

## DETERMINATION AND STATEMENT OF REASONS WILLOUGHBY LOCAL PLANNING PANEL

<b>DATE OF DETERMINATION</b>	26 July 2022
<b>PANEL MEMBERS</b>	Graham Brown (Chair), John McInerney, Gary Shiels and Philippa Hayes
<b>DECLARATIONS OF INTEREST</b>	None

Public meeting held at Willoughby City Council on 26 July 2022 by teleconference. The meeting opened at 2.00pm. Papers circulated electronically between 20 July and 26 July 2022.

This item was heard between 2.44pm and 3.10pm.

### MATTER DETERMINED

DA-2021/340 at 43 Donnelly Road, Naremburn NSW 2065. Proposed mixed use development comprising the demolition of existing school building, additions to St Leonards Church comprising parish hall and presbytery, construction of multi dwelling housing, conversion of existing presbytery to a dwelling and construction of a dwelling house.

### 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 after the meeting to deliberate on the matter and formulate a resolution.

### Application to vary a development standard

The Panel considered the clause 4.6 submission and is not satisfied that:

- a) the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6 (3) of the *WLEP*;
- b) the proposed development is in the public interest because it is inconsistent 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 **refuse** the development application pursuant to section 4.15 of the *Environmental Planning and Assessment Act 1979*. The Panel considered a request from the representatives of the Applicant to defer consideration of the application on the basis that matters provided to the Council in correspondence dated 30 June 2021 had not been addressed in the report prepared for the Panel's consideration, including specific legal advice. In response, the Council staff stated that the matters raised in the Applicant's correspondence were addressed in the report before the Panel. The Panel accepted this advice so the Panel declined the request for a deferral.

The Panel generally accepted that the site offers the potential for some form of redevelopment. However the Panel formed the strong view that the proposal sought to provide excessive levels of development that resulted in an unacceptable impact such as, but not limited to the impact on the character of the area, unacceptable impacts on the heritage significance of the heritage item and also the buildings ancillary to the heritage item and the loss of important trees that contribute significantly to the established character of the area.

The decision was unanimous.

### REASONS FOR THE DECISION

The reasons outlined in the Council assessment /supplementary report and:

1. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed dwelling houses are impermissible in the R3 Zone applicable to the site pursuant to the *Willoughby Local Environmental Plan 2012*.
2. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (b)(i), failing to conserve and balance the environmental heritage of the locality.
3. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (b)(ii), failing to promote an appropriate balance between development and management of the environment through provision of adequate landscaping.





4. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (c)(iii), failing to allow development at a scale that is sensitive to environmental constraints by provision of adequate stormwater measures.
5. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (d), failing to promote development that is designed and constructed to enhance or integrate into the natural landform and the existing character of distinctive locations, neighbourhoods and streetscapes, and to contribute to the desired future character of the locality or to contribute positively to the public domain.
6. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (e) to reduce adverse impacts from development on adjoining or nearby residential properties.
7. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2(i) to conserve items of environmental and cultural heritage.
8. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (j), failing to provide integrated development design of vehicular access and parking.
9. Pursuant to Section 4.15 (1) (a) (ii) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the draft *Willoughby Local Environmental Plan* in Clause 6.21 failing to reduce and remove urban heating from the environment and protect community health and wellbeing by provision of deep soil landscaping and canopy trees.

#### 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 key issues of concern included:

- Impact on character of the area
- Impact on heritage significance of the Heritage item on the site
- Impact on heritage significance of the surrounding Heritage items
- Privacy
- Overshadowing
- Traffic and parking
- Compliance with Height
- Landscaping and tree loss

The 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.

<b>PANEL MEMBERS</b>	
 <b>GRAHAM BROWN (CHAIR)</b>	 <b>JOHN MCINERNEY</b>
 <b>GARY SHIELS</b>	 <b>PHILIPPA HAYES</b>

<b>SCHEDULE 1</b>		
1)	<b>DA NO.</b>	DA-2021/340
2)	<b>PROPOSED DEVELOPMENT</b>	Proposed mixed use development comprising the demolition of existing school building, additions to St Leonards Church comprising parish hall and presbytery, construction of multi dwelling housing, conversion of existing presbytery to a dwelling and construction of a dwelling house.
3)	<b>STREET ADDRESS</b>	43 Donnelly Road, Naremburn NSW 2065.
4)	<b>APPLICANT/OWNER</b>	Metro Property Development / Roman Catholic Church Trustees.
5)	<b>REASON FOR REFERRAL</b>	Contentious Development – more than 10 submissions. Departure from standard by more than 10%.
6)	<b>RELEVANT MANDATORY CONSIDERATIONS</b>	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ <i>SEPP BASIX</i>.</li> <li>○ <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>.</li> <li>○ <i>Willoughby Local Environmental Plan 2012</i>.</li> </ul> </li> <li>• Draft environmental planning instruments: <i>Draft Willoughby Local Environmental Plan</i></li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ <i>Willoughby Development Control Plan</i></li> <li>○ <i>Section 7.12 (S94A) Plan</i></li> <li>○ <i>Willoughby Local Infrastructure Contributions Plan</i>.</li> </ul> </li> <li>• Provisions of the <i>Environmental Planning and Assessment Act</i>.</li> <li>• Planning agreements: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality.</li> <li>• The suitability of the site for the development.</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations.</li> <li>• The public interest, including the principles of ecologically sustainable development.</li> </ul>
7)	<b>MATERIAL CONSIDERED BY THE PANEL</b>	<ol style="list-style-type: none"> <li>1) Council assessment report: 19 July 2022.</li> <li>2) Clause 4.6 variation requests: <ul style="list-style-type: none"> <li>4.3 Building Height</li> </ul> </li> <li>3) Written submissions during public exhibition: 20 and a petition</li> <li>4) Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ In Objection <ul style="list-style-type: none"> <li>○ Geoffrey David Baker of 41 Donnelly Road</li> <li>○ Larissa Penn of Naremburn Progress Association</li> </ul> </li> <li>○ On behalf of the applicant <ul style="list-style-type: none"> <li>○ Emma McDonald of Broken Bay Diocese</li> <li>○ Sophie Litherland of Willowtree Planning</li> <li>○ Luke Hartman of Metro Property</li> </ul> </li> <li>○ Council staff – Mark Bolduan and Ritu Shankar</li> </ul> </li> </ol>
8)	<b>MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL/PAPERS CIRCULATED ELECTRONICALLY</b>	<ul style="list-style-type: none"> <li>• Site inspections were undertaken individually by Panellists at their discretion due to COVID-19 precautions.</li> <li>• Papers circulated electronically 20 and 26 July 2022.</li> <li>• Final briefing to discuss Council's recommendation, 26 July 2022 at 11:00am</li> <li>• Attendees: <ul style="list-style-type: none"> <li>○ Graham Brown (Chair), John McInerney, Gary Shiels and Philippa Hayes.</li> <li>○ Council staff: Mark Bolduan and Ritu Shankar</li> </ul> </li> </ul>
9)	<b>COUNCIL RECOMMENDATION</b>	Refusal
10)	<b>DRAFT CONDITIONS</b>	N/A