

MINUTES

DEVELOPMENT DETERMINATION PANEL MEETING

held via teleconference on

WEDNESDAY 2 NOVEMBER 2022

**Minutes of a Meeting of the Development Determination Panel
held on Wednesday 2 November 2022
via teleconference**

1.0 APOLOGIES AND DECLARATIONS INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 26 OCTOBER 2022

The minutes of the Development Determination Panel held 26 October 2022, were adopted by all Panel Members and have been posted on the Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

3.1 MOD2022/0343 - 23 & 25 LAUDERDALE AVENUE FAIRLIGHT - MODIFICATION OF DEVELOPMENT CONSENT DA2017/1304 GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF 4 ATTACHED DWELLINGS AND 4 LOT TORRENS TITLE SUBDIVISION

PANEL MEMBERS

Steve Findlay	Manager, Development Assessments
Dan Milliken	Manager, Development Assessments
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

There were no submissions received for this application.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority **approves** Development Consent to Mod2022/0343 for Modification of Development Consent DA2017/1304 granted for demolition works and construction of 4 attached dwellings and 4 lot torrens title subdivision on land at Lot 1 DP 1087552, 25 Lauderdale Avenue FAIRLIGHT and Lot 1 DP 168846, 23 Lauderdale Avenue FAIRLIGHT, subject to the conditions set out in the Assessment Report.

Vote: 3/0

3.2 DA2022/0407 - 53 UPPER BEACH STREET BALGOWLAH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL

PANEL MEMBERS

Steve Findlay	Manager, Development Assessments
Dan Milliken	Manager, Development Assessments
Phil Jemison	Manager, Strategic & Place Planning

PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

The Panel was addressed by two objectors and representatives of the applicant.

The Panel notes the series of amendments that have been made to the design to increase the rear setback to 12m. This will largely retain the views from the kitchen of No. 26 Seaview Street and will provide a better view outcome from the dining/living area than the original design's 8m rear setback. The views from the upper level are also largely retained. The Panel is of the view that this satisfies the test in the Tenacity planning principal requiring consideration of a better design that achieves a similar development potential while resulting in greater view sharing.

The Panel is of the opinion that retaining substantial views from a potential future first floor addition at No. 55 Upper Beach Street would require such extensive design changes that it would severely limit the reasonable development of the subject site.

Concerns around proposed planting have been addressed by condition no. 11.

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

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority **approves** Development Consent to DA2022/0407 for demolition works and construction of a dwelling house including swimming pool on land at Lot 11 DP 13808, 53 Upper Beach Street BALGOWLAH, subject to the conditions set out in the Assessment Report.

Vote: 3/0

3.3 REV2022/0006 - 19 THE DRIVE FRESHWATER - REVIEW OF DETERMINATION OF APPLICATION OF DA2021/1733 FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

PANEL MEMBERS

Steve Findlay	Manager, Development Assessments
Adam Susko	Acting Manager, Development Assessments
Phil Jemison	Manager, Strategic & Place Planning

PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

The Panel visited the homes of two adjoining property owners who both raised objections to the proposed development. The Panel was also addressed by a planning consultant representing one of the objectors and was also addressed by a consultant acting on behalf of the applicant for the proposed development.

The Panel raised concerns in its deliberations regarding the height of the proposal. In the meeting, the applicant made representations that the Assessment Officer had miscalculated the height by using the Merman way of measuring height, and insisted that the Bettar way of measuring height should have been used. Therefore, the applicant has not submitted an updated Clause 4.6 Variation Request to justify the breach from 8.5m to 8.61m. The Panel concurs with the building height assessment and calculation as contained within the Assessment Report. The Panel does not concur with the letter submitted by a representative of the applicant (dated 30 August 2022) which states that the roof height is compliant with the 8.5m building height control. In the absence of an accurate or adequate Clause 4.6 Variation Request, the Panel is unable to approve the development, and this warrants the refusal of the application.

The Panel acknowledges that there are a number of surrounding and nearby properties in Freshwater that do not comply with the numerical controls contained within the WDCP 2011 and WLEP 2011. However, in its deliberations The Panel concluded that the extent of breaches sought by the proposal is excessive and results in an unacceptable visual bulk. The Panel considers that further changes to the plans, including the size of the first floor, the roof, landscaping and finishing materials would ameliorate these concerns.

The Panel notes that there are inconsistencies between the plans before it and the plans approved under the Complying Development Certificate No. 088/21 dated 16 September 2021. Specifically, the plans before the Panel for this Review Application include the addition of a bathroom at lower-ground level, and the enlargement of a ground floor deck from 12m² to 41m². The bathroom is not addressed in any documentation, and the deck is annotated as part of the 'existing alterations and additions under CDC shown hatched', however a check reveals that it is not. The Panel therefore does not have sufficient certainty as to what is proposed under the Review Application.

The Panel raises further concern regarding the relationship between the approved CDC works and the works sought under this application. The Applicant has not demonstrated the construction methodology of the proposal, specifically as to whether the first floor element would conflict with the approved CDC works, and whether such conflict would result in the inability for an Occupation Certificate to be issued. The Panel notes that cumulatively the works would result in a part three storey dwelling house.

STATEMENT OF REASON

The Panel concurs with the Reasons for Refusal put forward in the Assessment Report, subject to amendments to the Reasons for Refusal as follows:

- (a) Deletion of Reason for Refusal No. 2, relating to the Aims of the WLEP 2011.
- (b) Amendment to Reason for Refusal No. 3 to state that the submitted Clause 4.6 was not updated to reflect the measured height of the building of 8.61m.
- (c) Amendment to Reason for Refusal No. 4 to state that the submitted Clause 4.6 was not updated to reflect the measured height of the building of 8.61m.

The Panel finds that it cannot approve the application in the absence of an adequate or accurate Clause 4.6 Variation Request, and that even if an updated Clause 4.6 Variation Request was provided, that the merits of the application are insufficient to warrants its approval.

It is for these reasons that the Panel endorses the refusal of the Review Application, subject to the amendments referred to above.

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 REV2022/0006 for Review of Determination of Application of DA2021/1733 for alterations and additions to a dwelling house on land at Lot 18 DP 5205, 19 The Drive FRESHWATER, for the reasons for refusal set out in the Assessment Report, subject to amendments to the Reasons for Refusal as follows:

- (a) Deletion of Reason for Refusal No. 2, relating to the Aims of the WLEP 2011.
- (b) Amendment to Reason for Refusal No. 3 to state that the submitted Clause 4.6 was not updated to reflect the measured height of the building of 8.61m.
- (c) Amendment to Reason for Refusal No. 4 to state that the submitted Clause 4.6 was not updated to reflect the measured height of the building of 8.61m.

Vote: 3/0

3.4 DA2022/1008 - 69 PALMGROVE ROAD AVALON BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING SWIMMING POOL

PANEL MEMBERS

Adam Richardson	Manager, Development Assessments
Adam Susko	Acting Manager, Development Assessments
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 a representative of the applicant. The Panel also noted the receipt of two additional late submissions from Nos. 71 and 73 Palmgrove Road, Avalon Beach.

The objector who addressed the Panel raised concerns in relation to privacy and amenity issues with the development, primarily arising from the position of the pool and loss of Tree 7.

The Panel noted that Tree 7's removal is exempt and its removal could occur absent of this development application. However, as it is shown on the plans as being retained, its ongoing retention is a matter for the landowner. The objector requested that the pool be turned 90 degrees away from the boundary so as to lessen the impacts of it, primarily in relation to noise and overlooking. The Panel considered this request in detail, but noted that such an amendment would place further structures in the TPZ and SRZ of the Spotted Gums (particularly Tree 8) and such additional impact would likely result in the loss of those trees which is not supported from an ecological point of view.

In the case of Tree 8, the Panel noted that there was no identifiable reason for the incursion of the pool retaining wall and fence into the SRZ of Tree 8 and considered it reasonable for those elements to be relocatable, by way of condition.

The applicant spoke in support of the recommendations and the conditions of consent.

The Panel generally concurred with the Officer's Assessment Report and recommendation, however noted that the proposed boundary fencing works is a matter for the Dividing Fences Act, as such it will be required by additional condition that the new side fencing works be positioned wholly within the boundaries of 69 Palmgrove Road. Similarly, the Panel noted the poor drafting of Condition 14 and agreed to reword it both to incorporate necessary amendments to the heater flue as it foreshadows and the foreshadowed amendments to the retaining wall and fence at the rear of the pool.

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 submissions have been taken into account in the report and the meeting and issues identified acceptable per the conditions of consent.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority **approves** Development Consent to DA2022/1008 for alterations and additions to a dwelling house including swimming pool on land at Lot 375 DP 16902, 69 Palmgrove Road AVALON BEACH, subject to the conditions set out in the Assessment Report, subject to the following:

1. The amendment of Condition 14 to read as follows:

14. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- The flue of the heater shall be located 600mm above the ridge line of the dwelling.
- The southern and eastern retaining walls and pool fence shall be relocated north and westwards so that they do not encroach into the structural root zone of Tree 8.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure development minimises unreasonable impacts on surrounding land.

2. The addition of the following condition:

Construction of side boundary fencing

Despite any reference upon the plans listed in Condition 1, the side boundary fencing is to be positioned wholly within the boundaries of 69 Palmgrove Road and is not to be positioned on, or over the boundaries of the site.

Reason: To ensure the orderly development of land and not conflict with the Dividing Fences Act.

Vote: 3/0

3.5 DA2022/0666 - 439 BARRENJOEY ROAD NEWPORT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL

PANEL MEMBERS

Adam Richardson	Manager, Development Assessments
Adam Susko	Acting Manager, Development Assessments
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 the applicant.

The address of the Panel by the objector raised concern as to the adequacy of the assessment around variation to the rear setback control and whether it had been adequately justified. The Panel agreed to consider the adequacy of this as part of its deliberations. Upon further consideration of this issue, it was noted that there was little justification provided by the application in relation to the breach of the rear setback by the proposed works. Furthermore, it was apparent to the Panel the addition to the north-eastern corner was superfluous floor space and that deletion of these works along with a simple rationalisation of the layout could result in the same level of amenity, absent the addition at the rear north-eastern corner.

The applicant's planner spoke in support of the proposal and was agreeable, were the development to be approved, to a condition which restricted the used of the dwelling to a single occupancy and that built in cooking facilities could not be included or installed in the ground floor kitchenette.

The Panel noted that the Coastal Management Act or the Coastal provisions of the Resilience and Hazards SEPP had not been addressed in the report.

As such the Panel deferred the determination of the application to invite the applicant to amend the development so as to delete the north-eastern addition of the dwelling and thereafter have the assessment updated to consider and report on the Coastal Management Act and the Coastal provisions of the Resilience and Hazards SEPP.

DEFERRAL OF THE DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority **defers** the determination of DA2022/0666 for alterations and additions to a dwelling house including a swimming pool on land at Lot 29 DP 6248, 439 Barrenjoey Road NEWPORT, subject to the following:

- A. The applicant be invited to prepare and submit amended plans which deletes the additions in the north-eastern corner of the dwelling and leaving that part of the dwelling as is existing. Such an amendment would reduce the size of the study and delete bedroom 4. The Panel recommends to the applicant that a rationalisation of the proposed layout of the altered dwelling may result in a similar or same number of rooms / amenity. The applicant is provided 14 days to provide amended plans and any accompany updated documents / reports (eg. BASIX).

- B. That upon the receipt of amended plans or at such time that the applicant declines the Panel's offer to amend the application as it recommends, provide a supplementary assessment report that considers and addresses the relevant provisions of the Coastal Management Act and the Coastal provisions of the Resilience and Hazards SEPP for the Panel's final determination.

Vote: 3/0

3.6 REV2022/0013 - 47 ROBERTSON ROAD SCOTLAND ISLAND - REVIEW OF DETERMINATION OF APPLICATION DA2021/1325 FOR DEMOLITION WORKS AND CONSTRUCTION OF A SHED

PANEL MEMBERS

Adam Richardson	Manager, Development Assessments
Adam Susko	Acting Manager, Development Assessments
Phil Jemison	Manager, Strategic & Place Planning

PROCEEDINGS IN BRIEF

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.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority, **reviews the determination** of DA2021/1325 and resolves to grant Development Consent to DA2021/1325 for demolition works and construction of a shed on land at Lot 126 DP 12749 and Lot LIC 461586, 47 Robertson Road SCOTLAND ISLAND, subject to the conditions set out in the Assessment Report.

Vote: 3/0

3.7 DA2022/0042 - 62 FLORIDA ROAD PALM BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL AND CABANA WITH STUDIO

PANEL MEMBERS

Adam Richardson	Manager, Development Assessments
Adam Susko	Acting Manager, Development Assessments
Phil Jemison	Manager, Strategic & Place Planning

PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

The Panel noted that despite the number of objections to the development that no objectors to the DA addressed the Panel.

The Panel was addressed by a representative of the applicant, who was supportive of the recommendation and Conditions of consent. No specific amendments were sought and the applicant noted that the requirement for a dilapidation report for the adjoining residential flat building was to cover the whole building. Further, the applicant made the observation that many dwellings in the surrounding area were of light colours, contrary to the restrictions listed in the consent.

The Panel identified minor issues with the drafting of recommended conditions 2 and 12, with reference to dwelling house to be included within condition 2 and that the extent of dilapidation report required by condition 12 be limited to structures within 2 metres of the common boundary.

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 submissions have been taken into account in the report and have been considered as part of the Panel's deliberations.

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 that seeks 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

- A. THAT Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and 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. THAT Council as the consent authority **approves** Development Consent to DA2022/0042 for alterations and additions to a dwelling house including a swimming pool and cabana with studio on land at Lot 99 DP 6937, 62 Florida Road PALM BEACH, subject to the conditions set out in the Assessment Report, subject to the following:
1. The amendment of condition 2 to read as follows:

2. Approved Land Use

Nothing in this consent shall authorise the use of site as detailed on the approved plans for any land use of the site beyond the definition of a dwelling and dwelling house.

A dwelling is defined as:

"means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile."

(development is defined by the Pittwater Local Environment Plan 2014 (as amended) Dictionary).

A dwelling house is defined as:

"means a building containing only one dwelling"

(development is defined by the Pittwater Local Environment Plan 2014 (as amended) Dictionary).

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

2. The amendment of condition 12 to read as follows:

12. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

- All structures within 2 metres of the common boundary of the subject site with 24-26 Ocean Street, Palm Beach

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

Vote: 3/0

The meeting concluded at 1:00pm

This is the final page of the Minutes comprising 16 pages
numbered 1 to 16 of the Development Determination Panel meeting
held on Wednesday 2 November 2022.