

MINUTES

NORTHERN BEACHES LOCAL PLANNING PANEL

Electronically determined on

TUESDAY 15 SEPTEMBER 2020

Minutes of the Northern Beaches Local Planning Panel

Electronically determined on Tuesday 15 September 2020

ATTENDANCE:

Panel Members

Paul Vergotis	Chair
Marcus Sainsbury	Environmental Expert
Robert Hussey	Town Planner
Nick Lawther	Community Representative

**ELECTRONIC DETERMINATION OF THE NORTHERN BEACHES LOCAL PLANNING PANEL
– 15 SEPTEMBER 2020 – SCHEDULE 2, PART 5, ITEM 26 ENVIRONMENTAL PLANNING
AND ASSESSMENT ACT 1979 (NSW)**

Panel constituted by: Paul Vergotis (Chair), Bob Hussey (Expert), Marcus Sainsbury (Expert) & Nick Lawther (Community representative).

Development application: DA 2020/0211.

Proposed development: Reconstruction of walls and structures which were demolished during the course of renovations to an existing dual occupancy due to structural integrity of the walls and structures being compromised.

Premises: Lot 5, DP 8075 (Nos. 82 & 84) Bower Street, Manly

Determination: Pursuant to s 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* (NSW) conditional development consent is granted to development application no. 2020/0211 for the reconstruction of walls and structures which were demolished during the course of renovations to an existing dual occupancy due to structural integrity of the walls and structures being compromised. Consent is in accordance with the conditions set out in the Assessment Report (Item 3.5) published in the business papers of the Northern Beaches Local Planning Panel meeting held 29 July 2020 and subject to the following additional conditions:

1. The development being carried out in accordance with the amended plans submitted to the Northern Beaches Council on or about 30 July 2020 which were the subject of an approval to amend the development application pursuant to cl 55 of the *Environmental Planning and Assessment Regulation 2000* (NSW).
2. The amended plans referred to in (1) above are as follows:
 - a. Site Plan - Revision A dated 10/12/19 – 15_117 DA4-A-010 prepared by Smith & Tzannes;
 - b. Basement & Lower Ground – Revision A dated 10/12/19 – 15_117 DA4-A-100 prepared by Smith & Tzannes;
 - c. Ground & Level 1 – Revision B dated 29/7/2020 – 15_117 DA4-A-101 prepared by Smith & Tzannes;
 - d. Roof – Revision A dated 10/12/19 – 15_117 DA4-A-102 prepared by Smith & Tzannes;
 - e. Elevations – Revision B dated 29 /7/2020 – 15_117 DA4-A-200 prepared by Smith & Tzannes;
 - f. Sections – Revision A dated 10/12/19 – 15_117 DA4-A-201 prepared by Smith & Tzannes;
3. The 'Ground & Level 1 Revision B' plan and 'Elevations Revision B' plan are conditionally amended so that any subsequent construction certificate application is to indicate that the West Elevation Ground Floor windows accessible from the kitchen, dining and living areas of No. 84 Bower Street, Manly are fitted with external screens which shall have vertical angled fins that cover the windows. The individual vertical fins shall have a width of 200mm and be positioned top to bottom at an angle of 20° orientated to the north with 50mm overlaps so as there can be no vision and overlooking onto the adjoining property to the west No. 86 Bower Street, Manly. [Reason: To preserve and maintain visual privacy and amenity to the immediate adjoining property to the west at No. 86 Bower Street, Manly]
4. The external screens with vertical fins referred to in (3) above shall be replicated in size and continued in a northerly direction from the external wall of the dwelling along the western

edge of the external balcony accessible from the living area of No. 84 Bower Street, Manly.
[Reason: To preserve and maintain visual privacy and amenity to the immediate adjoining property to the west at No. 86 Bower Street, Manly and to also maintain design consistency with the similar edge type screening along the adjoining dwelling]

Statement of Reasons: This development application was the subject of considerable debate and objection from the adjoining neighbours who, in the main, made many valid arguments before the Panel about the merits of the proposed development. Notably the assessment report presented to the Panel summarised these contentious issues and concluded by recommending that the application should be refused.

The Panel after considering the competing arguments posited by both the applicant and the adjoining objectors decided to defer the determination of the application pending a better understanding of the visual impacts caused by the development. On this basis a further site inspection by 3 of the Panel members was held on 18 August 2020 where access to the subject site was gained. This was most beneficial as the Panel members gained a better understanding of the nature of the reconstruction works proposed. In addition to this the Panel also visited the dwelling of the immediate adjoining owners to the west No. 86 Bower Street, Manly. Once again this visit to the adjoining property was very beneficial and gave the Panel members a clear understanding of the visual privacy impacts likely to be caused from overlooking from west facing windows in the internal living area and from the northern end external balcony at No 84 Bower Street, Manly.

It is to be noted that the Panel's community representative, Mr Lawther was not in favour with the granting of a development consent to the proposed works as the impacts, from his perspective, were not able to be resolved. The majority of the Panel in reaching its ultimate decision to grant consent to the development application, were mindful of the fact that back in 2016 the former Manly Council granted consent to alterations and additions to the previous semi-detached building erected on the site. Then in 2017 another development consent was granted by Northern Beaches Council for alterations and additions to the pre-existing dual occupancy/semi. These facts must be given considerable weight. The works being proposed with this current application do not alter the height, bulk and scale of the building as approved back in 2017. This was a matter that the majority of the Panel had verified by the council's officers. This application seeks to put back walls that should have been retained but ended up being demolished during the course of the construction authorised by the 2017 consent and a subsequent 2018 modification application that had also been approved.

The other very important matter that needed to be considered was the site location and its context. All of the ocean foreshore lots along Bower Street (and Marine Parade) are sloping sites where most of the dwellings and outdoor terrace/deck areas all overlook one another. This is an inevitable consequence of the sloping nature of these types of sites. The subject site and the adjoining site are typical examples of foreshore lots.

Given the above site characteristics the major contention with this current application relates to the privacy impacts likely to eventuate rather than whether the reinstatement work constitutes a new dwelling. This later issue whilst important must be considered in light of the development consent history of the site which not only enjoys the benefit of a previous development consent (and modification) it also enjoys the benefit of 'existing use rights' which would have an overriding legal effect on compliance with the current planning and built form controls.

As such, the majority of the Panel took the view (after its deferral, detailed site inspection, site location context, and reconsideration) that the proper course of action to adopt was to grant development consent to the application but in doing so impose appropriate conditions to achieve the best practical outcome to first, facilitate the completion of the partially constructed building, and secondly (and most importantly) ensure the likely privacy impacts to the immediate adjoining

property to the west are addressed. The additional conditions imposed by the majority of the Panel are appropriate responses to these likely impacts.

Voting: 3 to 1 By Majority.

Paul Vergotis (Chair), Bob Hussey (Expert) and Marcus Sainsbury (Expert) **FOR** the decision to grant development consent; and

Nick Lawther (Community representative) **AGAINST** the decision to grant development consent

Confirmed: Paul Vergotis (Chair), Bob Hussey (Expert), Marcus Sainsbury (Expert) & Nick Lawther (Community representative) as the constituted Northern Beaches Local Planning Panel pursuant to Part 4 of the *Environmental Planning and Assessment Act 1979* (NSW).

This is the final page of the Minutes comprising 5 pages numbered 1 to 5 of the Northern Beaches Local Planning Panel electronically determined on Tuesday 15 September 2020.