

DETERMINATION AND STATEMENT OF REASONS

WOLLONGONG CITY COUNCIL – WOLLONGONG LOCAL PLANNING PANEL (WLPP)

DATE OF DETERMINATION	13 June 2023
PANEL MEMBERS	Sue Francis (Chair), Larissa Ozog, Stephen Davies, Edger DuBois (Community Representative)

Public meeting held at Wollongong City Council, Level 10 Council Chambers, 41 Burelli Street, Wollongong on 13 June 2023 opened at 5:00pm and closed at 5.27pm.

MATTER DETERMINED

DA-2022/1023, Lot 101 DP1279511, and 15 Nicholson Road Woonona (as described in detail in schedule 1).

PUBLIC SUBMISSIONS

The Panel was addressed by 5 submitters.

The applicant did not address the Panel.

PANEL CONSIDERATION AND DECISION

The Panel considered the matters listed at item 7, the material presented at the meeting and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined refuse the development application as described in Schedule 1 pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel was informed by Council staff of the impending s34 conference and that the Statement of Facts and Contentions (SOFACs) had already been provided to the applicant. The Panel has not seen nor has it been involved in the preparation of the SOFACs.

The representations made by submitters involved concerns related to traffic, flooding, ecological concerns, loss of trees, visual and privacy concerns as well as concerns for view loss. The Panel advised the submitters of the pending s34 Conference and informed them that they would have an opportunity to put their concerns to the Commissioner during the site visit for the s34 conference. Much of their concerns had been addressed in the Assessment report and formed reasons for refusal of the DA.

The Panel supported the refusal of the application for the reasons in the Assessment report, as amended below.

The reasons for the decision of the Panel were:

- 1 In accordance with Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development does not comply with the floor space ratio under Clause 4.4 of Wollongong Local Environmental Plan 2009. The extent of variation is uncertain due to insufficient information provided in relation to existing and proposed ground levels. No written request has been provided by the applicant to address Clause 4.6 therefore consent cannot be granted.


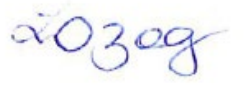


- 2 In accordance with Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the development is not acceptable when evaluated having regard to the design quality principles outlined in Schedule 1 of State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development (SEPP 65).

The proposal does not satisfy the relevant design criteria objectives of the Apartment Design Guide, particularly in regard to site analysis, communal open space, deep soil zone, visual privacy, separation and setbacks, apartment mix and waste management.

- 3 The proposed shared zone and visitor carparking area is a poor planning and urban design response for the site by removing space that could otherwise become communal open space which is lacking in the development. It also creates an undesirable and unacceptable conflict between pedestrians and vehicles.
- 4 In accordance with Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development does not comply with the building height under Clause 4.3 of Wollongong Local Environmental Plan 2009. The written request provided by the applicant has not adequately addressed the matters required to be demonstrated by Clause 4.6(3) for the departure sought in the building height for the development.
- 5 In accordance with Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, Council cannot be satisfied of the various matters required to be considered, as prescribed by Clause 5.10 Heritage Conservation of Wollongong Local Environmental Plan 2009.
- 6 In accordance with Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, Council cannot be satisfied of the various matters required to be considered, as prescribed by Clause 5.21 Flood Planning of Wollongong Local Environmental Plan 2009.
- 7 In accordance with Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, Council cannot be satisfied of the various matters required to be considered, as prescribed by Clause 7.6 Earthworks of Wollongong Local Environmental Plan 2009.
- 8 In accordance with Section 4.15(1)(a)(iii) of the Environmental Planning & Assessment Act 1979, the proposed development does not comply with the provisions of Wollongong Development Control Plan 2009 in a number of areas:
- a The development fails to demonstrate compliance with the provisions within Chapter B1 – Residential Development, including side and rear setbacks, deep soil planting, private open space, solar access, dwelling mix and layout, adaptable housing, view sharing and basement car parking controls.
 - b The development fails to demonstrate compliance with the provisions within Chapter E2 – Crime Prevention through Environmental Design.
 - c The development fails to demonstrate compliance with the provisions within Chapter E6– Landscaping.
 - d The development fails to demonstrate compliance with the provisions within Chapter E7– Waste Management.
 - e The development fails to demonstrate compliance with the provisions within Chapter E11 – Heritage Conservation.
 - f The development fails to demonstrate compliance with the provisions within Chapter E13 – Floodplain Management, including the proposal for filling and residential development within a High Flood Risk Precinct.
 - g The development fails to demonstrate compliance with the provisions of Chapter E14 – Stormwater Management, including that adequate stormwater management and onsite detention system can be catered for within the proposed built form.
 - h The development fails to demonstrate compliance with the provisions within Chapter E17 – Preservation and Management of Trees and Vegetation.

- i The development fails to demonstrate compliance with the provisions within Chapter E18 – Threatened Species Impact Assessment.
 - j The development fails to demonstrate compliance with the provisions within Chapter E19 - Earthworks.
- 10 In accordance with Section 4.15(1)(c) of the Environmental Planning & Assessment Act 1979 the application submission has failed to demonstrate site is suitable for the proposed development. Insufficient information has been provided in terms of plans and sections to establish the levels of the site relative to adjoining properties to properly understand the environmental impacts and the impacts on adjoining properties.
- 11 In accordance with Section 4.15(1 (d) and (e) of the Environmental Planning & Assessment Act 1979, having regard to the submissions received, it is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.

Should the decision be legally appealed, the Panel delegates any function of the Panel to defend the matter in accordance with S2.20(8) of the Act to Council.

PANEL MEMBERS	
 <p>Sue Francis (Chair)</p>	 <p>Larissa Ozog</p>
 <p>Stephen Davies</p>	 <p>Edger DuBois (Community Representative)</p>

SCHEDULE 1		
1	DA NO.	DA-2023/1023
2	PROPOSED DEVELOPMENT	Residential - demolition works, tree removal, construction of 12 units and 20 townhouses with associated basement car parking, landscaping and services infrastructure
3	STREET ADDRESS	15 Nicholson Road, Woonona Lot 101 DP 1279511
4	APPLICANT	Martin Morris & Jones Pty Ltd
5	REASON FOR REFERRAL	Schedule 2(4)(b) of the Local Planning Panels Direction the proposal is development to which SEPP No. 65 – Design Quality of Residential Apartment Development applies. Additionally, under Schedule 2(b) the development is subject of 10 or more unique submission.
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 Wollongong Local Environment Plan 2009 NSW Apartment Design Guide Wollongong Development Contributions Plan 2022 Draft environmental planning instruments: N/A Development control plans: <ul style="list-style-type: none"> Wollongong Development Control Plan 2009 Planning agreements: N/A Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Section 6 and 61 Coastal zone management plan: N/A 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	<ul style="list-style-type: none"> Council assessment report dated 13 June 2023 Written submissions during public exhibition: 36 Verbal submissions at the public meeting: 5
8	SITE INSPECTIONS BY THE PANEL	Virtual site inspection 13 June 2023 Attendees: <ul style="list-style-type: none"> <u>Panel members</u>: Sue Francis (Chair), Larissa Ozog, Stephen Davies, Edger Du Bois (Community Representative) <u>Council assessment staff</u>: John Wood, Vivian Lee
9	COUNCIL RECOMMENDATION	Refuse
10	DRAFT CONDITIONS	NIL