



northern  
beaches  
council

# MINUTES

## DEVELOPMENT DETERMINATION PANEL MEETING

held in the Walamai Room, Northern Beaches Council on

**WEDNESDAY 28 MARCH 2018**



**Minutes of a Meeting of the Development Determination Panel**  
**held on Wednesday 28 March 2018**  
**at Walamai Room, Dee Why Civic Centre**  
**Commencing at 9.30 a.m.**

**ATTENDANCE:**

**Panel Members**

Melissa Messina (Chairperson)	Executive Manager Children's Services (Item 3.6)
Steven Findlay (Chairperson)	Acting Executive Manager Development Assessment
Matthew Edmonds	Manager Development Assessment
Liza Cordoba	Manager Strategic Place and Planning

**Note: Melissa Messina assumed the role Chairperson for Item 3.6 22 Ian Lane North Curl Curl.**



## **1.0 APOLOGIES AND DECLARATIONS OF PECUNIARY INTEREST**

**Item 3.6** - As the Manager of the reporting officer, Steve Findlay was replaced by Melissa Messina for this item due to him declaring a conflict.

No conflict of interest was declared from the rest of the Panel for Item 3.6.

**Items 3.1 to 3.5** - No conflict of interest was declared.

## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 14 MARCH 2018**

That the Minutes of the Development Determination Panel held 14 March 2018, were adopted by all Panel Members at the time of the meeting and have been posted on the Council's website



### 3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

#### 3.1 DA 243/2017 - 61 BOWER STREET, MANLY - DEMOLITION OF THE EXISTING DWELLING AND CONSTRUCTION OF A NEW DWELLING

##### PROCEEDINGS IN BRIEF

The Panel visited the site prior to the meeting. The Panel has considered the Assessment Report. The Panel also visited the two neighbouring properties, No. 11 and 12 Montpelier Place. There were no speakers on this item.

The Panel supports the Clause 4.6 Variation which is found to be well founded and justified and supports the side and rear setback variations as detailed in the Assessment Report.

The Panel considered the issue raised in the resident submissions in relation to conflict with visitor spaces on the secondary section of private road (forming Montpelier Place) which is to be relied upon for vehicular access to the property. The assessment officer provided information on this matter and the Panel was satisfied that there is a legal right of access and use of the private road and no evidence of formal visitor parking on title was evident.

The Panel noted that the design is well articulated and the non-compliance with height relates to a triangular section of pitched roof toward the lower or northern part of the site.

The Panel notes the views from the objector's properties and that those vantage points are elevated above the subject site. There will be an improvement to existing views as a result of the lowering of overall the height of proposed development compared to the existing dwelling. It was noted that views that will be lost comprise ocean or water (noting that substantial areas of ocean view will be retained) and not land interface or Long Reef headland. The Panel noted that a fully compliant building (i.e. deletion of the non-compliant roof section) would not significantly improve views and that the lowering of the garage structure will minimise view impacts and improve the visual impact and streetscape when viewed from the objectors properties in Montpelier Place.

##### DECISION

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, the consent authority is satisfied that compliance with the development standard contained in Clause 4.3 (Height of Buildings) of that Plan is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. 243/2017 for demolition of the existing dwelling and construction of a new dwelling at 61 Bower Street, Manly be **approved** subject to the recommendations and conditions as outlined in the Assessment Report.



### 3.2 DA 384/2009 - 31 VICTORIA PARADE, MANLY - SECTION 96(2) TO MODIFY APPROVED ALTERATIONS AND ADDITIONS TO THE EXISTING RESIDENTIAL FLAT BUILDING - PART 5

#### PROCEEDINGS IN BRIEF

The Panel visited the site prior to the meeting. The Panel supported the recommendation in the Assessment Report.

However, when considering the matter at the meeting, the question as to whether the consent has lapsed was raised. The assessment officer could not confirm that the consent was taken up and that there was physical commencement to ensure it had not lapsed. It was decided that the matter should be deferred by the Panel for the assessment officer to investigate and advise the Panel at a later time before a determination could be made.

The Applicant was requested to provide documentary evidence that the consent had not lapsed. By email dated 29 March 2018, the Applicant submitted an email containing a legal opinion by Michael Staunton (Barrister), dated 4 September 2015, that the consent has not lapsed based on geotechnical investigation works to comply with Condition 5 of Consent No. DA384/2009. Whilst Council has not been privy to the particulars (extent of geotech work and the expert reports) that led to the opinion that physical commencement has been satisfied, this legal opinion is noted and is being relied upon by the Applicant. It is also noted that the Manly Independent Assessment Panel (MIAP) approved a Section 96 Application on this site in April 2016. On this basis, there is sufficient information to allow Council to approve the current modification application.

#### DECISION

That the Modification Application to modify 384/2009 granted for alterations and additions to an existing residential flat building at 31 Victoria Parade Manly be **approved** as per the recommendation in the Assessment Report.



### 3.3 DA2017/1333 - 50 LAUDERDALE AVENUE, FAIRLIGHT - DEMOLITION AND CONSTRUCTION OF A NEW DWELLING HOUSE

#### PROCEEDINGS IN BRIEF

The Panel visited the site prior to the meeting. The Panel also visited the neighbours property at 35 Upper Clifford Avenue, which included the neighbour from the adjoining property at 1/37 Upper Clifford Avenue. The Panel considered the Assessment Report, recommendation and special conditions.

The Panel was provided with copies of the late submissions from the neighbours at 1 and 2/37 Upper Clifford Avenue and 35 Upper Clifford Avenue.

The Panel heard submissions from an architect from Archisoul Architects on behalf of the neighbours at 48 Lauderdale Avenue. The Panel also heard from the neighbours at 1/37 Upper Clifford Avenue and 35 Upper Clifford Avenue. The consultant planner from Boston Blyth and Fleming attended to answer questions from the Panel on behalf of the applicants and landowners.

The main issues discussed in the meeting were the loss of solar access to 48 Lauderdale Avenue, the size and impact of the roof terrace and gym on views and amenity of the residents to the north in Upper Clifford Avenue, the setback of the roof terrace to the western boundary and the non-compliances with building height and wall height.

The Panel also heard submissions from the neighbours and consultant planner on the approval at 52 Lauderdale Avenue (same architect and same consultant planner as 50 Lauderdale Avenue). It became apparent that a condition referred to in the Assessment Report to require a 2.0m setback from the edge of the building on the western side of the roof terrace had not been included in the recommended conditions (an omission). The Applicant was willing to accept a 1.0m setback requirement only.

Based on those discussions, it was decided to defer the determination of this matter to allow a joint inspection to take place at the neighbouring property at 48 Lauderdale Avenue to better ascertain the impact on existing solar access.

#### DECISION

That the determination of the Development Application No. DA2017/1333 for Demolition and construction of a new dwelling house at 50 Lauderdale Avenue, Fairlight be **deferred** to allow for a joint site inspection by the Panel at the adjoining property, 48 Lauderdale Avenue.



### 3.4 MOD2017/0316 - 26 BEATTY STREET, BALGOWLAH HEIGHTS - MODIFICATION OF DEVELOPMENT CONSENT DA0085/2016 GRANTED FOR DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A NEW DWELLING

#### PROCEEDINGS IN BRIEF

The Panel visited the site. The Panel also viewed the roof terrace from neighbouring properties at 21B Beatty Street (noting that the Panel was unable to gain access inside that dwelling as the owner was not able to wait for the Panel to arrive onsite, however the Panel had the benefit of photos taken from inside the dwelling) and the driveway to the south of the subject site at 24A Beatty Street (owner of that property was not an objector).

The Panel considered the Assessment Report, including non-compliances, submissions and recommended conditions. The Panel was addressed by the consultant planner from JV Urban and the owners. There was discussion around the origins, purpose and function of the roof terrace. In response to questions from the Panel concerning hours of use and frequency of intended use, the planner and owners were willing to accept conditions further restricting the use of the terrace to 9pm/7 days per week, no outdoor lighting (except for new year's eve) and no furniture. The applicants also suggested obscure balustrade in lieu of the required 1.5m setback on the southern edge.

The Panel does not support the recommendation in the Assessment Report.

The Panel resolves to refuse the application on the grounds of the impact on the visual amenity and outlooks from surrounding and nearby residential properties, the impact on views from surrounding and nearby residential properties, the inconsistency with the character of residential dwellings in the area and the additional non-compliance with the building height control.

Furthermore, the matter of the unauthorised works to create the roof terrace be referred back to Council's Compliance Section for action.

#### DECISION

That Modification Application No. Mod2017/0316 to modify Development Consent No. DA0085/2016 granted for demolition of existing structures and construction of a new dwelling on land at Lot 2 DP 217340, 26 Beatty Street Balgowlah Heights be **refused** for the following reasons:

1. Pursuant to Section 4.15 (1) (a) (iii) and (b) of the Environmental Planning and Assessment Act, 1979, the proposed development is inconsistent with the provisions of the Manly Development Control Plan 2013 in relation to impacts on adjoining and nearby residential properties, particularly in relation to privacy, views and outlooks.
2. Pursuant to Section 4.15 (1) (a) (iii) and (b) of the Environmental Planning and Assessment Act, 1979, the proposed development is inconsistent with the provisions of the Manly Development Control Plan 2013 in relation to inconsistency with the visual character of development in the area.
3. Pursuant to Section 4.15 (1) (a) (i) of the Environmental Planning and Assessment Act, 1979, the proposed development does not comply with the building height control under the Manly Local Environmental Plan 2013.
4. Pursuant to Section 4.15 (1) (c) of the Environmental Planning and Assessment Act, 1979, the proposed development is not suitable on the subject site.



**3.5 DA2017/1051 - 94 BOORALIE ROAD, TERREY HILLS - DEMOLITION AND SITE WORKS FOR CONSTRUCTION OF A DWELLING HOUSE, INCLUDING SWIMMING POOL, TENNIS COURT AND PAVILION, SHED, OUTBUILDING (HOME OFFICE), DRIVEWAY, LANDSCAPING, DAM AND DRAINAGE WORK**

**PROCEEDINGS IN BRIEF**

The Panel viewed the site. There were no speakers on this item. The Panel has considered the Assessment Report.

The proposal has non-compliances with height, front and side setbacks and wall height, which are addressed in the report and noting that there is a recommended condition that the shed be setback 10.0m from the side boundary. The Clause 4.6 variation for building height relates to an architectural roof feature and is well founded and justified.

The submissions raised concerns in relation to unauthorised use of the property for helicopter take off and landings, however, the application does not propose the use of the site for that purpose, which is a matter to be dealt with by Council's Compliance Section. The concerns in relation to the side setback are dealt with by condition, which is supported.

The Panel support the recommendation for approval.

**DECISION**

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Warringah Local Environmental Plan 2011, the consent authority is satisfied that compliance with the development standard contained in Clause 4.3 (Height of Buildings) of that Plan is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. DA2017/1051 for demolition and site works for construction of a dwelling house, including swimming pool, tennis court and pavilion, shed, outbuilding (home office), driveway, landscaping, dam and drainage work on land at Lot 264 DP 752017, 94 Booralie Road, TERREY HILLS, be **approved** subject to the conditions as outlined in the report and with the following changes to the conditions:

Condition No. 2 is to be amended to read as follows:

**"2. Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, home business and ancillary outbuildings.

Additionally, nothing in this consent shall authorise the use of the site/onsite structures for use as a helipad.

A **dwelling house** is defined as:

a building containing only one dwelling". In this regard, the ancillary components to the dwelling house, including the swimming pool, tennis court and pavilion, shed, dam and drainage works are approved under this consent.

A **home business** is defined as:

a business that is carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling and that does not involve:



- (a) the employment of more than 2 persons other than those residents, or
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or
- (c) the exposure to view, from any adjacent premises or from any public place, of any unsightly matter, or
- (d) the exhibition of any signage (other than a business identification sign), or
- (e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, except for goods produced at the dwelling or building, but does not include bed and breakfast accommodation, home occupation (sex services) or sex services premises."

(development is defined by the Warringah Local Environment Plan 2011 (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. (DACPLB03)"



### **3.6 DA2017/0793 - 22 IAN LANE, NORTH CURL CURL - ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING HOUSE**

#### **PROCEEDINGS IN BRIEF**

The Panel viewed the site of the proposed development on 27 March 2018 and viewed the site from the adjoining property at No. 24 Ian Lane.

Mr Sam Henderson addressed the panel and raised ongoing concerns regarding bulk, volume and scale, landscaped area building height and view loss and provided a further submission in this regard. The Panel considered the officer's report and recommendation and the concerns raised from the community and determined as follows:

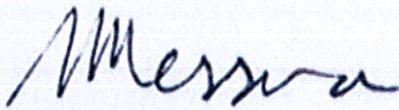
That the application should be deferred seeking amendments to the architectural plans to reduce the extent of non-compliance with the 8.5 height limit in the area of the eastern terrace at floor level at FFL 44.18 including the additional floor space to the east of the current building alignment and a reduction in the roof skylight where it is not non-compliant with the 8.5 height limit. The Panel remained concerned regarding the extent of the height variation in the circumstances where there was a minor to moderate impact upon views.

The Panel also considered that the overland flow study required by Condition 8 should be provided during the deferral period and assessed prior to the determination of the application.

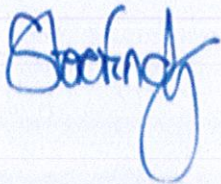
#### **DECISION**

That Development Application No. DA2017/0793 for Alterations and additions to a dwelling house at 22 Ian Lane, North Curl Curl be deferred to allow amendments to the architectural plans to reduce the extent of non-compliance with the 8.5 height limit in the area of the eastern terrace at floor level at FFL 44.18, including the additional floor space to the east of the current building alignment and a reduction in the roof skylight where it is non-compliant with the 8.5 height control.

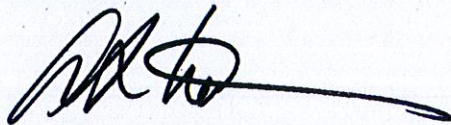




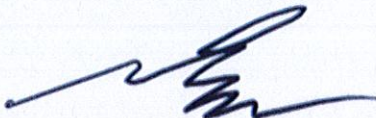
Melissa Messina  
**Executive Manager, Children's Services**  
**Chairperson (Item 3.6)**



Steve Findlay  
**Acting Executive Manager, Development Assessment**  
**Chairperson (Items 3.1 to 3.5)**



Liza Cordoba  
**Manager Strategic Place and Planning**



Matthew Edmonds  
**Manager, Development Assessment**

*The meeting concluded at 2.15 p.m.*

This is the final page of the Minutes comprising 11 pages  
numbered 1 to 11 of the Development Determination Panel meeting  
held on Wednesday 28 March 2018.