



northern
beaches
council

MINUTES

DEVELOPMENT DETERMINATION PANEL MEETING

held via Teleconference on

WEDNESDAY 22 NOVEMBER 2023

Minutes of a Meeting of the Development Determination Panel held on Wednesday 22 November 2023 via Teleconference

The public meeting commenced at 10.00am and concluded at 1:15pm.

The minutes were determined on 22 November 2023.

1.0 APOLOGIES AND DECLARATIONS INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 8 NOVEMBER 2023

The minutes of the Development Determination Panel held 8 November 2023, were adopted by all Panel Members and have been posted on the Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

3.1 DA2022/1974 - 84 QUIRK STREET DEE WHY - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL

PANEL MEMBERS

Adam Richardson	Manager, Development Assessment
Steve Findlay	Manager, Development Assessment
Robbie Platt	Principal Planner, Strategic & Place Planning

PROCEEDINGS IN BRIEF

Panel members visited the site and surrounds.

The Panel was addressed by two objectors and representatives of the applicant. The Panel was also in receipt of 3 submissions that were made after the assessment report had been published on Council's website.

The Panel does not agree with the Officer's Assessment Report, in particular, its finding in respect of impacts upon views. Despite the assessment, the Panel has concerns in relation to view impacts created by the proposals size and scale. Specifically, the proposal has not demonstrated that view impacts have been minimised as per the provisions of the Warringah DCP 2011, nor are the views considered to be shared.

Amendments to the design are available which reduces the length of the building thereby reducing the extent of view impact, whilst achieving a level of amenity desired by the applicants. The Panel was not of the view that issues in relation to view loss could be overcome through Conditions.

STATEMENT OF REASON

The proposal does not satisfy the relevant strategy, objectives and provisions of Warringah LEP 2011 and the Warringah DCP 2011 as set out within the reasons for refusal and articulated within the comments contained within the proceedings in brief.

COMMUNITY CONSULTATION

Issues raised in the submissions have been taken into account in the report and the meeting.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority, **refuses** Application No. DA2022/1974 for demolition works and construction of a dwelling house including swimming pool at Lot 2 DP 10683, 84 Quirk Street DEE WHY, for the following reasons:

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part D7 views of the Warringah Development Control Plan 2011

Particulars:

- i. The proposed development is not considered to result in the reasonable sharing of views.
- ii. It is considered that the elongated form of the dwelling results in a severe and unacceptable view loss impact on 82 Quirk Street, that is inconsistent with the Planning Principle established by the Land and Environment Court in *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*.
- iii. The application documentation fails to accurately demonstrate what the extent of view impact is and why the protrusion of the proposed dwelling to the north is necessary to

facilitate view sharing for the subject site and surrounding properties.

The site is not suitable for the proposed development pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.

Particulars:

- i. For the reasons set out in the refusal reason above, the site is not considered suitable for the proposed development in terms of its size, scale and design, despite it being residential development in the Low Density Residential R2 zone.

Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

Particulars:

- i. The extent of issues identified with the proposed development are such that the public's interest is not served by way of approval of the development application.

Vote: 3/0

3.2 DA2023/0782 - 20 ALBERT STREET FRESHWATER - ALTERATIONS AND ADDITIONS TO EXISTING RESTAURANT AND INCREASE IN HOURS OF OPERATION

PANEL MEMBERS

Daniel Milliken	Manager, Development Assessment
Adam Richardson	Manager, Development Assessment
Robbie Platt	Principal Planner, Strategic & Place Planning

PROCEEDINGS IN BRIEF

Panel members visited the site and surrounds.

The Panel was addressed by representatives of the applicant and an objector.

The Panel is of the view that Condition 27 needs to be amended so that it is a reviewable condition, in order to more efficiently deal with any resulting noise issues.

The Panel concurred with the Officer's Assessment Report and recommendation, however in respect of the assessment undertaken in relation to remediation of land, that the report erroneously refers to residential development rather than commercial development. Despite this incorrect reference the Panel is satisfied that the site is suitable from a contamination view point for the proposed development.

STATEMENT OF REASON

The proposal generally satisfies the relevant strategy, objectives and provisions of Warringah LEP 2011 and the Warringah DCP 2011 subject to conditions.

COMMUNITY CONSULTATION

Issues raised in the submissions have been taken into account in the report and the meeting.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority, **approves** Application No. DA2023/0782 for Alterations and additions to existing restaurant and increase in hours of operation at Lot 21 DP 226287, 20 Albert Street FRESHWATER, subject to the conditions set out in the Assessment Report, with the following changes:

Amend Condition 27 to read as follows:

27. Hours of Operation

This condition is imposed under s4.17(10B) of the Environmental Planning and Assessment Act 1979 to enable Council to review the performance of the approved development with respect to extended hours of operation.

The hours of operation are to be restricted to:

Indoor Seating Area

Monday to Saturday: 12.00pm - 12.00am

Sunday and Public Holidays: 12.00pm - 10:00pm

Outdoor Seating Area

Monday to Thursday: 12.00pm - 8:00pm

Friday and Saturday: 12.00pm - 10:00pm

Sunday and Public Holidays: 12.00pm - 8:00pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes

Review of Approved Hours of Operation

1. Throughout the first 12 months of operations, in addition to the implementation of recommendations as outlined in the above acoustic report, periodic acoustic assessments may be required where Council is in receipt of complaints in relation to noise. Where periodic acoustic assessments are required they are to be undertaken by a qualified acoustic consultant to determine whether "offensive noise" is emanating from the site.

Council may undertake its own monitoring at any time to verify the owner's assessments and, pending submission of the monitoring reports, undertake further investigation.

Offensive noise means noise—

- (a) that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances—
 - (i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
 - (ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
- (b) that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.

Should any acoustic assessment, including any monitoring done by Council, reveal that "offensive noise" is or has occurred, Council may require additional control measures in relation to hours of operation, number of patrons, or the like.

At any time during the first 12 months of operation, Council can advise the site operator of any required changes to operations that must be implemented. Council can require these changes to be implemented immediately, pursuant of written instructions from Council.

Where "offensive noise" is identified, and written instructions from Council are issued, the hours of operation will revert to those outlined in the written instructions issued by Council.

Reason: To ensure that amenity of the surrounding locality is maintained and to review any potential noise related issues, to residential receivers.

Vote: 3/0

3.3 DA2023/1001 - 72 ADDISON ROAD MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

PANEL MEMBERS

Daniel Milliken	Manager, Development Assessment
Adam Richardson	Manager, Development Assessment
Robbie Platt	Principal Planner, Strategic & Place Planning

PROCEEDINGS IN BRIEF

Panel members visited the site and surrounds.

The Panel was addressed by representatives of the applicant.

DETERMINATION OF DEVELOPMENT APPLICATION

The panel requires additional time to consider this application.

3.4 DA2023/0869 - 3 LAWSON PLACE MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

PANEL MEMBERS

Daniel Milliken	Manager, Development Assessment
Steve Findlay	Manager, Development Assessment
Kelly Wilkinson	Principal Planner, Strategic & Place Planning

PROCEEDINGS IN BRIEF

Panel members visited the site and surrounds.

The Panel was addressed by representatives of the applicant.

The Panel concurred with the Officer's Assessment Report and recommendation, subject to the deletion of Condition 9 and the amendment of Condition 14.

STATEMENT OF REASON

The proposal generally satisfies the relevant strategy, objectives and provisions of Manly LEP 2013 and the Manly DCP 2013 subject to conditions.

COMMUNITY CONSULTATION

There were no submissions received for this application.

DECISION ON EXCEPTIONS TO DEVELOPMENT STANDARDS

A. The Panel is satisfied that:

- 1) the applicant's written request under clause 4.6 of the Manly LEP 2013 seeking to justify a contravention of clause 4.3 Height of Buildings & 4.4 Floor Space Ratio development standard has adequately addressed and demonstrated that:
 - a) compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
 - b) there are sufficient environmental planning grounds to justify the contravention.
- 2) the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. The Panel assumes the concurrence of the Secretary, Department Planning and Environment required under clause 4.6.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority, **approves** Application No. DA2023/0869 for alterations and additions to a dwelling house at Lot B DP 345901, 3 Lawson Place MANLY, subject to the conditions set out in the Assessment Report, with the following changes:

Delete Condition 9

Amend Condition 14 to read as follows:

14. Roof colours and materials

The external finish to the roof shall consist of materials similar to that of the existing roof tile and colour scheme.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

Vote: 3/0

3.5 DA2023/1167 - 23 OLIVER STREET FRESHWATER - EXTENSION TO THE HOURS OF OPERATION FOR AN EXISTING RECREATIONAL (INDOOR) FACILITY

PANEL MEMBERS

Daniel Milliken	Manager, Development Assessment
Steve Findlay	Manager, Development Assessment
Kelly Wilkinson	Principal Planner, Strategic & Place Planning

PROCEEDINGS IN BRIEF

Panel members visited the site and surrounds.

The Panel was addressed by representatives of the applicant.

The Panel notes that the aims of the LEP in the table under 'Warringah Local Environmental Plan 2011' in the Assessment Report shows a blank space where it should read "Yes". The Panel has considered the proposal against the aims of the LEP and is satisfied that it meets those aim. The Panel also notes that the conditions relation to a Construction Certificate are not required given there is no construction. Conditions 2, 3 and 6 will be deleted.

Two members of the Panel were of the view that a trial of a noise level at 72dB is appropriate within the 6 (six) month trial period. To ensure an efficient response should this noise level result in unreasonable impacts, Condition 8 will be amended to be a reviewable Condition. Condition 5 will be amended to reference 72dB.

One Panel member was of the view that the noise limit of 65dB, which was the noise limit recommended by Council's Environmental Health Officer was appropriate and could not support the application based on the higher level of 72dBA

Subject to the above, the Panel, based on a majority vote, concurred with the Officer's Assessment Report and recommendation.

STATEMENT OF REASON

The proposal generally satisfies the relevant strategy, objectives and provisions of Warringah LEP 2011 and the Warringah DCP 2011 subject to conditions.

COMMUNITY CONSULTATION

Issues raised in the submissions have been taken into account in the report and the meeting.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority, **approves** Application No. DA2023/1167 for Extension to the hours of operation for an existing recreational (indoor) facility at Lot 1 DP 517620, 23 Oliver Street FRESHWATER, subject to the conditions set out in the Assessment Report, with the following changes:

Delete Conditions 2, 3 and 6

Amend Condition 5 to read as follows:

5. Noise Limiter

A noise limiter is to be installed to measure the sound pressure level of the music/microphone noise between 5am – 7am. The noise limiter is to be set to a maximum sound pressure level of 72dB inside the gymnasium. The limiter is to be stored in a secured, locked area only accessible by a manager for the gymnasium but must not be adjusted higher than 72dB at any time between 5am – 7am.

Reason: To ensure acoustic compliance in an operational situation.

Amend Condition 8 to read as follows:

8. Six Month Trial Period for Hours of Operation

This condition is imposed under s4.17(10B) of the Environmental Planning and Assessment Act 1979 to enable Council to review the performance of the approved development with respect to extended hours of operation.

The gymnasium (indoor recreational facility) may be open for business **Monday to Saturday from 5.00am** for a trial period of six (6) months from the date these operational hours are put into place (Council is to be informed of this commencement date in writing). Following the expiry of this period, the hours of operation specified in CDC2022/1912 shall apply. Notwithstanding this, the hours of operation of the premises that are otherwise permitted under the exempt development provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 continue to apply.

Review of Approved Hours of Operation

1. Throughout the first 6 (six) months of operations, in addition to the implementation of recommendations as outlined in the acoustic report and the conditions of consent, periodic acoustic assessments may be required where Council is in receipt of complaints in relation to noise. Where periodic acoustic assessments are required they are to be undertaken by a qualified acoustic consultant to determine whether "offensive noise" is emanating from the site.

Council may undertake its own monitoring at any time to verify the owner's assessments and, pending submission of the monitoring reports, undertake further investigation. offensive noise means noise—

- (a) that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances—
 - (i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
 - (ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
- (b) that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.

Should any acoustic assessment, including any monitoring done by Council, reveal that "offensive noise" is or has occurred, Council may require additional control measures or a reduction in decibel levels.

At any time during the first 6 months of operation, Council can advise the site operator of any required changes to operations that must be implemented. Council can require these changes to be implemented immediately, pursuant of written instructions from Council.

Where “offensive noise” is identified, and written instructions from Council are issued, the decibel levels or hours of operation will revert to those outlined in the written instructions issued by Council.

In order for the above trial hours of operation to be confirmed as on-going, a Section 4.55 Modification Application must be lodged with Council prior to the expiration of the trial period.

The assessment of the application to continue the proposed hours of operation for the gymnasium will consider, inter alia, the impact of the use on surrounding areas and the performance of the operation in relation to compliance with development consent conditions.

Note: Any person acting on this consent is advised that any modification application concerned with the trial hours of operation should be submitted to Council within sixty (60) days minimum prior to the expiration of the trial period otherwise the trial period must lapse.

Reason: To ensure that amenity of the surrounding locality is maintained.

Amend Condition 9 to read as follows:

9. Acoustic Review

To support a further application as outlined in Condition 8, an acoustic review of the findings prepared by Acoustic Logic (dated 29 September 2023) including the recommendations made (amended by conditions of this consent) shall be carried out on site (between 5.00am - 6.00am on Monday to Saturday).

Reason: To ensure acoustic compliance in an operational situation.

Vote: 2/1

3.6 DA2023/0857 - 31A AMIENS ROAD CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

PANEL MEMBERS

Daniel Milliken	Manager, Development Assessment
Steve Findlay	Manager, Development Assessment
Anne-Maree Newbery	Manager, Strategic & Place Planning

PROCEEDINGS IN BRIEF

Panel members visited the site and surrounds.

The Panel was addressed by representatives of the applicant.

The Panel considered the owners request to delete Condition 8 but is of the view that the Condition is reasonable and should be maintained.

The Panel concurred with the Officer's Assessment Report and recommendation.

STATEMENT OF REASON

The proposal generally satisfies the relevant strategy, objectives and provisions of Manly LEP 2013 and the Manly DCP 2013 subject to conditions.

COMMUNITY CONSULTATION

Issues raised in the submission have been taken into account in the report and the meeting.

DECISION ON EXCEPTIONS TO DEVELOPMENT STANDARDS

A. The Panel is satisfied that:

- 1) the applicant's written request under clause 4.6 of the Manly LEP 2013 seeking to justify a contravention of clause 4.3 Height of Buildings development standard has adequately addressed and demonstrated that:
 - a) compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
 - b) there are sufficient environmental planning grounds to justify the contravention.
- 2) the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. The Panel assumes the concurrence of the Secretary, Department Planning and Environment required under clause 4.6.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority, **approves** Application No. DA2023/0857 for alterations and additions to a dwelling house at Lot 2 DP 827554, 31 A Amiens Road CLONTARF, subject to the conditions set out in the Assessment Report.

Vote: 3/0

3.7 DA2023/0763 - 940 BARRENJOEY ROAD PALM BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

PANEL MEMBERS

Daniel Milliken	Manager, Development Assessment
Rod Piggott	Manager, Development Assessment
Anne-Maree Newbery	Manager, Strategic & Place Planning

PROCEEDINGS IN BRIEF

Panel members visited the site and surrounds.

The Panel was addressed by representatives of the applicant.

The Panel concurred with the Officer's Assessment Report and recommendation.

STATEMENT OF REASON

The proposal generally satisfies the relevant strategy, objectives and provisions of Pittwater LEP 2014 and the Pittwater 21 DCP subject to conditions.

COMMUNITY CONSULTATION

There were no submissions received for this application.

DECISION ON EXCEPTIONS TO DEVELOPMENT STANDARDS

A. The Panel is satisfied that:

- 1) the applicant's written request under clause 4.6 of the Pittwater LEP 2014 seeking to justify a contravention of clause 4.3 Height of Buildings development standard has adequately addressed and demonstrated that:
 - a) compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
 - b) there are sufficient environmental planning grounds to justify the contravention.
- 2) the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. The Panel assumes the concurrence of the Secretary, Department Planning and Environment required under clause 4.6.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority, **approves** Application No. DA2023/0763 for alterations and additions to a dwelling house at Lot 5 DP 13686, 940 Barrenjoey Road PALM BEACH, subject to the conditions set out in the Assessment Report.

Vote: 3/0

3.8 DA2023/0718 - 1825 PITTWATER ROAD BAYVIEW - RENOVATION OF ELEVEN (11) OF THE EXISTING GOLF COURSE GREENS, CONSTRUCTION OF ONE (1) NEW GREEN AND REMOVAL OF TREES

PANEL MEMBERS

Daniel Milliken	Manager, Development Assessment
Rod Piggott	Manager, Development Assessment
Anne-Maree Newbery	Manager, Strategic & Place Planning

PROCEEDINGS IN BRIEF

Panel members visited the site and surrounds.

The Panel was addressed by representatives of the applicant.

The Panel considered the applicants request to delete Condition 10 but was of the view that the Condition is reasonable and should be maintained.

The Panel concurred with the Officer's Assessment Report and recommendation, subject to an amendment to Condition 7.

STATEMENT OF REASON

The proposal generally satisfies the relevant strategy, objectives and provisions of Pittwater LEP 2014 and the Pittwater 21 DCP subject to conditions.

COMMUNITY CONSULTATION

Issues raised in the submissions have been taken into account in the report and the meeting.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority, **approves** Application No. DA2023/0718 for Renovation of eleven (11) of the existing gold course greens, construction of one (1) new green and removal of trees at Lot 1 DP 662920, Lot 1 DP 19161, Lot 5, 6 & 7 DP 45114, 52 Cabbage Tree Road BAYVIEW & Lot A DP 339874, Lot 1, 2 & 3 DP 986894, Lot 150 DP 1003518, Lot 191 DP 1039481, Lot 300 DP 1139238, 1825 Pittwater Road BAYVIEW, subject to the conditions set out in the Assessment Report, with the following changes:

Amend Condition 7 to read as follows:

7. Landscape Plan

A landscape plan shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

- locations of the 40 replacement trees to be installed within the property boundaries,
- the replacement trees shall be made up of *Casuarina glauca*, *Eucalyptus robusta* and/or *Melaleuca quinquenervia*, and must be planted at a minimum 25L pot size.

Certification shall be provided to the Certifier that these amendments have been documented.

Reason: Landscape amenity.

Vote: 3/0

3.9 DA2022/1715 - 60 HUDSON PARADE CLAREVILLE - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL

PANEL MEMBERS

Daniel Milliken	Manager, Development Assessment
Rod Piggott	Manager, Development Assessment
Kelly Wilkinson	Principal Planner, Strategic & Place Planning

PROCEEDINGS IN BRIEF

Panel members visited the site and surrounds.

The Panel was addressed by two objectors and representatives of the applicant

The Panel notes Condition 19 requiring a 2 meter setback to the pool's northern wall (with the privacy screen sitting atop it) and is of the view that a 2.5 meter setback is appropriate in this context. Condition 19 will be amended to achieve this.

Subject to the above, the Panel concurred with the Officer's Assessment Report and recommendation.

STATEMENT OF REASON

The proposal generally satisfies the relevant strategy, objectives and provisions of Pittwater LEP 2014 and the Pittwater 21 DCP subject to conditions.

COMMUNITY CONSULTATION

Issues raised in the submissions have been taken into account in the report and the meeting.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority, **approves** Application No. DA2022/1715 for Alterations and additions to a dwelling house including a swimming pool at Lot 56 DP 7794, 60 Hudson Parade CLAREVILLE, subject to the conditions set out in the Assessment Report, with the following changes:

Amend Condition 19 to read as follows:

Pool Design and Setback

Amended plans shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

An increase to the outside of the pool's northern wall (with the privacy screen sitting atop it) to 2.5m with the additional setback area replaced with soft landscaping; and

The pool amended to a straightened edge design.

Details demonstrating compliance with this condition are to be provided to the Certifying Authority.

Reason: To provide an appropriate pool and landscaping design to the Rickard House.

Vote: 3/0

This is the final page of the Minutes comprising 18 pages
numbered 1 to 18 of the Development Determination Panel meeting
held on Wednesday 22 November 2023.