



northern  
beaches  
council

# MINUTES

## DEVELOPMENT DETERMINATION PANEL MEETING

held on

**WEDNESDAY 28 OCTOBER 2020**

## Minutes of a Meeting of the Development Determination Panel held on Wednesday 28 October 2020

### ATTENDANCE:

#### Panel Members

Peter Robinson (Chairperson)	Executive Manager Development Assessment	
Tony Collier	Principal Planner, Development Assessment	Item 3.4 & 3.5
Anna Williams	Manager, Development Assessment	Item 3.1, 3.2, & 3.3
Anne-Maree Newbery	Manager, Strategic & Place Planning	Item 3.1
Phil Jemison	Manager, Strategic & Place Planning	Item 3.2, 3.3, 3.4 & 3.5

## **1.0 APOLOGIES AND DECLARATIONS INTEREST**

Nil

## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 14 OCTOBER 2020**

The Minutes of the Development Determination Panel held 14 October 2020, were adopted by all Panel Members and have been posted on the Council's website

### **3.0 DEVELOPMENT DETERMINATION PANEL REPORTS**

#### **3.1 MOD2020/0363 - 34 BEATTY STREET, BALGOWLAH HEIGHTS - MODIFICATION OF DEVELOPMENT CONSENT DA2019/0080 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING SWIMMING POOL**

##### **PROCEEDINGS IN BRIEF**

The Panel viewed the site and the surrounds.

The Panel were not addressed by any speakers.

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**

There were no submissions received for this application.

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##### **RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approve** Mod2020/0363 for Modification of Development Consent DA2019/0080 granted for alterations and additions to a dwelling house including swimming pool on land at Lot 21A DP 350345, 34 Beatty Street, Balgowlah Heights, subject to the conditions outlined in the Assessment Report.

Vote: 3/0 – determined on 28 October 2020

### **3.2 DA2020/0959 - 15 MALO ROAD, WHALE BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**

#### **PROCEEDINGS IN BRIEF**

The Panel viewed the site and the surrounds.

The Panel were addressed by 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**

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

#### **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 Local Environmental Plan 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.

#### **DECISION ON DEVELOPMENT APPLICATION**

THAT Council as the consent authority **approve** Development Consent to DA2020/0959 for alterations and additions to a dwelling house on land at Lot 2 DP 10782, 15 Malo Road, Whale Beach, subject to the conditions outlined in the Assessment Report.

Vote: 3/0 – determined on 28 October 2020

### **3.3 DA2020/0126 - 173 SEAFORTH CRESCENT, SEAFORTH - ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING HOUSE**

#### **PROCEEDINGS IN BRIEF**

The Panel viewed the site and the surrounds.

The Panel were addressed by three objectors and the owner.

The Panel does not concur with the Officer's assessment report and recommendation.

The Panel were not satisfied that the bulk and scale of the development was appropriate in regards to the objectives of the E3 zone and the requirements for the rear setback.

The development contained excessive fill and does not respect topography of landscaped setting of the site. In particular the excessive height of the raised terraces and buildings works at the rear of the property does not respond to the topography or surrounding development.

The dominant structures within the rear setback, both raised terraces, balconies and proposed rooms at the rear of the site are unacceptable in terms of bulk, scale, topography visual dominance and privacy.

The proposed landscaping does not dominate the site, the building mass and scale dominates.

Whilst the landscaping percentage is compliant with the numerical controls this is a result of the long battle axe handle to the foreshore. The main body of the site is dominated by the built form which is not meeting the objective of the zone.

In this regard the Panel cannot support the proposal.

#### **STATEMENT OF REASON**

The proposal does not satisfy the relevant strategy, objectives and provisions of Manly LEP 2013 and the Manly DCP 2013.

#### **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 not satisfied that:

- 1) the applicant's written request under clause 4.6 of the Manly Local Environmental Plan 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 not 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.

#### **DECISION ON DEVELOPMENT APPLICATION**

THAT Council as the consent authority **refuse** Development Consent to DA2020/0126 for alterations and additions to an existing dwelling house on land at Lot 1 DP 555814, 173 Seaforth Crescent, Seaforth, for the following reasons:

- Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.
- Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Zone E3 Environmental Management of the Manly Local Environmental Plan 2013.
- Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013.
- Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Special Height Provisions of the Manly Local Environmental Plan 2013.
- Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.
- 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 Clause 3.3.1 Landscaping Design of the Manly Development Control Plan.
- 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 Clause 4.1.8 Development on Sloping Sites of the Manly Development Control Plan.
- 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 Clause 4.4.5 Earthworks (Excavation and Filling) of the Manly Development Control Plan.

Vote: 3/0 – determined on 28 October 2020

### 3.4 DA2020/0646 - 117B SEAFORTH CRESCENT, SEAFORTH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE

#### PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

The Panel were addressed by the applicant.

The Panel does not concur with the Officer's assessment report and recommendation.

Panel considered that the variation to height was satisfactory in the context of the site and surrounds and that visually the building provided a lightweight, articulated design with a minimised footprint, reducing the extent of excavation. The building would not be detrimental to the visual amenity of the harbour or foreshore and that the design was a suitable outcome in its context and location.

Additional plans were submitted to clarify the finished level for the landscaped area above the dwelling which were satisfactory.

#### 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 Local Environmental Plan 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.

#### DECISION ON DEVELOPMENT APPLICATION

THAT Council as the consent authority **approves** Development Consent to DA2020/0646 for demolition works and construction of a dwelling house on land at Lot 21 DP 871376, 117B Seaforth Crescent, Seaforth, subject to the following conditions:

1. The addition of the following conditions:

##### **1. Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other



condition of consent) with the following:

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA04 Site / Roof Plan	Rev. H, 14 February 2020	Bennett Murada Architects
DA11 Lower Level Plan	Rev. H, 14 February 2020	Bennett Murada Architects
DA12 Middle Level Plan	Rev. H, 14 February 2020	Bennett Murada Architects
DA13 Upper Level Plan	Rev. H, 14 February 2020	Bennett Murada Architects
DA20 West Elevation	Rev. G, 21 September 2020	Bennett Murada Architects
DA21 East Elevation	Rev. G, 21 September 2020	Bennett Murada Architects
DA22 North Elevation	Rev. G, 21 September 2020	Bennett Murada Architects
DA23 South Elevation	Rev. G, 21 September 2020	Bennett Murada Architects
DA25 Section 1	Rev. G, 21 September 2020	Bennett Murada Architects
DA27 Section 2	Rev. G, 21 September 2020	Bennett Murada Architects
DA49 Additional Section Locations	Rev. B, 21 September 2020	Bennett Murada Architects
DA50 Additional Section 1	Rev. B, 21 September 2020	Bennett Murada Architects
DA51 Additional Section 2	Rev. B, 21 September 2020	Bennett Murada Architects
DA52 Additional Section 3	Rev. B, 21 September 2020	Bennett Murada Architects
DA53 Additional Section 4	Rev. B, 21 September 2020	Bennett Murada Architects
DA54 Additional Section 5	Rev. B, 21 September 2020	Bennett Murada Architects

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Geotechnical Report	May 2020	Douglas Partners
Arboricultural Assessment	10 October 2019	Coastal Care Horticultural Services

a) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
M1/3 Landscape Plan - Ground Level	1 May 2020	Art for Gardens
M2/3 Landscape Plan - Rooftop Garden	1 May 2020	Art for Gardens
M3/3 Landscape Plan - Street Level Gardens	1 May 2020	Art for Gardens
SK100 Proposed Rear Yard Levels and Retention	29 October 2020	Bennett Murada Architects
SK101 Proposed Section A	29 October 2020	Bennett Murada Architects
SK102 Proposed Section B	29 October 2020	Bennett Murada Architects

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

## 2. Prescribed Conditions

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in

progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

### 3. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

I 7.00 am to 5.00 pm inclusive Monday to Friday,

I 8.00 am to 1.00 pm inclusive on Saturday,

I No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

I 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
- Building/s that are to be erected
  - Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - Building/s that are to be demolished
  - For any work/s that is to be carried out
  - For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- Swimming Pools Act 1992
  - Swimming Pools Amendment Act 2009
  - Swimming Pools Regulation 2008
  - Australian Standard AS1926 Swimming Pool Safety
  - Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of

residents and the community.

#### **4. Ausgrid**

The “as constructed” minimum clearances to Ausgrid’s infrastructure must not be encroached by the building development. It also remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

Reason: To maintain safety on site.

#### **5. Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$16,680.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$1,668,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council’s Customer Service Centres or alternatively, on Council’s website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

#### **6. Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council’s Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

Reason: To ensure adequate protection of Council's infrastructure.

### **7. On slab landscape works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:

- i) 300mm for lawn
- ii) 600mm for shrubs
- iii) 1m for small trees

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: to ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

### **8. Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed into a scour and erosion control device prior to discharging to the ocean in accordance with Council's Manly Specification for On site Stormwater Management 2003.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from the development.

### **9. Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

### **10. Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the



Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

#### **11. Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

#### **12. Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- North point and scale.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

#### **13. Design Impact on Coastal Processes and Public/Private Amenity**

All development and/or activities must be designed and constructed so that they will not adversely impact on surrounding properties, coastal processes or the amenity of public foreshore lands.

Reason: To ensure the development does not impact the coastal process and public/private

#### **14. External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

Details demonstrating compliance are to be submitted to the Certifying Authority 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. (DACPLC03)

### **15. Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites and as nominated in the Arboricultural Assessment. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

The Project Arborist shall be in attendance and supervise all works, including:

- i) canopy pruning to the existing *Ficus rubiginosa* identified as tree number 1,
- ii) excavation and construction in the tree protection zone of existing *Ficus rubiginosa* identified as tree number 1, where the siting of the walling and path shall be determined based on the recommendations of the project arborist, in consideration of the following requirements
  - a) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture;
  - b) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture; and c) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
  - iii) excavation and construction in the tree protection zone of existing *Corymbia maculata* identified as tree number 8.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note: A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Any potential impact to trees within adjoining property as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon adjoining properties are preserved, and shall be the subject of a modification application.

Reason: tree protection.

### **16. Installation and Maintenance of Sediment and Erosion Control**



Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

#### **17. Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

#### **18. Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

#### **19. Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

#### **20. Tree and vegetation protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,

- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970- 2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees.
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Assessment prepared by Coastal Care Horticultural Services, as listed in the following sections:

- i) section 7. Development Impacts,
- ii) section 8. Recommendations and Tree Protection,
- iii) section 9. Arborist Involvement.

The Certifying Authority must ensure that:

- d) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree

(s) is prohibited.

Reason: tree and vegetation protection.

## **21.Landscape completion**

Landscaping is to be implemented in accordance with the Landscape Plans M 1/3, M 2/3, and M 3/3, prepared by Art for Gardens, inclusive of the following conditions:

- i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- ii) tree planting shall be located within a 9m<sup>2</sup> deep soil area and be located a minimum of 3 metres from existing and proposed buildings, and shall be located to minimise significant

impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: environmental amenity.

## **22. Condition of retained vegetation - Project Arborist**

Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: tree protection.

## **23. Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

## **24. Landscape maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: to maintain local environmental amenity.

## **25. No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

## **26. Dead or Injured Wildlife – Manly LEP Clause 6.5**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

Vote: 3/0 – determined on 2 November 2020

### **3.5 DA2020/0449 - 28 PAVILLION STREET, QUEENSCLIFF - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE**

#### **PROCEEDINGS IN BRIEF**

The Panel viewed the site and the surrounds.

The Panel were addressed by the applicant and architect.

The Panel does not concur with the Officer's assessment report and recommendation.

The media room within the front setback to the street was unacceptable, this impacts the non-compliance created on solar access to No.26 Pavillion St and the visual bulk on streetscape and neighbouring properties. The panel accepts that a variation to the front setback for the single storey garage may be acceptable, however street level landscaping within the front setback needs to be enhanced.

The Panel were concerned that the central courtyard in its current form was not an appropriate outcome given the non-compliances and impacts created from the relocation of floor space.

#### **STATEMENT OF REASON**

The proposal does not satisfy the relevant objectives and provisions of the Warringah DCP 2011.

#### **COMMUNITY CONSULTATION**

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

#### **DECISION ON EXCEPTIONS TO DEVELOPMENT STANDARDS**

A. The Panel is not satisfied that:

- 1) the applicant's written request under clause 4.6 of the Warringah Local Environmental Plan 2011 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 not 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.

#### **DECISION ON DEVELOPMENT APPLICATION**

THAT Council as the consent authority **refuse** Development Consent to DA2020/0449 for demolition works and construction of a dwelling house on land at Lot 4 DP 654388, 28 Pavilion Street, Queenscliff, for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B7 Front Boundary Setbacks of the Warringah Development Control Plan 2011. The total impact of the development will result in an outcome that is inconsistent with the streetscape character and development along Pavilion Street.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan 2011. The total impact of the development will result in an unreasonable visual impact when viewed from Pavilion Street resulting in unreasonable amenity impacts towards adjoining properties.

Vote: 3/0 – determined on 28 October 2020

This is the final page of the Minutes comprising 22 pages  
numbered 1 to 22 of the Development Determination Panel meeting  
held on Wednesday 28 October 2020.