

DETERMINATION AND STATEMENT OF REASONS

WILLOUGHBY LOCAL PLANNING PANEL

DATE OF DETERMINATION	12 March 2024
PANEL MEMBERS	Graham Brown (Chair), Jason Perica, Darren Troy and Linda Tully
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Electronic determination on 12 March 2024.

Papers circulated electronically 6 March 2024. Electronic communication sent between 6 and 12 March 2024.

MATTER DETERMINED

DA-2022/322 at 1-5 Koorunga Road, Chatswood NSW 2067. Construction of new residential flat building including basement carparking, 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:

- a) compliance with cl. 4.3 (height of buildings) 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 *WLEP*; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 (height of buildings) of the *WLEP* and the objectives for development in the R3 zone; and
- c) 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 reasons outlined in the Council assessment report.

1. **The proposed development achieves the desired outcomes and objectives and complies with the bonus development provisions for FSR for infill affordable housing development under *State Environmental Planning Policy (Housing) 2021*.**
2. **The proposed development achieves the desired outcomes and objectives of (former) *State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development*.**
3. **The proposed development does not conflict with the desired outcomes and objectives of the development standards contained in the *Willoughby Local Environmental Plan 2012 (WLEP)*, to the extent that the provisions apply.**
4. **The proposal is consistent with the objectives of the development controls contained in *WDCP 2006*.**

CONDITIONS

The development application was approved subject to the conditions in the Council assessment report with the following amendments. Condition 2 was amended to provide greater clarity regarding laneway dedication to Council and to address some typographical errors and condition 85 was amended to address the applicant's means of moving the waste to and from the kerbside from the internal storage area.

Condition 2 to be amended to read as follows:

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

The following conditions of consent must be complied with prior to the issue of a construction certificate.

2. SUBMIT THE FOLLOWING AMENDED PLANS AND INFORMATION TO WILLOUGHBY CITY COUNCIL

Prior to the lodgement of an application for a construction certificate, the applicant shall submit plans and specifications satisfying the following requirements to Willoughby City Council for approval. Documentation confirming approval by Willoughby City Council shall then be submitted to the Certifier for the application of a construction certificate.

- (a) The Access Report is to be amended to demonstrate the provision of not less than 12 units satisfying the requirements of AS 4299 - Class C.

(Reason: to ensure not less than 50% of units are adaptable in accordance with Council policy).

- (b) An Arborist Report prepared by a qualified arborist demonstrating that the tree to be retained on site and the trees on adjoining sites, where the tree protection zones extend into the subject site, are able to be retained as stated in the Landscape Plans. Such report is to include measures to be implemented during the construction phase to achieve the stated outcome for retention of the trees.

(Reason: to ensure trees identified for retention are capable of being retained).

- (c) The Architectural Plans are to be amended:

- i. to identify, for dedication to Council **at no cost**, the land shown on the *Willoughby Local Environmental Plan 2012* Land Reservation Acquisition Map as "Local road widening".
- ii. to ~~remove~~ delete the excavation area shown on the Architectural Plans within the land identified for Local road widening.

(Reason: To ensure provision of the lane widening land in accordance with *WLEP 2012*)

- iii. to identify the provision of not less than 12 units satisfying the requirements of AS 4299 - Class C consistent with the amended Access Report.

(Reason: to ensure not less than 50% of units are adaptable in accordance with Council policy).

- iv. To provide a solid screen wall and raised planter bed along the outer edge of the ground floor terraces adjacent to northern side boundary. The screen shall be not less than 1.6m above the floor level of the terraces. The planter bed shall provide not less than 600mm soil depth and not less than clear planting width of 1.0m along the edge of the terrace. Suitable screen plants shall be included in the raised planter bed.

- v. **To include s**Screens on the outer edge of the balconies on the northern side of the building, at the first and second floor level. Such screens shall be not less than 1.6m above the floor level of the balcony.

(Reason: Ensure privacy between the development and adjoining development.)

- (d) The Landscape Plans are to be amended:

- i. To be consistent with the amended Architectural Plans, and
- ii. To include any recommendations of the Arborist Report,

(Reason: Ensure consistency with Architectural Plans and ensure the site is landscaped in accordance with the objectives of *WDCP 2006* and *WDCP 2023*)

Condition 85 is amended as follows:

ONGOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

The following conditions have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the planning instrument affecting the land, and relevant legislation.

85. WASTE MANAGEMENT – ONGOING OPERATION

- (a) The owner the property, or Body Corporate, whichever is appropriate, shall ensure the appointment of a site caretaker that shall be responsible for the movement of waste bins from the basement storage room to the temporary bin enclosure adjacent the front boundary no more than 24 hours before the scheduled collection time, and to return the bins to the basement storage area not more than 24 hours after collection.
- (b) Bins are not to be stored in the temporary bin enclosure except in accordance with the times specified in this condition.
- (c) **Provision of an electric bin tug or similar device in the bin storage room at all times to be available for the movement of bins from the bin storage room to the temporary bin storage area on collection day and return after the bins are emptied.**

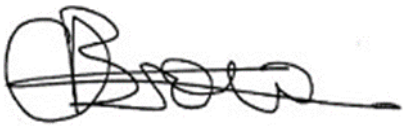


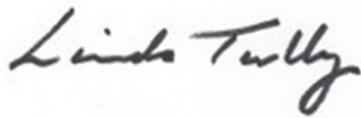
(Reason: To ensure proper management of waste bins on site to protect amenity)

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during the public exhibition. These submissions totalled 8 unique submissions and 1 petition. The Panel noted that key issues of concern included:

- Privacy
- Overshadowing
- Traffic and parking
- Compliance with height requirements
- Parking
- Parking during construction
- Construction noise, vibration and dust
- Landscaping

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

PANEL MEMBERS	
 GRAHAM BROWN (CHAIR)	 JASON PERICA
 DARREN TROY	 LINDA TULLY

SCHEDULE 1		
1)	DA NO.	DA-2022/322
2)	PROPOSED DEVELOPMENT	Construction of new residential flat building including basement carparking, landscaping and associated works.
3)	STREET ADDRESS	1-5 Kooringa Road, Chatswood NSW 2067.
4)	APPLICANT/OWNER	Mr M Filipe / Mr M Filipe and Mr A A De Paiva and Mrs A Paiva.
5)	REASON FOR REFERRAL	Development to which <i>State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development</i> applies.
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>State Environmental Planning Policy (Resilience and Hazards) 2021</i>. <i>State Environmental Planning Policy (Housing) 2021 (Housing SEPP)</i>. <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>. <i>Willoughby Local Environmental Plan 2012</i>. Draft environmental planning instruments (noting savings provisions): <ul style="list-style-type: none"> <i>Willoughby Local Environmental Plan 2012 (Am 34)</i> <i>State Environmental Planning Policy Amendment (Housing) 2023</i> Development control plans: <ul style="list-style-type: none"> <i>Willoughby Development Control Plan 2006 and 2023</i>. <i>Section 7.11 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: 12 March 2024 2) Clause 4.6 variation requests: 4.3 Building Height 3) Written submissions during public exhibition: Eight + Petition
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: Graham Brown (Chair), Jason Perica, Darren Troy and Linda Tully. Papers circulated electronically 6 March 2024. Panel briefing held on 12 March 2024. Attendees: <ul style="list-style-type: none"> Graham Brown (Chair), Jason Perica, Darren Troy and Linda Tully. Council staff: Anthony Blue, Ritu Shankar and Dyalan Govender.
9)	COUNCIL RECOMMENDATION	Approval
10)	DRAFT CONDITIONS	Attached to the Council assessment report