



northern
beaches
council

MINUTES

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

held via teleconference on

WEDNESDAY 20 OCTOBER 2021

Minutes of the Northern Beaches Local Planning Panel held on Wednesday 20 October 2021

The public meeting commenced at 12.00pm and concluded at 2.05pm.

The deliberations and determinations commenced immediately following the public meeting and concluded at 5.00pm.

ATTENDANCE:

Panel Members

Peter Biscoe	Chair
Kara Krason	Town Planner
Lisa Bella Esposito	Town Planner
John Simmonds	Community Representative

The Panel have visited all sites personally, or electronically (due to COVID restrictions), and have had regard to the assessment report, all accompanying documentation, submissions from the public and any supplementary reports in determining all applications.

1.0 APOLOGIES AND DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 6 OCTOBER 2021

The Panel note that the Minutes of the Northern Beaches Local Planning Panel held 6 October 2021, were adopted by the Chairperson and have been posted on the Council's website

3.0 PUBLIC MEETING ITEMS

3.1 MOD2021/0178 - 138-139 NORTH STEYNE, MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA2018/0723 GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING

PROCEEDINGS IN BRIEF

The proposal is for seeks to modify development consent DA2018/0723, which provides for the demolition of all existing site improvements and the construction of a four storey residential flat building at the subject site.

At the public meeting which followed the Panel was addressed by two neighbours and one representative of the applicant.

The Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **defers** Application No. Mod2021/0178 for Modification of Development Consent DA2018/0723 granted for demolition works and construction of a residential flat building at Lot 10 DP 5824 & Lot B DP 345625, 138-139 North Steyne.

REASON FOR DEFERRAL

The applicant has provided amended plans very recently to Council. The Public Meeting is adjourned to 3 December 2021 to permit Council to prepare an updated Assessment Report on the revised proposal and to give the public an opportunity to make submissions.

3.2 MOD2021/0039 - 9-11 VICTORIA PARADE, MANLY - MODIFICATION OF COURT CONSENT DA0220/2013 UNDER S4.56 OF THE EP&A ACT, GRANTED FOR DEMOLITION WORKS, CONSTRUCTION OF A MIXED USE DEVELOPMENT AND STRATA SUBDIVISION

PROCEEDINGS IN BRIEF

The proposal is for modification to a development consent for DA220/2013 granted for demolition of existing buildings and the construction of a new 7-storey mixed-use building.

At the public meeting which followed the Panel was addressed by two neighbours and three representatives of the applicant.

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 and clause 4.4 Floor Space Ratio development standard has adequately addressed and demonstrated that:
 - a) compliance with the standards is unreasonable or unnecessary in the circumstances of the case; and
 - b) there are sufficient environmental planning grounds to justify the contraventions.
- 2) the proposed development will be in the public interest because it is consistent with the objectives of the standards 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2021/0039 for Modification of Court Consent DA0220/2013 under s4.56 of the EP&A Act, granted for demolition works, construction of a mixed use development and strata subdivision at Lot 1 DP 77358 & Lot CP SP 31058, 9-11 Victoria Parade, Manly subject to the conditions set out in the Assessment Report, subject to the following:

1. The amendment of the following condition to read as follows:

15. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003, and generally in accordance with the concept drainage plans prepared by BG& E consultant, project no S20059, Drawing no. C-0000, C- 0200 and C-0700 as per condition DA1A.

Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

2. The amendment of the following condition to read as follows:

24 Heritage Consultation

The applicant at their cost is to commission an experienced heritage architect to work with the consultant team throughout the design development, contract documentation and construction stages of the project.

The heritage architect is to be involved in the resolution of all matters where existing significant fabric and spaces are to be subject to preservation, restoration, reconstruction, adaptive reuse, recording and demolition.

The heritage architect is to be provided with full access to the site, including during the demolition phase of the development, and must respond directly to Northern Beaches Council where Council requires information or clarification regarding the resolution of heritage issues throughout the project.

Written details of the engagement of the experienced heritage architect must be submitted to Council prior to issuing any Construction Certificate works on the site.

Reason: To ensure that all matters relating to significant fabric and spaces are resolved using best practice for heritage conservation.

3. The amendment of the following condition to read as follows:

26 External Finishes

The external finishes used for construction are to be in accordance with drawing reference: External Finishes Schedule s4.55 Updated Revision 3. On the heritage building the external colour scheme for surfaces intended for painting is to be based where possible on physical and documentary evidence in keeping with the architectural style and period of the original building.

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

Reason: To ensure the proposed colour scheme is appropriate to the type and style of the building and the surrounding area.

4. The amendment of the following condition to read as follows:

43F Window Glazing

All windows marked "FIX" for Units 15, 14, 12, 8, and 1 on the western side elevation facing No.5-7 Victoria Parade are to use translucent glazing or fixed privacy treatment.

Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To minimise privacy impacts between adjacent dwellings.

5. The amendment of the following condition to read as follows:

43G Light Well

The wall alignment position / shape for the light well (Units 6, 7, 11, & 13) is to remain as per the approved plans.

Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain the same light / air well alignment for amenity to kitchen / bathroom area windows within No. 5-7 Victoria Parade.

6. The amendment of the following condition to read as follows:

43H Level 1 and 2 street facade

The forward corner of the curved front balcony and centre (inner corner) curved wall corner fronting Victoria Parade for Unit 6 and Unit 7 are to be straightened to the satisfaction of the Council's Executive Manager of Development Assessment in order to better complement the adjacent heritage element; and

The front balcony for Unit 10 is required to have a 2.0m minimum depth dimension. The compliant width is to be provided without further intrusion forward into the hipped roof section of the heritage building retained.

Details are to be provided to the satisfaction of the Executive Manager of Development Assessment prior to the issue of a Construction Certificate. The Construction Certificate is to be amended to incorporate this design.

Reason: Heritage and streetscape considerations.

REASONS FOR DETERMINATION:

The Panel agrees generally with the assessment report and the above.

Vote: 4/0

3.3 DA2021/0863 - 90 QUEENSCLIFF ROAD, QUEENSCLIFF - ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT BUILDING AND STRATA SUBDIVISION

PROCEEDINGS IN BRIEF

The proposal is for alterations and additions to the existing residential building containing three dwellings and strata subdivision.

At the public meeting which followed the Panel was addressed by three neighbours and three representatives of the applicant.

In the interest of transparency Kara Krason, a member of the Panel, discloses the following. During the course of the public meeting an objector stated that Paul Oates, one of the owners of the subject land, was employed by Dexus, a real estate company. Ms Krason, in her capacity as an employee of UTS, is periodically briefed by Dexus staff in relation to their Central Place Sydney Project located in the proximity to the UTS Campus. However, she was not aware that Mr Oates is an employee of Dexus and, as far as she is aware, has never met him.

DETERMINATION OF DEVELOPMENT APPLICATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/0863 for alterations and additions to a Residential Flat Building and Strata Subdivision at Lot 22 DP 8373, 90 Queenscliff Road, Queenscliff for the reasons set out below:

REASONS FOR REFUSAL:

1. Part B Built Form Controls and Part D Design

Pursuant to 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the following provisions of Parts B and D of the Warringah Development Control Plan 2011:

- B1 Wall Height,
- B3 Side Boundary Envelope,
- B5 Side Boundary Setbacks,
- B7 Front Boundary Setback,
- B9 Rear Boundary Setback, and
- D1 Landscaped Open Space and Bushland Setting

The cumulative effect of these non-compliances contribute to an unacceptable bulk and scale.

2. D9 Building Bulk

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 D9 Building Bulk of the Warringah Development Control Plan. Specifically, the bulk of the proposed building is excessive and does not achieve the objectives of the control. The development is not considered to exhibit good design that will improve the urban environment, and does not appropriately minimise the visual and amenity impacts when viewed from adjoining properties and the streetscape.

3. Amenity

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Aims of the Warringah Local Environmental Plan 2011, section 1.2 (2) (d)(i). Specifically, the proposed design in regards to ceiling heights provide poor amenity which does not protect or enhance the residential use and amenity of existing residential environments.

4 Design

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Aims of the Warringah Local Environmental Plan 2011 section 1.2.(2)(f)(i). Specifically, the proposed design does not achieve an outcome of quality urban design.

REASONS FOR DETERMINATION

- a) The development application is based on a change to an existing use permitted with development consent under Part 5 (clauses 41-44) of the Environmental Planning and Assessment Regulation 2000. The Part 5 provisions are called “the incorporated provisions” because they are taken to be incorporated in every environmental planning instrument (EPI): s 4.67(2) EPA Act 1979. Relevantly, cl 41(1) provides that an existing use may be (a) enlarged, expanded or intensified, or (b) be altered or extended, or (c) be rebuilt. The development application must be determined taking into consideration (inter alia) relevant provisions of an EPI – which is defined to include a local environmental plan (LEP) - and a development control plan (DCP) : s 4.15(1) EPA Act . An EPI may contain provisions extending, expanding or supplementing the incorporated provisions, but any provision of an EPI that would “derogate” or have the effect of derogating from the incorporated provisions have no force or effect: s 4.67(3).
- b) The provisions of an LEP fixing development standards do not derogate from the incorporated provisions: *Saffioti v Kiama Municipal Council* [2019] NSWLEC 57 at [65] approving earlier authority. Nor can built form controls in a DCP derogate in the manner prescribed by s 4.67(3) since a DCP is not an EPI for the purposes of the Act: *Saffioti* at [4], [72], [81]; *Made Property Group Pty Ltd v North Sydney council* [2020] NSWLEC 1332 at [154]. The planning principles in *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71, which the assessment report (and the applicant’s statement of environment effects) assumed to be the only ones applicable, were predicated on the assumption that planning controls do derogate and therefore have no application to the incorporated provisions, an assumption that cannot prevail in light of more recent decisions referred to above.
- c) This panel agrees with the decision of Council’s Design and Sustainability Advisory Panel (DSAP) not to support the proposal because the design was of poor quality with many of the rooms having low amenity and the overall form having unnecessary bulk. Subsequent amendments to the proposal do not respond sufficiently to that assessment.
- d) To the extent that the planning principles in *Fodor Investments* are applicable, the proposal is inconsistent with those principles as follows:
 - i. The bulk and scale (including as expressed by height and setbacks) of the proposal relates poorly to what is permissible on sites on either side of the subject site,
 - ii. The existing building on the site is to be partly demolished and its bulk is an important consideration,
 - iii. The visual impacts of the unacceptable bulk on adjoining land is significant,
 - iv. The design is of poor quality with many rooms having low amenity, as assessed by DSAP.

Vote: 4/0

3.4 DA2021/1208 - 20-26 AVON ROAD, DEE WHY - DEMOLITION WORKS AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING

PROCEEDINGS IN BRIEF

The proposal is for demolition of existing dwelling houses across four (4) lots, consolidation of four (4) lots and construction of a four (4) storey residential flat building consisting of 26 units and basement car parking.

At the public meeting which followed the Panel was addressed by two neighbours.

DETERMINATION OF DEVELOPMENT APPLICATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/1208 for demolition works and construction of a residential flat building at Lot 1, 2, 3 & 4 DP 104820, 20-26 Avon Road, Dee Why for the reasons for refusal set out in the Assessment Report.

REASONS FOR DETERMINATION:

The Panel agrees generally with the assessment report.

Vote: 4/0

4.0 NON PUBLIC MEETING ITEMS

4.1 MOD2021/0092 - 1184-1186 PITTWATER ROAD, NARRABEEN - MODIFICATION OF DEVELOPMENT CONSENT DA2008/1216 GRANTED FOR MAJOR ALTERATIONS AND ADDITIONS TO AN EXISTING HERITAGE BUILDING RESIDENTIAL FLAT BUILDING TO CREATE 5 RESIDENTIAL UNITS WITH BASEMENT CARPARKING AND STRATA SUBDIVISION

PROCEEDINGS IN BRIEF

The proposal is for Modification of Development Consent DA2008/1216 granted for major alterations and additions to an existing heritage building residential flat building to create 5 residential units with basement carparking and strata subdivision.

DETERMINATION OF DEVELOPMENT APPLICATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2021/0092 for Modification of Development Consent DA2008/1216 granted for Major alterations and additions to an existing heritage building residential flat building to create 5 residential units with basement carparking and strata subdivision at Lot 6 DP 659074, 1184-1186 Pittwater Road, Narrabeen subject to the conditions set out in the Assessment Report.

REASONS FOR DETERMINATION:

The Panel agrees generally with the assessment report.

Vote: 4/0

4.2 DA2021/1141 - 30 CAREEBONG ROAD, FRENCHS FOREST - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE, INCLUDING A FRONT FENCE

PROCEEDINGS IN BRIEF

The proposal is for alterations and additions to a dwelling house, including a front fence.

DETERMINATION OF DEVELOPMENT APPLICATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/1141 for alterations and additions to a dwelling house, including a front fence at Lot 78 DP 29463, 30 Careebong Road, Frenchs Forest subject to the conditions set out in the Assessment Report.

REASONS FOR DETERMINATION:

The Panel agrees generally with the assessment report.

Vote: 4/0

This is the final page of the Minutes comprising 12 pages
numbered 1 to 12 of the Northern Beaches Local Planning Panel meeting
held on Wednesday 20 October 2021.