

DETERMINATION AND STATEMENT OF REASONS

WILLOUGHBY LOCAL PLANNING PANEL

DATE OF DETERMINATION	30 April 2024
PANEL MEMBERS	Jacqueline Townsend (Chair), Robert Montgomery, Elizabeth Kinkade, and Emma Rogerson
DECLARATIONS OF INTEREST	None

Public meeting held at Willoughby City Council on 30 April 2024 by teleconference. The meeting opened at 2.00pm. Papers circulated electronically between 23 April and 30 April 2024.

This item was heard between 2.04pm and 2.49pm.

MATTER DETERMINED

DA-2022/393 at 3 Ellis Street, Chatswood NSW 2067. Demolition of existing residential unit building, construction of a 14 storey shop top housing development comprising 3 storeys of retail/commercial use, communal facilities and 4 levels of basement car parking, landscaping and associated works - INTEGRATED

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.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

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. 4.3 (height of buildings)

- a) 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*;
- 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 B4 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 3:1 in favour, against the decision was Elizabeth Kinkade.

REASONS FOR THE DECISION

The reasons are outlined in the Council assessment report and as follows:

1. **The proposed development achieves the desired outcomes and objectives of Chapter 4 of State Environmental Planning Policy – (Housing) 2021.**
2. **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.**
3. **The proposal is consistent with the objectives of the development controls contained in *WDCP 2006*.**
4. **In relation to the overshadowing, the majority Panel agrees with the Council assessment that the site has been rezoned for an uplift to support the Chatswood city centre, with a significant height and floor space ratio (FSR) increase. Considering the uplift envisaged in the Chatswood city centre, the overshadowing impacts from the development are considered minor and do not unreasonably affect the adjoining properties.**

5. Due to the constraints of the development site, the majority Panel agrees that the proposed waste management system is the best outcome in the circumstances.

Elizabeth Kinkade disagreed with the majority decision for the following reasons:

In my view, inadequate information has been provided to determine the potential overshadowing impacts on the existing residential flat building to the west of the site, therefore the impact on solar access to these existing dwellings is unable to be clearly identified.

Solar access has been assessed against all relevant requirements for dwellings in the proposal. However, it is my view that clearer information is required to undertake an assessment of the overshadowing and solar access impacts on the adjoining properties to determine if design modifications to the proposed residential flat building are required.

CONDITIONS

The development application was approved subject to the conditions in the Council assessment report with the following amendments.

Condition 7 and 34 to be amended to read as follows:

PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

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

7. Submit the Following Information to Willoughby City Council

Prior to the ~~lodgement of an application for issue of~~ a construction certificate, the applicant shall submit the following information to the Director of Planning & Infrastructure at Council for its review, comment and written approval. Documentation confirming approval by Willoughby City Council shall then be submitted to the Certifier ~~for the application prior to the issue~~ of a construction certificate.

- a) a Demolition and Construction Waste Management Plan
- b) a revised Operational Waste Management Plan that addresses all the Conditions and retains ongoing compliance with the Development Application including *WDCP 2023* with the exception of:
 - Kerbside presentation of bins and bulky waste, unless Council provides an SRV that can enter the development; at which time the development will be required to cater for onsite collection.
 - Twice weekly collection for general waste with kerbside presentation of 660L bins.
 - Garden organics bin generation, based on *WDCP 2006* (Part C.8 and Attachment 16).
- c) Kerbside presentation of bins will not occur earlier than 5:00pm the day before collection and after 9:00am the day of collection.**
- d) Detailed Public Art Plan:

The detailed public art plan must be developed and implemented in accordance with Council's Public Art Policy and Procedures and Guidelines.

The Detailed Public Art Plan should include the public art concept/s illustrated in such a way that the form, dimensions, materials and location of the proposed artwork are clearly communicated. It should include a brief statement explaining the rationale behind the artwork and should demonstrate how the proposed work will relate to the proposed development and site.

It should provide a program for documentation, fabrication and installation and integration with the construction program for the development. It should also provide engineer's drawings, expected maintenance requirements and deaccessioning agreements.

The Public Art Plan will be reviewed by the Public Art Advisory Panel for comment and any recommendations will be recorded and passed on to the developer.

(Reason: Ensure compliance)

34. Amended plans

Prior to the issue of a Construction Certificate, submit to Council for approval amended **architectural** plans that show:

- The eastern edge of the vehicle crossing for the site located a minimum of 1.2m off the eastern site boundary, with the edge of the crossing at 90° to the kerb and gutter.
- The vehicle crossing has a maximum width of 6.2m.
- The driveway between the front boundary and the junction with the loading bay with a minimum width of 5.5m between kerbs and 6.1m between side walls.





(Reason: Pedestrian and vehicle safety)

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during the public exhibition and heard from all those wishing to address the Panel. The Panel noted that all persons who made submissions were notified of the public hearing and there were no speakers at the public hearing, other than on behalf of the applicant. The key issues of concern raised in written submissions included:

- Acoustic
- Privacy
- View loss
- Overshadowing
- Traffic and parking
- Inconsistent bulk and scale
- Wind tunnel affect
- Structural impacts on adjoining properties
- Construction noise, vibration and dust
- Impact on trees

The majority Panel considered that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 JACQUELINE TOWNSEND (CHAIR)	 ROBERT MONTGOMERY
 ELIZABETH KINKADE	 EMMA ROGERSON

SCHEDULE 1		
1)	DA NO.	DA-2022/393
2)	PROPOSED DEVELOPMENT	Demolition of existing residential unit building, construction of a 14 storey shop top housing development comprising 3 storeys of retail/commercial use, communal facilities and 4 levels of basement car parking, landscaping and associated works - INTEGRATED
3)	STREET ADDRESS	3 Ellis Street, Chatswood NSW 2067.
4)	APPLICANT/OWNER	Mpg Au Pty Ltd / Owners Corp Strata Plan 2715.
5)	REASON FOR REFERRAL	Contentious Development – more than 10 submissions, Development to which <i>State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development</i> applies, and Sensitive Development –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>State Environmental Planning Policy (2021) Housing</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 (Biodiversity and Conservation) 2021.</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> • 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	<ol style="list-style-type: none"> 1) Council assessment report: 19 April 2024. 2) Clause 4.6 variation requests: 4.3 Building Height 3) Written submissions during public exhibition: 73 4) Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ In Support: Craig Chung of MPG AU Pty Ltd ○ In Objection: Nil ○ On behalf of the applicant: Nil ○ Council staff: Akshay Bishnoi and Ritu Shankar
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. • Papers circulated electronically 23 April 2024. • Final briefing to discuss Council's recommendation, 30 April 2024 at 2.49pm – 4.19pm • Attendees: <ul style="list-style-type: none"> ○ Jacqueline Townsend (Chair), Robert Montgomery, Elizabeth Kinkade and Emma Rogerson. ○ Council staff: Akshay Bishnoi and Ritu Shankar
9)	COUNCIL RECOMMENDATION	Approval
10)	DRAFT CONDITIONS	Attached to the Council assessment report