



northern
beaches
council

MINUTES

DEVELOPMENT DETERMINATION PANEL MEETING

held via teleconference on

WEDNESDAY 7 DECEMBER 2022

**Minutes of a Meeting of the Development Determination Panel
held on Wednesday 7 December 2022
via teleconference**

1.0 APOLOGIES AND DECLARATIONS INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 23 NOVEMBER 2022

The minutes of the Development Determination Panel held 23 November 2022, were adopted by all Panel Members and have been posted on the Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

3.1 DA2022/1487 - 46 OLD BARRENJOEY ROAD AVALON BEACH - USE OF PREMISES AS AN INDOOR RECREATION FACILITY (PILATES STUDIO) AND ASSOCIATED INTERNAL ALTERATIONS

PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

The Panel was addressed by two objectors and one representative of the applicant. The Panel was informed that the associated internal alterations have already been completed as exempt development. In this regard the representative of the applicant confirm that the application was now only for the use, not physical works.

The Panel concurred with the Officer's Assessment Report and recommendation, with the following changes:

- Amend the description of development for the Use of the premises as an indoor recreation facility only, no physical works involved in the application
- Delete conditions, 3 Prescribed Condition, 4 General Requirements (building hours) and 6 Work Zone and Permits all relating to physical works
- Amend condition 5 Compliance with Standards to remove reference to submitting details to the Certifier prior to the Construction Certificate as no physical works are now proposed.
- Replace condition 10 *Hours of Operations* to be a reviewable condition, so that if early morning noise is not managed, the starting hours may revert back to 7am.
- Additional requirements for the Plan of Management to manage potential impacts

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.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority **approves** Development Consent to DA2022/1487 for use of premises as an indoor recreation facility (pilates studio) on land at Lot B DP 416879, 46 Old Barrenjoey Road AVALON BEACH, subject to the conditions set out in the Assessment Report, subject to the following:

1. The deletion of condition #3
2. The deletion of condition #4
3. The deletion of condition #6

4. The amendment of condition 5 to read as follows:

5. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Reason: To ensure the development is constructed in accordance with appropriate standards.

5. The amendment of condition 9 to read as follows:

9. Plan of Management

1. The Plan of Management being upgraded to include the following measures to reduce noise impacts:
 - a) Arrival and departure instructions for patrons prior to 7am
 - b) All windows and doors being kept closed during business prior to 7am
 - c) No music or instruction being audible in any residential premises
 - d) Patrons encourage to park in Old Barrenjoey Rd, especially before 7am
 - e) A log to be kept of any complaints raised with the facility and the actions taken to resolve, which is to be available on request by Council
2. The Plan of Management being kept on site, a copy sent to council for a public record and available on the business operator's webpage.

Reason: To avoid a nuisance to neighbouring residential receivers

6. The replacement of condition 10 with:

10. Hours of Operation (Reviewable Condition)

This condition is imposed under s4.17(1B) of the Environmental Planning and Assessment Act 1979 to enable Council to review the performance of the approved development with respect to extended hours of operation.

This review will take place with 14 days' notice within the first 12 months of operations, or with 14 days' notice at any time following the first 12 months of operations, where Council is in receipt of complaints related to hours of operation and amenity impacts.

The hours of operation are approved as:

- Monday to Wednesday – 5:30am to 7:15pm
- Thursday – 5:30am to 6:45pm
- Friday – 5:30am to 12:45pm
- Saturday, Sunday, and Public Holidays – 7:00am to 10:45am

Should, upon a review of this condition and following a proper investigation, Council find that limiting the hours of operation is the most efficient and effective means of reducing amenity impacts, then the hours of operation will be required, at the expiration of 14 days written notice, to revert back to the following:

- Monday to Wednesday – 7:00am to 7:15pm
- Thursday 7:00am to 6:45pm
- Friday – 7:00am to 12:45pm
- Saturday, Sunday and Public Holidays – 8:00am to 11:45am

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

Vote: 3/0

3.2 MOD2022/0472 - 164 WARRINGAH ROAD BEACON HILL - MODIFICATION OF DEVELOPMENT CONSENT DA2020/0933 GRANTED FOR USE OF PREMISES AS AN EXISTING APPROVED RESTAURANT WITH EXTENDED HOURS OF OPERATION

PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

The Panel was addressed by two representatives of the applicant.

The Panel concurred with the Officer's Assessment Report and recommendation subject to amendment of Condition 6 c, which was agreed to by Council's Environmental Health Officer.

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

There were no submissions received for this application.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority **approves** Development Consent to Mod2022/0472 for Modification of Development Consent DA2020/0933 granted for use of premises as an existing approved restaurant with extended hours of operation on land at Lot 1 DP 570451 & Lot 1 DP 575638, 164 Warringah Road BEACON HILL, subject to the conditions set out in the Assessment Report subject to the following:

1. The amendment of condition 6 to read as follows:

6. Plan of Management

The approved Plan of Management, prepared by SLR and referenced as McDonald's Operation 164 Warringah Road, Beacon Hill NSW 2100 and dated August 2022, is to be maintained on site and shall include measures to ensure a nuisance to any adjoining residential receiver is avoided. Such measures shall include, but not be limited to:

- a. Lighting on site being directed within the boundaries of the site.
- b. Plant and equipment being maintained to minimise noise.
- c. Noise Emissions from amplified operation music and drive thru customer ordering displays are to comply with the recommended internal noise levels for habitable spaces outlined in AS2107:2016 at the nearest residential receivers.
- d. Management of noisy patrons or vehicles.
- e. Cooking odour being managed by mechanical ventilation and odour control equipment as necessary.
- f. Site cleaning and maintenance, deliveries and waste collection being restricted to avoid overnight services to minimise noise impacts on neighbouring residential residents.

An extract from the Plan of Management is to be sent to Council for its records showing how the above measures will be implemented and maintained.

Reason: To maintain residential amenity to neighbouring residents.

Vote: 3/0

**3.3 DA2022/0824 - 1 & 2 / 35 LAUDERDALE AVENUE FAIRLIGHT
& 35 LAUDERDALE AVENUE FAIRLIGHT - ALTERATIONS AND ADDITIONS TO
CREATE A DWELLING HOUSE (EXISTING DUAL OCCUPANCY) AND
CONSTRUCTION OF A SWIMMING POOL**

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 generally concurred with the Officer's Assessment Report and recommendation, however concerns raised by the objector were considered to have merit in relation to Privacy and Visual bulk of the proposal. Accordingly additional conditions have been included to improve privacy and reduce the height of the proposal.

The First Floor Plan balcony located 4.3m from the west side boundary was considered to result in a reasonable privacy outcome through the level of physical separation between this balcony and the private open space and living areas/bedrooms of the adjoining dwelling to the west.

The Panel were satisfied reasonable view sharing was maintained by the proposal.

The Panel also noted the swimming pool had been deleted from the proposal.

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.

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 & 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

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 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, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 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.
- C. THAT Council as the consent authority **approves** Development Consent to DA2022/0824 for alterations and additions to create a dwelling house (existing dual occupancy) and construction of a swimming pool on land at Lot 3 SP 78265, 1 / 35 Lauderdale Avenue FAIRLIGHT, Lot 4 SP 78265, 2 / 35 Lauderdale Avenue FAIRLIGHT, Lot CP SP 78265, 35 Lauderdale Avenue FAIRLIGHT, Lot B DP 960822, 35 Lauderdale Avenue FAIRLIGHT & Lot CP SP 49962, 35 Lauderdale Avenue FAIRLIGHT, subject to the conditions set out in the Assessment Report, subject to the following:
1. The addition of the following conditions to be included under the heading "Conditions to be satisfied prior to the issue of a Construction Certificate":

Privacy

A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the balcony located off Bedroom 1 at Ground Floor Plan as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 100mm) orientated to the southwest, in materials that complement the design of the approved development.

Further the proposed sun/privacy screen louvres on the western facing window of Bedroom 1 are to be fixed with a maximum spacing of 100mm orientated to the southwest.

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

Reason: In order to maintain privacy to the adjoining / nearby property.

Privacy

The frosted windows on the western elevation at Ground Floor Plan servicing the ensuite and laundry are to maintain a fixed/non openable element up to 1.7m above floor level.

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

Reason: In order to maintain privacy to the adjoining / nearby property.

Roof height

The roof ridge at RL36.85 is to be reduced by 500mm to RL36.35.

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

Reason: In order to reduce visual bulk from the streetscape.

2. The addition of the following conditions to be included under the heading “On-going conditions that must be complied with at all times”:

Air conditioning Motor Noise

Any air conditioning motor/plant shall not produce noise levels that exceed 5dB(A) above the background noise when measured from the nearest property boundary. All motor/plant is to be located either at ground level and/or within the subfloor areas of the carport and/or dwelling.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

Vote: 3/0

3.4 DA2022/0947 - 5 & 7 RICHARD ROAD SCOTLAND ISLAND - CONSTRUCTION OF A BOAT SHED, JETTY EXTENSION, SKID RAMP AND ACCESS DECK AND STAIRS

PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

There were no registered speakers.

The Panel generally concurred with the Officer's Assessment Report and recommendation; however, the Panel were concerned with the visual bulk of the boat shed roof having regard to the building height non-compliance. Accordingly, an additional condition has been included to reduce the height of the proposal.

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

- 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 DA2022/0947 for construction of a boat shed, jetty extension, skid ramp and access deck and stairs on land at Lot 48 DP 12749 & Lot LIC 496057, 5 Richard Road SCOTLAND ISLAND, and Lot 47 DP 12749, and Lot LIC 496058, 7 Richard Road SCOTLAND ISLAND, subject to the conditions set out in the Assessment Report subject to the conditions set out in the Assessment Report, subject to the following:

1. The addition of the following condition to be included under the heading “Conditions to be satisfied prior to the issue of a Construction Certificate”:

Roof height

The roof ridge at 6.15 AHD is to be reduced by 500mm to 5.65 AHD.

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

Reason: In order to reduce visual bulk.

Vote: 3/0

3.5 DA2022/1289 - 9 LOWER BEACH STREET BALGOWLAH - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING

PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

The Panel was addressed by representatives of the applicant.

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 amended plans, the assessment report (including conditions) 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

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 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 DA2022/1289 for alterations and additions to a semi-detached dwelling on land at Lot A DP 106732, 9 Lower Beach Street BALGOWLAH, subject to the conditions set out in the Assessment Report.

Vote: 3/0

3.6 DA2022/1320 - 20 ALBERT STREET FRESHWATER - ALTERATIONS AND ADDITIONS TO AN EXISTING RESTAURANT AND A CHANGE OF HOURS

PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

The Panel was addressed by the applicant.

The Panel raised concerns in relation to the noise impacts of the proposal on the amenity of adjoining and nearby residential properties. During deliberations, the Panel conferred with the Assessment Officer and the Environmental Health Officer, as well as with the Applicant, regarding the acoustic properties of the retractable shade sail covering of the proposed outdoor dining area and whether it would provide the required noise protection.

The Panel were not satisfied that the proposed light weight shade sail covering would afford the level of acoustic protection for neighbouring properties as proffered in the Acoustic Report and the Statement of Environmental Effects.

The Applicant put forward an unsolicited amended design which attempted to address the Panels concerns. This design solution involved a solid translucent polycarbonate panel and aluminium framed roofing system, which may provide the level of noise protection required. However, such a revised scheme requires further detailed assessment of noise, visual amenity, streetscape and stormwater management, and further public consultation, which is to be facilitated through an appropriate application, and not as an amended application.

Therefore, the Panel has not accepted the amended plans and accompanying information and determines the application based on the original information lodged via the NSW Planning Portal which accompanied the application as presented to the Panel.

STATEMENT OF REASON

The proposal does not satisfy the relevant strategy, objectives and provisions of Warringah LEP 2011 and the Warringah DCP 2011.

COMMUNITY CONSULTATION

Issues raised in the submissions to the application have been taken into account in the report, at the meeting and in subsequent investigations and considerations by the Panel.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority **refuses** Development Application No. DA2022/1320 for alterations and additions to an existing restaurant and a change of hours on land at Lot 21 DP 226287, 20 Albert Street FRESHWATER, for the following reasons:

1. 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 D3 Noise of the Warringah Development Control Plan 2011, as the proposal will result in significant adverse noise impacts on the amenity of adjoining and nearby residential properties, as the mitigation measures to which the proposals acceptable noise environ relies is not supported by detailed construction information and specification.

2. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest, as the proposal will result in significant adverse noise impacts on adjoining and nearby residential properties.

Vote: 3/0

3.7 DA2022/1651 - 6 RICHMOND ROAD SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

PROCEEDINGS IN BRIEF

The Panel viewed the site and the surrounds.

The Panel was addressed by the applicant.

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.

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

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 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 DA2022/1651 for alterations and additions to a dwelling house on land at Lot 2 DP 540021, 6 Richmond Road SEAFORTH, subject to the conditions set out in the Assessment Report.

Vote: 3/0

The meeting concluded at 12:45pm

This is the final page of the Minutes comprising 17 pages
numbered 1 to 17 of the Development Determination Panel meeting
held on Wednesday 7 December 2022.