

DETERMINATION AND STATEMENT OF REASONS WILLOUGHBY LOCAL PLANNING PANEL

DATE OF DETERMINATION	13 August 2024
PANEL MEMBERS	Graham Brown (Chair), Kevin Hoffman, Linda McClure and Emma Rogerson
DECLARATIONS OF INTEREST	None

Public meeting held at Willoughby City Council on 13 August 2024 by teleconference. The meeting opened at 1.55pm. Papers circulated electronically between 7 August and 13 August 2024.

This item was heard between 1.56pm and 2.00pm.

MATTER DETERMINED

DA-2022/34 at 90-96 Eastern Valley Way, Willoughby NSW 2068 demolition of structures at 90-96 eastern valley way, Willoughby and construction of 14 townhouses and one affordable housing unit, basement car parking, 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.

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:

- 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*;
- 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 **grant deferred commencement consent** to 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 and:

1. **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)*.**
2. **The proposal is consistent with the objectives contained in *WDCP 2006* and *WDCP 2023*, and the numerical non-compliances are considered minor and adequately justified in respect to the relevant performance criteria.**
3. **The issue of site isolation has been addressed in accordance with the LEC Planning Principle.**
4. **The provision of an affordable housing dwelling within the development is a desirable planning outcome.**
5. **The development has been amended in response to submissions and issues identified since the initial notification of the application, and it is considered that the issues have been adequately addressed.**

CONDITIONS

The development application was granted deferred commencement consent subject to the conditions in the Council assessment report with the following amendment and additional conditions requiring a car parking space be attached to the affordable housing unit (condition 105A).

Schedule 1 Deferred Commencement Conditions of Consent is amended as follows;

SCHEDULE 1

CONDITIONS OF CONSENT

DEFERRED COMMENCEMENT

In accordance with Section 4.16(3) of the Environmental Planning and Assessment Act 1979 this consent will not operate until the applicant has provided information to the satisfaction of the Council that the following conditions can be complied with. Upon receipt of written information from the applicant in relation to the conditions in this schedule the Council will advise in writing whether the information is satisfactory and, if so, will nominate the effective date for the commencement of this consent.

In accordance with Clause 76(3) of the Environmental Planning and Assessment Regulation 2021, a twelve (12) month period is given from the date of the 'deferred commencement' notice to lodge plans and evidence that satisfactorily address the required amendments/details. If not, then the 'deferred commencement' will lapse and a new development application will be required.

1. Stormwater Diversion Plan

Submit to Council for approval a detailed plan and sections for the diversion of the Council stormwater pipe. The documents shall include the following:

- Survey of the new easement and the area 5m each side of the easement
- Location and level of adjacent buildings
- Location of the diverted pipe and pits
- Longitudinal section of the pipe, which includes existing and proposed ground levels, location of the pipe, any existing services, chainages along the pipe and 5% and 1% AEP water levels.
- Sections at 5m intervals through the easement and extending to the proposed building. The sections shall include **includes** existing and proposed ground levels, location of the pipe, any existing services and 5% and 1% AEP water levels.

The documents must clearly demonstrate that 500mm freeboard is achieved between the 1%AEP water level in the overland flow path in the easement and the flood level in the building adjacent to the flow path. If a wall is relied on to achieve the freeboard, the location and level of the wall must be clearly shown on the plan and sections.

(Reason: Stormwater management, protection of Council asset and protection of property)

2. Dedicated Parking for Affordable Housing Dwelling

Submit to Council for approval, an amended basement plan that allocated one of the visitor parking spaces for the exclusive use of residents of the affordable housing dwelling and car parking space.

(Reason: To ensure onsite parking is provided for the resident/s of the affordable housing unit, consistent with the provision of allocated parking for all dwellings within the development)

Note: Nothing in the Act prevents a person from doing such things as may be necessary to comply with these conditions. (See section 4.16(3) of the Act)

Schedule 2, Condition 10 is amended as follows:

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

10. Agreement to Transfer Affordable Housing Dwellings

The applicant must enter into a Deed with the Council providing for the transfer of title of the affordable housing dwelling **and assigned car parking space**, identified as TH15, to the Council, free of charge. The Deed is to be drafted in accordance with the Housing Transfer Deed template available on Council's website and is to be submitted to the Council's Property Team and be executed prior to the issue of the Construction Certificate.

The terms of this agreement must be to the satisfaction of the Council and must include a provision to the effect that the transfer of the dwellings **and parking space** is to be completed within two months of the registration of any subdivision of the development creating the areas to be dedicated and within 6 months of the issue of an Occupation Certificate. The applicant must agree to pay the Council's reasonable legal costs in satisfying itself that the agreement is appropriate, and a provision to this effect is to be included in the agreement.

The construction certificate plans should demonstrate that the physical requirements specified in the Housing Transfer Deed are satisfied.
(Reason: Ensure compliance)

Schedule 2, new Condition 105A was added as follows:

ONGOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

105A. Dedicated Parking for Affordable Housing Dwelling

One parking space in the basement shall be allocated for the exclusive use of the of residents of the affordable housing dwelling. Such space shall form part of the strata lot of the affordable housing unit in any strata title subdivision of the site.

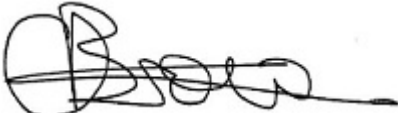



(Reason: To ensure onsite parking is provided for the resident/s of the affordable housing unit, consistent with the provision of allocated parking for all dwellings within the development).

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:

- Isolation of adjoining site
- Overshadowing
- Privacy
- Affordable housing requirement not fully satisfied
- Height exceedance
- FSR exceedance
- Bulk
- Views
- Tree loss
- Car parking
- DCP non compliances
- Construction impacts
- Traffic impacts
- Asbestos
- Contamination

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.

PANEL MEMBERS	
 GRAHAM BROWN (CHAIR)	 KEVIN HOFFMAN
 LINDA MCCLURE	 EMMA ROGERSON

SCHEDULE 1		
1)	DA NO.	DA-2022/34
2)	PROPOSED DEVELOPMENT	Demolition of structures at 90-96 Eastern Valley Way, Willoughby and construction of 14 townhouses and one affordable housing unit, basement car parking, landscaping and associated works.
3)	STREET ADDRESS	90-96 Eastern Valley Way, Willoughby NSW 2068
4)	APPLICANT/OWNER	Norvista P4 Pty Ltd / Norvista P4 Pty Ltd.
5)	REASON FOR REFERRAL	Contentious Development – more than 10 submissions.
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 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>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	<ol style="list-style-type: none"> 1) Council assessment report: 30 July 2024. 2) Clause 4.6 variation requests: 4.3 Building Height 3) Written submissions during public exhibition: 16 4) Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ In Support: Nil ○ In Objection: Nil ○ On behalf of the applicant: <ul style="list-style-type: none"> ○ Mo Chehelnabi & Vaughan Milligan of Architecture Urbaneia P/L and Vaughan Milligan Development Consulting (Architect and Planner) ○ Council staff: Anthony Blue and Akshay Bishnoi
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 7 August 2024. • Final briefing to discuss Council's recommendation, 13 August 2024 at 2.28pm-2.38pm • Attendees: <ul style="list-style-type: none"> ○ Graham Brown (Chair), Kevin Hoffman, Linda McClure and Emma Rogerson. ○ Council staff: Anthony Blue and Akshay Bishnoi
9)	COUNCIL RECOMMENDATION	Deferred Commencement Consent
10)	DRAFT CONDITIONS	Attached to the Council assessment report