby Development Control Plan 2023 (WDCP 2023)* and its requirement for replacement for trees.
11. Insufficient information has been submitted over the duration of the development application and review process to enable Council to carry out a proper and accurate assessment of the application. Additional information was requested on 17 October 2023 and the information received failed to meet Council's requirements and standards.
12. Granting consent to the proposal in its current form with its various non- compliance with the objectives of *Willoughby LEP 2012* and with the relevant performance criteria of *WDCP* would not be in the public interest. (Section 4.15(1) (c) of the *Environmental Planning and Assessment Act 1979*).

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered a written submission made during the public exhibition. The Panel noted that key issues of concern included:

- apartment mix
- site isolation
- streetscape

The Panel considered that concerns raised by the community have been adequately addressed in the assessment report.

PANEL MEMBERS	
 ABIGAIL GOLDBERG (CHAIR)	 HEATHER WARTON
 ELIZABETH KINKADE	 PHILIPPA HAYES

SCHEDULE 1		
1)	DA NO.	DA-2023/51
2)	PROPOSED DEVELOPMENT	Demolition of existing structures and construction of new residential flat building with basement car parking and driveway, landscaping and associated works.
3)	STREET ADDRESS	42 Hampden Road, Artarmon NSW 2064.
4)	APPLICANT/OWNER	SWA Group / Owners Corp Strata Plan 16523.
5)	REASON FOR REFERRAL	Departure from standard by more than 10%. Development to which <i>State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development</i> applies. Sensitive Development – Designated, RFB, Demolition of Heritage, Licensed premises (club), Licensed premises (hotel), Licensed premises (entertainment venue), Sex premises, Restricted premises, Planning Agreement
6)	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> <i>SEPP 65 – Design Quality of Residential Apartment Development</i>. <i>SEPP Building Sustainability Index: BASIX 2004 (The BASIX SEPP)</i>. <i>Willoughby Local Environmental Plan 2012</i>. Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> <i>Willoughby Development Control Plan</i> <i>Section 7.12 (S94A) Plan</i> <i>Willoughby Local Infrastructure Contributions Plan</i>. Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>. Provisions of the <i>Environmental Planning and Assessment Act 1979</i>. Planning agreements: 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	1) Council assessment report: 27 February 2024 2) Clause 4.6 variation requests: 6.10 (minimum lot size) 3) Written submissions during public exhibition: 1
8)	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL/PAPERS CIRCULATED ELECTRONICALLY	<ul style="list-style-type: none"> Site inspections were undertaken individually by Panellists at their discretion due to COVID-19 precautions. Panel Members: Abigail Goldberg (Chair), Heather Warton, Elizabeth Kinkade and Philippa Hayes. Papers circulated electronically 21 February 2024. Panel briefing held on 27 February 2024. Attendees: <ul style="list-style-type: none"> Abigail Goldberg (Chair), Heather Warton, Elizabeth Kinkade and Philippa Hayes. Council staff: Adiba Kashfi and Ritu Shankar.
9)	COUNCIL RECOMMENDATION	Refusal
10)	DRAFT CONDITIONS	N/A