



northern  
beaches  
council

# MINUTES

## **DEVELOPMENT DETERMINATION PANEL MEETING**

held via teleconference on

**WEDNESDAY 24 AUGUST 2022**

**Minutes of a Meeting of the Development Determination Panel  
held on Wednesday 24 August 2022  
via teleconference**

## **1.0 APOLOGIES AND DECLARATIONS INTEREST**

Nil

## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 10 AUGUST 2022**

The minutes of the Development Determination Panel held 10 August 2022, were adopted by all Panel Members and have been posted on the Council's website

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

#### **3.1 MOD2022/0146 - 31 THE CRESCENT MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA2019/0215 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**

##### **PANEL MEMBERS**

Steve Findlay	Manager, Development Assessment
Alex Keller	Principal Planner, Development Assessment
Phil Jemison	Manager, Strategic & Place Planning

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

The Panel viewed the site and the surrounds.

The Panel was addressed by seven (7) objectors and a representative of the applicant.

A supplementary memo was provided to the panel in relation to some errors in the assessment report in relation to the Section 4.15 'Matters for Consideration' table in terms of the suitability of the site and public interest section of the table and a corrected assessment against the relevant matters for consideration has been conducted.

The Panel was also provided with an email on 24.8.2022 from a representative of one of the objectors in relation to impacts and a series of recommendations were requested in that email.

There were several requests to defer the hearing of the application by the Panel and the determination of the application by the Panel, however there are no compelling reasons provided to warrant the deferral.

However, there were a number of issues arising from the meeting and as contained in the email that required further consideration after the presentations from the objectors and applicant. The issues are addressed as follows:

##### **Views**

It is noted that the roof height of the building is not being changed. The main wall setbacks are consistent with the approved development and the minor changes to the external appearance do not have a material impact due the minimal adjustments being made to the walls.

Conditions are recommended for the plants on the carport/garage roof to be of a low growing species and the trees in the western side setback are to be limited to 3.0m mature height. Additional conditions are also recommended to ensure floor levels and framing are checked through survey confirmation to ensure the approved levels are adhered to during construction.

A condition is also recommended to ensure the construction certificate process does not allow for additional equipment, condensers, lift overruns, satellite dishes or the like to be added to the house roof area. The solar panels are shown to be limited as per existing Condition 8.

##### **Windows**

The use of translucent glass mixed with clear glass is not adequate to protect privacy along the side elevations with some of the window arrangements shown. The large, angled screens will ensure directional viewing and privacy to the living area windows as shown. Conditions are recommended to improve the privacy to neighbours due to some of the Level 2 windows. At the lower levels, the side fencing and setback areas will provide reasonable privacy. Windows are as per the original sample board, which does not have a coded link or obvious match to the Platform Architect plans (the original plans were by "Action Plans"). Numerous windows have changed position or are a different style and shape. Consideration of concerns from the adjacent units to the

east and west of the site regarding privacy are addressed by conditions.

### **Solar Access**

The changes to the plans will not have any unreasonable impact on the overshadowing of adjoining properties compared to the approved scheme, subject to conditions. Consideration of this includes that, some items (such as installed rooftop equipment) could increase overshadowing, if located on the roof area and therefore a condition is recommended to limit this. Also, conditions are recommended to ensure landscape planting does not create adverse solar access impacts on adjoining properties.

### **Native tree height of 4.0m**

This issue is addressed by a condition to limit the tree planting shown to 3.0m to maintain solar access to the adjacent units west of the site.

### **Pouring of Slabs**

A new condition is recommended to ensure concrete slab levels are constructed as per the approved levels.

### **Side Wall changes**

The changes to the walls will have no material impact due to the other elements in the side setback are being retained and the stepped nature of the side walls. The retention of the kitchen wall maintains more of the original existing fabric of the dwelling, which maintains similar spatial separation along that particular wall section.

### **FSR Increase**

The FSR change is associated with changes to the lower ground floor by relocating an internal storeroom and the adjustments to the lift corridor. Other changes are minimal in terms of the FSR total area. It is noted that a Clause 4.6 variation is not required as this is a modification application and so the increase in floorspace is considered on its merits and is reasonable and acceptable considering there is no increase in height, bulk and scale of the dwelling-house.

### **No Rooftop Plant Equipment/AC units**

This is addressed by a new condition and the plans submitted show the location of the solar panels consistent with the original DA conditions (i.e. they will not be any higher than the parapet edge).

### **Existing Dwelling – Extent of Demolition**

The existing dwelling will be significantly altered and partly demolished under the approved DA. The modified scheme actually keeps more existing elements as part of the new dwelling structure.

### **Clarify wall height and building height issue**

The height of the building does not change under this application. The modification seeks to adjust the lower floor level on the lowest level, but this does not affect the wall height measurement. The change to the floor to ceiling height is shown on the elevations and plans and does not create any unreasonable amenity impacts for overshadowing, views or general amenity to adjoining properties.

### **Approved Plans**

The plans to be approved under this application are the plans dated 20.6.2022 which were submitted to Council in July 2022. The previously submitted plans, dated 23.2.2022 are superseded, although were relied on for the initial assessment, notification and the like. Importantly, the plans dated 20.6.2022 were used in the review of this application and on hand during DDP the site inspection. The principal changes in the June plans are the retention of the

straight section of the existing house kitchen wall. With the assistance of being able to review the changes in the June plans compared to the February plans the updated plans do not adversely materially change the external appearance of the dwelling nor create any reduced amenity.

Therefore, the plans dated 20.6.2022 have been considered in detail and are the basis of the approval and they do not require renotification under the Community Participation Plan.

### **Division of Dwelling-house into Separate Units**

The concerns expressed by residents regarding the possibility of dividing the dwelling-house into multiple units was considered. Notwithstanding apartments are a permissible use in the R1 General Residential zone under the Manly LEP 2013, the floorplans clearly show the dwelling-house is only designed to be a single dwelling; with one principal kitchen/living/dining area and other connected spaces for relaxation/living areas for a family.

Internally, the house is interconnected as a single dwelling and doorway areas are appropriate for heating/cooling zones and a shared living environment in a single dwelling. A condition is already on the consent that the house is to remain as a “dwelling house” and any proposal to convert the dwelling-house into a residential flat building or dual occupancy would require further development consent.

However, to support the existing condition, an additional condition has been imposed which specifically prohibits any kitchen or cooking facilities from being installed in the Rumpus Room on the Ground Floor Level and the Bar on the Second Floor Level.

### **Panels Conclusions**

The Panel concurs with the assessment officers report and recommendation, subject to amended and additional conditions in relation to rooftop planting, tree planting in the western side setback, privacy treatments to windows, survey certificate, rooftop structures and no additional cooking facilities.

### **STATEMENT OF REASON**

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

### **COMMUNITY CONSULTATION**

Issues raised in the submissions have been taken into account in the assessment report, at the meeting and in the post-meeting deliberations.

### **DETERMINATION OF MODIFICATION APPLICATION**

THAT Council as the consent authority **approves** Development Consent to MOD2022/0146 for Modification of Development Consent DA2019/0215 granted for alterations and additions to a dwelling house on land at Lot 1 DP 1085978, 31 The Crescent MANLY, subject to the conditions set out in the Assessment Report, as amended by the following amended and additional conditions:

1. Amend Condition 1A as follows:

#### **1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A1.02, A1.03.1, A1.03.2, A1.04.1, A1.04.2, A1.05, A1.50, A2.01, A2.02.1, A2.02.2, A2.03.1, A2.04, A2.05, A2.06, A3.01.1, A3.01.2, A3.04, (Revision S4.55, 01)	20.6.2022	Platform Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (Certificate Number: A443608)	21 December 2021	AGA Consultants

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:

Landscape Plans		
Drawing No.	Dated	Prepared By
DA- L01, DA- L03, DA- L04, DA- L05, DA- L06	17/12/2021	Sydney Design Collective

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

2. Add the following new conditions:

**Rooftop planting (Garage)**

The garage roof top cover planting shall be maintained with selected low-height plant species that can be maintained to a maximum natural growth height of 300mm above the roof planter enclosure/outer rim.

The landscape plans are to be amended to incorporate this requirement prior to release of the Construction Certificate.

Reason: To minimise visual impact and impact on views for surrounding properties.

**Tree planting (western setback)**

The tree planting within the western setback area (shown between the garage and approved dwelling) shall comprise of trees that have a natural mature height of 3.0m.

The landscape plans are to be amended to incorporate this requirement prior to release of the Construction Certificate.

Reason: To minimise overshadowing and view impacts for adjoining properties.

**Privacy (window treatments)**

The following windows are to use translucent (frosted glass) in order to protect privacy to

adjacent residential units:

- Level 2 East Elevation – W21, W20, W19A, W19B
- Level 2 West elevation – W24, W28, W29, W26 (study), W27 (library). For the ‘study’ and ‘library’ windows a sill height of 1.65m above floor level may be used instead for those windows if clear glazing is used (as shown) instead of translucent glass to allow direct solar internal amenity.
- All windows shown as “Obscure” for the glazing (for the approved modification plans) are to be provided as such.

The architectural plans are to be amended to incorporate these requirements prior to release of the Construction Certificate.

Reason: To protect the privacy and amenity of adjacent dwellings.

### **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To ensure the building is constructed in accordance with levels shown on approved plans.

### **Dwelling rooftop structures**

No motorised plant, telecommunications structures (satellite dishes or the like), or other structures not shown on the approved plans are to be located on the dwelling roof area.

Reason: To minimise impacts on views and overshadowing

### **No Kitchen Facilities on Ground Floor and Second Floor Levels**

No kitchen facilities, including an oven or other cooking equipment, are to be installed in the Rumpus Room area on the Ground Floor Level and the “Bar” on the Second Floor Level. The only kitchen or cooking area for the dwelling-house approved under this consent is on the First Floor Level as shown on the approved plans.

Reason: To ensure the dwelling-house is not adapted or used for multiple occupancy.

Vote: 3/0



### **3.2 DA2022/0741 - 15 CARLTON STREET MANLY - ALTERATIONS AND ADDITIONS TO AN ATTACHED DWELLING**

#### **PANEL MEMBERS**

Steve Findlay	Manager, Development Assessment
Alex Keller	Principal Planner, 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.

A supplementary memo was provided to the panel in relation to an additional condition to be placed on any consent to ensure the replacement tiles for the front section of roof to be terracotta.

The Panel concurred with the assessment officers report and recommendation, and concurs with the addition of the new condition.

#### **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 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 DA2022/0741 for alterations and additions to an attached dwelling on land at Lot B DP 301571, 15 Carlton Street MANLY, subject to the conditions set out in the Assessment Report and the following additional condition:

3. The addition of the following condition:

**13a. Roofing material – roof fronting Carlton Street**

Re-tiling of the roof fronting Carlton Street is to be with terracotta tiles in Marseille pattern or similar traditional profile. Details are to be submitted to Council's Heritage Advisor for approval, prior to the issue of a Construction Certificate.

Reason: To ensure compatibility with the architectural style of the semi and the character of the heritage conservation area.

Vote: 3/0

**3.3 DA2022/0492 - 397 CONDAMINE STREET ALLAMBIE HEIGHTS - ALTERATIONS AND ADDITIONS TO EXISTING TWO STOREY BUILDING TO PROVIDE A CENTRE-BASED CHILD CARE FACILITY WITH ASSOCIATED EARTHWORKS, LANDSCAPING AND AT-GRADE PARKING.**

**PANEL MEMBERS**

Adam Richardson	Manager, Development Assessment
Phil Lane	Principal Planner, 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 and four representatives of the applicant. The applicant had other representatives in attendance who did not address the Panel.

The objector raised concerns with the development which related to acoustic and visual privacy as well as the visual impact of the proposed acoustic treatment associated with the development. The objector also raised concerns with the undercroft outdoor play area and if this area in fact satisfies the definition of outdoor play space under the National Regulations for Child Care centres.

The Panel noted the late submission of contamination and acoustic information / reports on 22 August 2020 and a further contamination report and Plan of Management on 23 August 2022, and the applicants subsequent request for deferral of the determination of the application to allow this information to be considered by the Council. The Panel noted that the applicant had already commenced proceedings in the Land and Environment Court, deeming the application refused, prior to Council completing its preliminary assessment.

The Panel was of the agreed view that this additional information would not be accepted, nor would the determination of the application be deferred as the application is subject of a deemed refusal appeal to the Land and Environment Court and that the late, supplementary information provided to the Panel on 22 and 23 August may not resolve in its entirety the issues identified within the assessment report and that the supplementary / amended information may create further merit issues.

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

**STATEMENT OF REASON**

The proposal is considered to be inconsistent with the objectives and provisions of Warringah LEP 2011 and the Warringah DCP 2011, State Environmental Planning Policy (Transport and Infrastructure) 2021 and State Environmental Planning Policy (Resilience and Hazards) 2021.

**COMMUNITY CONSULTATION**

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

**DETERMINATION OF DEVELOPMENT APPLICATION**

THAT Council as the consent authority **refuses** Development Consent to DA2022/0492 for alterations and additions to existing two storey building to provide a centre-based child care facility with associated earthworks, landscaping and at-grade parking on land at Lot 1 DP 624845, 397 Condamine Street ALLAMBIE HEIGHTS, for the reasons for refusal set out in the Assessment Report.

Vote: 3/0

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**3.4 REV2022/0007 - 40 MILDRED AVENUE MANLY VALE - REVIEW OF DETERMINATION OF MODIFICATION OF DEVELOPMENT CONSENT DA2018/0074 GRANTED FOR ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING INCLUDING A FIRST FLOOR ADDITION, NEW GARAGE, FRONT FENCE AND GATE**

**PANEL MEMBERS**

Adam Richardson	Manager, Development Assessment
Phil Lane	Principal Planner, 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 and two representatives of the applicant.

The objector raised concerns with overlooking from windows which were not related to the Modification Application and therefore, they area beyond the scope of matters which can be considered in the review.

The Panel noted that the subject Conditions to which the review application relates included privacy requirements to windows which are beyond those required by the DCP. Accordingly, Section 4.14(3A)(a) of the Environmental Planning and Assessment Act, 1979 does not allow a more onerous standards to be applied to a development, where it meets the DCP. As such, the Condition as originally imposed, despite the perceived benefits is not lawful and therefore, its deletion and the review can proceed.

The Panel noted that the recommendation of the review was procedurally incorrect and that an alternate recommendation was needed to ensure that the review to the Modification Application was correctly made.

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 Warringah LEP 2011 and the Warringah DCP 2011 subject to conditions.

**COMMUNITY CONSULTATION**

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

**DETERMINATION OF DEVELOPMENT APPLICATION**

THAT Council as the consent authority **reviews the determination** of Modification Application MOD2022/0013 and in supporting the review pursuant of Section 8.3 of the Environmental Planning and Assessment Act, 1979, amends MOD2022/0013 subject to the Conditions set out in the Assessment Report, for Lot 1 DP 1203547, 40 Mildred Street, MANLY VALE.

Vote: 3/0

**3.5 DA2022/0471 - 61-63 DOUGLASS ESTATE MCCARRS CREEK - DEMOLITION WORKS AND CONSTRUCTION OF A BOAT SHED AND SKID RAMP**

**PANEL MEMBERS**

Steve Findlay	Manager, Development Assessment
Phil Lane	Principal Planner, 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 Pittwater LEP 2014 and the Pittwater 21 DCP 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 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 DA2022/0471 for demolition works and construction of a boat shed and skid ramp on land at Lot 2 DP 871065 and Lot LIC 409388, 61-63 Douglass Estate MCCARRS CREEK, subject to the conditions set out in the Assessment Report.

Vote: 3/0

*The meeting concluded at 12:45*

This is the final page of the Minutes comprising 15 pages  
numbered 1 to 15 of the Development Determination Panel meeting  
held on Wednesday 24 August 2022.