



northern
beaches
council

MINUTES

DEVELOPMENT DETERMINATION PANEL MEETING

held via teleconference on

WEDNESDAY 13 JULY 2022

**Minutes of a Meeting of the Development Determination Panel
held on Wednesday 13 July 2022
via teleconference**

1.0 APOLOGIES AND DECLARATIONS INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 22 JUNE 2022

The minutes of the Development Determination Panel held 22 June 2022, were adopted by all Panel Members and have been posted on the Council's website

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

3.1 DA2022/0084 - 73 MARINE PARADE AVALON BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE, SECONDARY DWELLING AND SWIMMING POOL

PANEL MEMBERS

Steve Findlay	Manager, Development Assessment
Adam Richardson	Manager, Development Assessment
Phil Jemison	Manager, Strategic & Place Planning

PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

The Panel was addressed by two objectors, the landowner and the project architect.

The Panel was addressed on a number of planning issues and the main concern raised by the objectors was relating to the potential impact of the excavation and construction of the dwelling-house and swimming pool on the nearby St Michaels Cave. Notwithstanding the applicant had lodged geotechnical engineering and coastal engineering reports, which include a risk assessment and impact mitigation measures, the residents were concerned that insufficient assessment had been undertaken specifically in relation to the location and condition of the cave and how the proposed works may impact on the stability of the cave.

The Panel noted that the geotech and coastal reports do make mention of the cave that indicates the cave has been considered in the proposal. However, to ensure that the Panel has all the available information and analysis to be certain that the application has sufficiently dealt with this issue and that the risk has been adequately addressed, the applicant will be requested to provide additional information on their considerations of the cave, its stability and protection in relation to the proposed development.

STATEMENT OF REASON

This decision to defer the determination of this application is based on community concerns and the requirements of the Pittwater Local Environmental Plan 2014 to ensure all geotechnical risks have been adequately addressed.

COMMUNITY CONSULTATION

Issues raised in the submissions have been taken into account in the report, the meeting and the decision to defer the matter.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority **defers determination** of Development Application No. DA2022/0084 for demolition works and construction of a dwelling house, secondary dwelling and swimming pool on land at Lot 114 DP 8394, 73 Marine Parade AVALON BEACH, to allow the following to take place:

1. The Applicant is to provide a Supplementary Geotechnical Report outlining all of the considerations of St Michaels Cave in the design of the proposed development, including the caves location, stability and protection. The report is specifically to address the provisions of Clause 7.7 "Geotechnical Hazards" of the Pittwater Local Environmental Plan 2014 and provide confirmation that the vibration and any other effects of the excavation of the site and construction of the dwelling house and swimming pool in the manner proposed

can be appropriately mitigated and/or managed to prevent adverse impacts on the cave.

2. The supplementary report is to be submitted to Council within 14 days from the date the minutes are posted on the website.
3. The Panel will then consider the supplementary report, obtaining any necessary advice from Council's Engineering Section and proceed to make a determination of the application based on all of the resident and assessment issues.

Vote: 3/0

3.2 DA2022/0122 - 253 WHALE BEACH ROAD WHALE BEACH -ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL

PANEL MEMBERS

Steve Findlay	Manager, Development Assessment
Adam Richardson	Manager, Development Assessment
Phil Jemison	Manager, Strategic & Place Planning

PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

The Panel was addressed by the project architect for the application.

The Panel notes that the Assessment Report states that the proposal complies with the 6.5m front setback control under the P21DCP, however the studio below the driveway is to be situated on a 4.5m setback. Nevertheless, the Panel are satisfied that the non-compliance will not impact on the streetscape or residential amenity and is supported.

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 and the meeting.

DECISION ON EXCEPTIONS TO DEVELOPMENT STANDARDS

A. The Panel is satisfied that:

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

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

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority **approves** Development Application No. DA2022/0122 for alterations and additions to a dwelling house including a swimming pool on land at Lot 169 DP 15376, 253 Whale Beach Road WHALE BEACH, subject to the conditions set out in the Assessment Report.

Vote: 3/0

3.3 MOD2022/0008 - 1 - 2, 25 BATTLE BOULEVARDE SEAFORTH - MODIFICATION OF DEVELOPMENT CONSENT DA2021/0227 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING WITHIN A DETACHED DUAL OCCUPANCY DEVELOPMENT, INCLUDING A SWIMMING POOL

PANEL MEMBERS

Steve Findlay	Manager, Development Assessment
Adam Richardson	Manager, Development Assessment
Phil Jemison	Manager, Strategic & Place Planning

PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

The Panel was addressed by the project architect for the application.

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.

DETERMINATION OF MODIFICATION APPLICATION

THAT Council as the consent authority **approves** for Modification Application No. Mod2022/0008 to modify Development Consent No. DA2021/0227 granted for alterations and additions to a dwelling within a detached dual occupancy development, including a swimming pool on land at Lot 1 SP 21645, 1 / 25 Battle Boulevard SEAFORTH, Lot 2 SP 21645, 2 / 25 Battle Boulevard SEAFORTH, Lot CP SP 21645, 25 Battle Boulevard SEAFORTH, subject to the conditions set out in the Assessment Report.

Vote: 3/0

3.4 DA2022/0351 - 19 HERBERT STREET MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

PANEL MEMBERS

Steve Findlay	Manager, Development Assessment
Adam Richardson	Manager, Development Assessment
Phil Jemison	Manager, Strategic & Place Planning

PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

The Panel was addressed by the applicant.

The Panel were not satisfied that the written request to vary the floor space ratio development standard under Clause 4.3 of the MLEP 2013 adequately addressed the requirements of Clause 4.6 of the MLEP 2013. A revised Clause 4.6 Variation has since been submitted and will be considered in the Panels determination of the application.

STATEMENT OF REASON

That the written request to vary the development standard that was lodged with the application was not adequate and an upgraded Clause 4.6 is required to be considered before a determination can be made.

COMMUNITY CONSULTATION

There were no submissions received for this application.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority, **defers determination** Development Application No. DA2022/0351 for alterations and additions to a dwelling house on land at Lot 27 DP 4449, No. 19 Herbert Street, MANLY, to assess an upgraded Clause 4.6 Variation to vary the Floor Space Ratio Development Standard under Clause 4.4 of MLEP 2013 and then the Panel will make a determination.

Vote: 3/0

3.5 DA2021/1265 - 11 PITT ROAD NORTH CURL CURL - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL

PANEL MEMBERS

Steve Findlay	Manager, Development Assessment
Phil Lane	Acting Manager, Development Assessment
Phil Jemison	Manager, Strategic & Place Planning

PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

The Panel was addressed by a representative and legal advisor for one of the objectors, the applicant who is the planning consultant and the project architect for the application.

The Panel was addressed on a number of issues, however the main issue in contention was the correctness of the measured height of the building as stated in the Assessment Report. The objectors advisors were of the opinion that the method used by the assessment officer, which is based on the extrapolation method as per the Court case *Bettar v Council of City of Sydney (2014)*, is not the correct method, and should be based on the excavated ground levels method in the Court case *Merman Investments Pty Ltd v Woollahra Municipal Council (2021)*.

In order to ensure all relevant case law is addressed and considered in the assessment and determination of this application, the latter Merman case law must be addressed by the Applicant and Council.

The fact that the proposed dwelling has a measured height greater than 8.5m, when measured from the excavated level of the site to the highest point of the building directly above those levels, a written Clause 4.6 Variation request to vary the Height of Buildings development standard under Clause 4.3 of the Warringah Local Environmental Plan 2011 is required to accompany the application.

Accordingly, the applicant will be requested to lodge a Clause 4.6 Variation request for Council's consideration and so the determination of the application is being deferred.

The Panel acknowledges that there are other planning and related issues, which are addressed in the Assessment Report and which were the subject of resident submissions at the meeting, which are also under consideration in the ultimate determination of this application.

STATEMENT OF REASON

The application is being deferred to allow the applicant to lodge a written Clause 4.6 Variation request to vary the 8.5m Height of Buildings development standard under Clause 4.3 of the WLEP 2011, applying the measurement of building height as per the *Merman Investments v Woollahra Council* case law, for the assessment officer to carry out an assessment of the Clause 4.6 variation and a supplementary memo addressing building height, to be prepared for the consideration of the Panel.

COMMUNITY CONSULTATION

Issues raised in the submissions have been taken into account in the report and the meeting. As a result, the application is being deferred and those who made a submission will be given the opportunity to view the applicants Clause 4.6 Variation and the Supplementary Memo and make any further submissions.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority **defers determination** of Development Consent No. DA2021/1265 for demolition works and construction of a dwelling house, including a swimming pool on land at Lot 1 DP 21968, No. 11 Pitt Road NORTH CURL CURL, to allow the following to take place:

1. The applicant is to lodge a written Clause 4.6 Variation request to vary the 8.5m Height of Buildings development standard under Clause 4.3 of the WLEP 2011, applying the measurement of building height as per the *Merman Investments v Woollahra Council* case law. A supplement to the Statement of Environmental Effects (SEE) addressing the revised height of the development is also to be submitted.

The additional information is to be submitted within 14 days from the date the minutes are posted on the website.

2. The application will be re-notified for 14 days, to allow interested persons to view the applicants written Clause 4.6 Variation and Supplement to the SEE, and make any further submissions on the application.
3. The Assessment Officer is to carry out an assessment of the Clause 4.6 variation, the supplement to the SEE and any new submissions, and provide a Supplementary Memo addressing the additional information, the issue of building height and any relevant planning and resident issues associated with building height.
4. The Panel will then consider the additional information, including the applicants Clause 4.6 variation and supplement to the SEE, any submissions received in response to the re-notification, the Supplementary Memo by the Assessment Officer and remainder of the application and Assessment Report, and make a determination.

Vote: 3/0

3.6 DA2021/2188 - 163 WHALE BEACH ROAD WHALE BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL

PANEL MEMBERS

Dan Milliken	Acting Manager, Development Assessment
Phil Lane	Acting Manager, Development Assessment
Phil Jemison	Manager, Strategic & Place Planning

PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

The Panel was addressed by the owner.

The Panel concurred with the Officer's assessment report, supplementary memo and recommendation, subject to the inclusion of the additional condition listed below.

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 and the meeting.

DECISION ON EXCEPTIONS TO DEVELOPMENT STANDARDS

A. The Panel is satisfied that:

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

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

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority **approves** Development Consent to DA2021/2188 for alterations and additions to a dwelling house including a swimming pool on land at Lot 12 DP 11909, 163 Whale Beach Road WHALE BEACH, subject to the conditions set out in the Assessment Report and the following additional condition:

1. The addition of the following condition:

40. Noise - Lift and Swimming Pool

All plant equipment must be installed and operated at times so as not to cause 'offensive

noise'. It must be demonstrated that the noise level will not exceed 5dB(A) above background noise when measured from the nearest property boundary, as defined by the Protection of the Environments Operation Act 1997.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.

Vote: 3/0

3.7 DA2022/0005 - 21 MOORE STREET CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL

PANEL MEMBERS

Dan Milliken	Acting Manager, Development Assessment
Phil Lane	Acting Manager, Development Assessment
Phil Jemison	Manager, Strategic & Place Planning

PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

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

The Panel notes that the photos in the assessment report showed height poles at the height of the original proposal, not the amended design that is before the Panel for determination.

The Panel notes that the upper floor roofline has been pulled back approx. 2.17m to the north (front) and set back further from the side boundary, between the original proposal and the plans before the Panel.

The Panel concurred with the Officer's assessment report and recommendation.

STATEMENT OF REASON

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

COMMUNITY CONSULTATION

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

DECISION ON EXCEPTIONS TO DEVELOPMENT STANDARDS

A. The Panel is satisfied that:

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

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

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority **approves** Development Consent to DA2022/0005 for alterations and additions to a dwelling house including a swimming pool on land at Lot 7 DP 2610,

21 Moore Street CLONTARF, subject to the conditions set out in the Assessment Report.

Vote: 3/0

3.8 DA2022/0487 - 85 SEAVIEW STREET BALGOWLAH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

PANEL MEMBERS

Dan Milliken	Acting Manager, Development Assessment
Phil Lane	Acting Manager, Development Assessment
Phil Jemison	Manager, Strategic & Place Planning

PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

There were no registered 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

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

DECISION ON EXCEPTIONS TO DEVELOPMENT STANDARDS

A. The Panel is satisfied that:

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

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

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority **approves** Development Consent to DA2022/0487 for alterations and additions to a dwelling house on land at Lot 2 DP 925018, 85 Seaview Street BALGOWLAH, subject to the conditions set out in the Assessment Report.

Vote: 3/0

The meeting concluded at

This is the final page of the Minutes comprising 16 pages
numbered 1 to 16 of the Development Determination Panel meeting
held on Wednesday 13 July 2022.