



northern  
beaches  
council

# MINUTES

## **NORTHERN BEACHES LOCAL PLANNING PANEL MEETING**

held via teleconference on

**WEDNESDAY 17 NOVEMBER 2021**

## **Minutes of the Northern Beaches Local Planning Panel held on Wednesday 17 November 2021**

The public meeting commenced at 12.00pm and concluded at 2.10pm.

The deliberations and determinations commenced immediately following the public meeting and concluded at 5.25pm.

### **ATTENDANCE:**

#### **Panel Members**

David Crofts	Chair
Robert Hussey	Town Planner
Lisa Bella Esposito	Town Planner
Peter Cotton	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 3 NOVEMBER 2021**

The Panel notes that the Minutes of the Northern Beaches Local Planning Panel held 3 November 2021, were adopted by the Chairperson and have been posted on the Council's website

### 3.0 CATEGORY 3 APPLICATIONS

#### 3.1 DA2021/0340 - 194 FOREST WAY, BELROSE - CONSTRUCTION OF A BULKY GOODS SHOP

##### PROCEEDINGS IN BRIEF

The proposal is for the demolition of all existing improvements on site and for the construction of a bulky goods shop.

At the public meeting which followed the Panel was addressed by 6 representatives of the applicant.

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##### FINDINGS AND RECOMMENDATIONS

That the Northern Beaches Local Planning Panel, adopts the findings on Application No. DA2021/0340 for construction of a bulky goods shop at Lot 2672 DP 752038 & Lot 1 DP 1026189 & Lot 100 DP 1144988, 194 Forest Way, Belrose and recommends that the development application be **refused** for the reasons set out below:

##### Part A:

That the Independent Public Hearing Panel makes its findings and recommendation on Development Application DA2021/0340 for demolition works and construction of a bulky goods shop at 194 Forest Way, Belrose having regard to the assessment and recommendation for refusal in the Assessment Report.

##### Part B:

That the outcome of the Independent Assessment Panels findings and recommendations be reported to the Director or Planning and Place for determination of Development Application DA2021/0340.

##### Recommendations and Findings

1. Pursuant to Section 4.15(1)(a)(i) to the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the Desired Future Character of the C8 Belrose North Locality of the Warringah Local Environmental Plan 2000.
  - It is not a low impact low intensity use.
  - The proposed built form will present as an industrial style building which is not consistent with the current or desired future character of the area.
  - The development will experience a level of use at certain times of the year which is incompatible with a low intensity impact.
2. Although Transport NSW has provided a letter of concurrence, the Panel notes that the detail of works proposed by the applicant to Transport NSW to achieve concurrence is not yet available and has not been reviewed by Council or the Panel. Notwithstanding this, the Panel has concerns that any proposed deceleration lane on the Forest Way frontage and associated infrastructure is likely to have unacceptable impacts on the desired future character of the C8 Belrose North Locality of the Warringah Local Environmental Plan 2000, and on adjoining properties.
3. Pursuant to Section 4.15(1)(a)(iii) to the Environmental Planning and Assessment Act 1979, the proposed development fails provide sufficient information to satisfy the requirements of Clause 72 'Traffic Access & Safety' of the Warringah Local Environmental Plan 2000. In particular, the following requested information has not been provided:

- a) Provision of a kerb and gutter and related stormwater works along full frontage of site.
- b) Longitudinal section of the centre line of the driveway at an interval of 2m showing existing and proposed levels and grades.
- c) Swept path diagram(s) for the single vehicular access is required to demonstrate that the largest vehicles are able to simultaneously enter and exit the site in a forward direction.
- d) Swept path diagram(s) to include lane allocation of Forest Way, and to demonstrate manoeuvres from the kerb side lane and no impact to traffic flows on adjacent lanes due to movements.

The Panel notes that Council has not seen plans relating to works proposed by the applicant to achieve concurrence with Transport NSW and there may be other detail which needs to be provided to Council.

- 4. Pursuant to Section 4.15(1)(e) to the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

#### REASONS FOR FINDINGS AND RECOMMENDATIONS:

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

Vote: 4/0

## 4.0 PUBLIC MEETING ITEMS

### 4.1 DA2021/0545 - 8 LADY PENRHYN DRIVE BEACON HILL - CONSTRUCTION OF 10 INDEPENDENT LIVING UNITS AS HOUSING FOR 'OLDER PEOPLE OR PEOPLE WITH A DISABILITY', INCLUDING ANCILLARY SITE WORKS

#### PROCEEDINGS IN BRIEF

The proposal is to construct a building containing ten (10) independent living units, for “housing for older people or people with a disability” (‘aged care’).

At the public meeting which followed the Panel was addressed by 4 neighbours and 2 representatives of the applicant.

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#### DETERMINATION OF DEVELOPMENT APPLICATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/0545 for construction of 10 independent living units as housing for 'older people or people with a disability', including ancillary site works at Lot 806 DP 752038, 8 Lady Penrhyn Drive, Beacon Hill for the reasons for refusal set out in the Assessment Report, subject to the following:

1. The amendment of the following reason for refusal:
  1. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979* the proposed development application relies on unauthorised works undertaken without consent to enable vehicle access to the proposed development.
2. The amendment of the following reason for refusal:
  3. Pursuant to Section 4.15(1) (a) (i) and (b) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of the *Warringah Local Environmental Plan 2000* in that the proposal is inconsistent with the 'General Principles of Development Control'. In particular the proposal does not satisfy the requirements and sufficient information to comply with:
    - i. Clause 29 (g) Private open space
    - ii. Clause 56 Retaining Unique Environmental Features on Site
    - iii. Clause 58 Protection of Flora
    - iv. Clause 62 Access to sunlight
    - v. Clause 63 Landscape open space
    - vi. Clause 72 Traffic Access and Safety
    - vii. Clause 74 Private open space; and
    - viii. Clause 76 Management of stormwater.

#### REASONS FOR DETERMINATION:

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

Vote: 4/0

## 4.2 DA2021/1541 - 20 ALBERT STREET FRESHWATER - USE OF PREMISES AS A RESTAURANT

### PROCEEDINGS IN BRIEF

The proposal comprises of the change of use from a take away food and drinks premise to a restaurant with increased number of patrons and change in hours of operation. The proposal comprises of some minor alterations and additions to the internal and external walls of the building.

At the public meeting which followed the Panel was addressed by 2 representatives of the applicant.

### DETERMINATION OF DEVELOPMENT APPLICATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/1541 for use of premises as a restaurant at Lot 21 DP 226287, 20 Albert Street, Freshwater 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:

#### 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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.001 Existing Site Plan RevC	22/10/2021	FiveFootOne
DA.100 Demolition Plan RevC	22/10/2021	FiveFootOne
DA.101 General Arrangement Plan RevC	22/10/2021	FiveFootOne
DA.201 Proposed Elevations RevC	22/10/2021	FiveFootOne
DA.202 Proposed Elevations RevC	22/10/2021	FiveFootOne
DA.203 Proposed Elevations RevC	22/10/2021	FiveFootOne
DA.300 Finishes RevC	22/10/2021	FiveFootOne

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Plan of Management	Undated	Jack Leary
Traffic Report	01/11/2021	Lyle Marshall & Partners Pty Ltd
Access Report	03/2021	Access-i
Acoustic Report	12/11/2021	Pulse White Noise Acoustics

Odour Certificate	22/10/2021	Avalier Ventilation
Lighting Schedule	20/08/2021	FiveFootOne
Exhaust Schedule	4/03/2021	Ace Ventilation

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	16/02/2021	Jack Michael Leary

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

### 3. Patron Capacity

The maximum patron capacity for the restaurant shall be 71 patrons. All patrons must be seated.

Reason: To protect the amenity of nearby residential sites and reduce parking demand within Freshwater Village.

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

### 11. Plan of Management Update

An updated Plan of Management is to be prepared to the satisfaction of Councils Environmental Health Team and the Principal Certifying Authority. Updates to the Plan of Management are to include:

- State approved trading hours of 11.30am-10pm Monday to Sunday; and
- That all speakers or any sound equipment used as part of the development, must not exceed an output 65dB(A) when measured at any point inside the premises. An electronic limiter with a maximum output of 65 dB(A) must be installed at all times. The limiter is to be installed in a tamper proof enclosure (or in the case of a DSP based limiter) with no access to the limiter controls by staff.
- A dedicated phone number is to be provided within the Plan of Management for complaints. For avoidance of doubt this number should be separate to the business operation phone number used for making bookings and takeaway orders.
- The maximum number of patrons on the premises at any time shall not exceed 71.
- A focus on operational and security matters to address potential amenity impacts, including those raised in community submissions. This would include the deletion of extraneous 'business plan' type information.



The updated Plan of Management is to be available on the restaurants website for the general public to access. A hard copy of the Plan of Management shall also be physically distributed to all residents within 100m of the premise.

A complaints register should be kept and be made available to Council upon request.

The updated Plan of Management is to be submitted to Council for review and approval by Councils Environmental Health Team.

Reason: To maintain amenity of the surrounding area.

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

**12. Noise - Design of Mechanical Plant**

Prior to the issue of a Construction Certificate, the design, specifications and location of the mechanical exhaust fan are to be provided to the Principal Certifying Authority. An acoustic assessment of the proposed mechanical exhaust fan is to be undertaken by a suitably qualified professional such as an acoustic engineer to determine if the proposed exhaust will meet the recommendations within the Acoustic Report prepared by Pulse White Noise Acoustic dated 12 November 2021 (Rev 5).

Any design recommendations made by the acoustic engineer must be implemented into the plans prior to issuing the Construction Certificate in order to achieve compliance with noted conditions of this consent. Amongst other measures, the mitigation works include:

- The exhaust fan should be altered such that the approximate noise level at 3m is no greater than 50dBA and;
- a western barrier of a minimum height of 2m of solid construction with no gaps or perforations.

Details demonstrating compliance are to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To maintain amenity of the surrounding area.

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

**20. Acoustic Report Certification**

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a suitably qualified professional such as an acoustic engineer to confirm compliance with recommendations within the Acoustic Report by Pulse White Noise Acoustic dated 12 November 2021 (Rev 5) and compliance with any relevant acoustic conditions of the consent.

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate in order to achieve compliance with noted conditions of this consent.

Details demonstrating compliance are to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To protect the acoustic amenity of neighbouring properties.

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

**27. Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Sunday - 11:30am to 10:00pm

Upon expiration of the permitted hours, all service 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.

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

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

**31. Deliveries**

Deliveries to the premises shall only take place prior to the approved trading hours of the restaurant.

Reason: to ensure the parking spaces are available for staff during trading hours.

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

**32. Parking Space Marking**

Both on-site parking spaces shall be marked for use as staff/delivery spaces and line marked.

Reason: to ensure the spaces are available for their intended use.

REASONS FOR DETERMINATION:

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

Vote: 3/1 – R Hussey dissents because the proposal involves a significant increase in the intensity of use and does not provide an adequate amount of parking as required by the Warringah DCP 2011.

#### 4.3 DA2021/0680 - 16 BANGAROO STREET BALGOWLAH - ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING HOUSE AND USE AS A CENTRE-BASED CHILD CARE FACILITY

##### PROCEEDINGS IN BRIEF

The proposal is for alterations and additions to an existing dwelling house to facilitate the change of use of the premises to a child care facility.

At the public meeting which followed the Panel was addressed by 5 neighbours and 2 representatives of the applicant.

The Panel notes that the applicant requested a deferral of this application via correspondence on the 15 November 2021 without the submission of amended plans and supporting documentation through the NSW Planning Portal. We further note this timeframe did not enable Council officers to carry out a comprehensive assessment of the amended proposal.

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##### DETERMINATION OF DEVELOPMENT APPLICATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/0680 for alterations and additions to an existing dwelling house and use as a centre-based child care facility at Lot 111 DP 11936, 16 Bangaroo Street, North Balgowlah for the reasons for refusal set out below:

##### REASONS FOR REFUSAL:

1. The proposal is inconsistent with Clause 23 of the SEPP Educational Establishments and Child Care Facilities.
2. The proposed development is inconsistent with the provisions of Clause A.5 Objectives of the Warringah Development Control Plan 2011 in that it fails to respond to the characteristics of the site and the neighbourhood, is not able to be a good neighbour, and does not provide a high level of access to and within the development in a safe manner.
3. The proposed development is inconsistent with the provisions of Clause C2 Traffic, Access and Safety of the Warringah Development Control Plan 2011 in that the proposed access arrangements will give rise to an unsafe environment for pedestrians and vehicles and their occupants. In particular, of concern is the reversing of vehicles onto the footpath and the road carriageway when leaving the car park, the reliance on stacked car parking which exacerbates safety concerns, proximity of a bus stop, proximity of a major roundabout, and the volume of vehicles in the road network at peak periods.
4. The proposed development is inconsistent with the provisions of Clause C3 Parking Facilities of the Warringah Development Control Plan 2011 in that it fails to provide compliant off-street car parking arrangements for the child care centre.
5. The proposed development is inconsistent with the provisions of Clause D20 Safety and Security of the Warringah Development Control Plan 2011.
6. Pursuant to Section 4.15 (1) (b) and (c) of the *Environmental Planning and Assessment Act 1979* the proposed development is unsuitable for the site due to neighbourhood amenity and public safety outcomes.
7. Pursuant to Section 4.15 (1) (e) of the *Environmental Planning and Assessment Act 1979* the

proposed development is not in the public interest.

REASONS FOR DETERMINATION:

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

Vote: 4/0

## **5.0 NON PUBLIC MEETING ITEMS**

Nil

This is the final page of the Minutes comprising 13 pages  
numbered 1 to 13 of the Northern Beaches Local Planning Panel meeting  
held on Wednesday 17 November 2021.