



northern
beaches
council

MINUTES

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

held in the Council Chambers, Civic Centre, Dee Why on

WEDNESDAY 6 JUNE 2018

**Minutes of a Meeting of the Northern Beaches Local Planning Panel
held on Wednesday 6 June 2018
at Council Chambers, Civic Centre, Dee Why
Commencing at 1.00PM**

ATTENDANCE:

Panel Members

Peter Biscoe	Chair
Marcus Sainsbury	Environmental Expert
Brian Kirk	Town Planner
Nick Lawther	Community Representative

1.0 APOLOGIES AND DECLARATIONS OF PECUNIARY INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING**2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 16 MAY 2018**

The Minutes of the Northern Beaches Local Planning Panel held 16 May 2018, were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

3.1 DA2017/0614 - 183 WARRINGAH ROAD, BEACON HILL - SUBDIVISION OF ONE LOT INTO TWO LOTS AND ASSOCIATED WORKS

PROCEEDINGS IN BRIEF

The proposal involves the subdivision of the existing single allotment (1210.9sqm) into two lots and associated works.

The Panel viewed the site and its surrounds. At the public meeting which followed there were no registered speakers.

DECISION ON EXCEPTIONS TO DEVELOPMENT STANDARDS

A. The Panel is satisfied that:

- 1) the applicant's written request under clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of clause 4.1 Minimum Subdivision Lot Size 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.

DECISION ON DEVELOPMENT APPLICATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2017/0614 for subdivision of one lot into two lots and associated works at Lot 2171 DP 752038, 183 Warringah Road, Beacon Hill subject to the conditions and for the reasons set out in the Assessment Report, subject to the following:

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

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with the following conditions stipulated by Roads and Maritime Services as conditions for their concurrence under section 138 of the Roads Act 1993 (in their letter to Council dated 26 April 2018):

1. All buildings and structures, together with any improvements integral to the future use of the site are wholly within the freehold property (unlimited in height or depth), along the Warringah Road boundary.
2. The design and construction of the kerb and gutter crossing on Warringah Road shall be in accordance Roads and Maritime requirements. Details of these requirements should be obtained from Roads and Maritime Services, Manager Developer Works, State Wide Delivery, Parramatta (telephone 9598 7798).

Detailed design plans of the proposed kerb and gutter are to be submitted to Roads and Maritime for approval prior to the issue of a Construction Certificate

and commencement of any road works.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approved road design plans by Roads and Maritime.

3. In accordance with AS 2890.1- 2004 (Parking Facilities, Part 1: Off-street car parking), the driveway shall be a minimum of 5.5 metres in width for a minimum distance of 6 metres from the property boundary. The driveway should be wide enough to allow simultaneous movements for vehicles enter/exit the site.
4. Sight distances from the proposed vehicular crossings to vehicles on Mona vale Road are to be in accordance with the Austroads 'Guide to Traffic Engineering Practice, Part 5: Intersections at Grade, Section 6.2 – Sight Distance' and AS 2890. Vegetation and proposed landscaping / fencing must not hinder sight lines to and from the vehicular crossings to motorists, pedestrians and cyclists.
5. All vehicles are to enter and leave the site in a forward direction.
6. All vehicles are to be wholly contained on site before being required to stop.
7. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system in Warringah Road are to be submitted to Roads and Maritime for approval, prior to the commencement of any works.

Details should be forwarded to: Suppiah.Thillai@rms.nsw.gov.au

A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2766.

8. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Warringah Road.
9. A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Warringah Road during construction activities.

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body. (DACPLB02)

Vote: 4/0

3.2 N0369/17 - 222 WHALE BEACH ROAD, WHALE BEACH - DEMOLITION OF EXISTING DWELLING, GARAGE AND OUTBUILDINGS, AND CONSTRUCTION OF A NEW DWELLING WITH GARAGE, SECONDARY DWELLING WITH CARPORT, SWIMMING POOL, DRIVEWAYS AND LANDSCAPING

PROCEEDINGS IN BRIEF

The applicant seeks consent for the following works:

- Demolition of the existing structures on site;
- Construction of a new dwelling and attached secondary dwelling comprising:
 - Level 1
Double Garage, Laundry/Plant Room, Wet Room and Entry Foyer;
 - Level 2
Open-plan Living/Dining/Kitchen area, Family room, Bathroom, Bunk Room, balcony to the east;
 - Level 3
Master Bedroom with En-suite, Sitting Room, balcony to the east, and Media Room;
 - Level 4
Principal Dwelling
 - Bedroom, Bathroom and Store, adjoining balcony to the east, and Garden Store;Secondary Dwelling
 - Bunkroom and Bathroom;
 - Level 5
Secondary dwelling open-plan Living/Dining/Kitchen area, Master Bedroom with Ensuite, adjoining balcony to the east;
- Attached elevated carport to the north-west of the secondary dwelling;
- Associated driveways, including access driveways from Morella Road and Whale Beach Road;
- Associated landscaping and earthworks.

The Panel viewed the site and its surrounds. At the public meeting which followed the Panel was addressed by three neighbours and two representatives of the applicant.

Diana Bourke, the wife of the owner of 222 Whale Beach Rd, Whale Beach, raised the question whether the Chair had a conflict of interest because until 2006 he had practiced as a barrister from his chambers on the Eleventh Floor Wentworth Chambers in Phillip Street, Sydney and for some years during that time two of the objectors had also practiced as barristers from their chambers on the Eleventh Floor Wentworth Chambers. The Chair held that there was no conflict of interest and that (although this was not suggested by Ms Bourke) there was no apparent bias.

DECISION ON DEVELOPMENT APPLICATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. N0369/17 for demolition of existing dwelling, garage and outbuildings, and construction of a new dwelling with garage, secondary dwelling with carport, swimming pool, driveways and landscaping at Lot 2 DP 421104, 222 Whale Beach Road, Whale Beach subject to the conditions and for the reasons set out in the Assessment Report, subject to the following:

Further reasons:

1. Legal submissions on behalf of two objectors dealt with three matters:

- a) First, whether the proposed secondary dwelling is prohibited development. It was submitted that the building was designed, in effect, to be a single dwelling and that the secondary dwelling did not have the physical attributes of a separate self-contained dwelling and therefore was prohibited development.

The Panel does not accept the submission. The Pittwater Local Environmental Plan 2014 clause 1.4 defines a 'dwelling' as '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'.

Clause 1.4 defines a 'secondary dwelling' as:

"a self-contained dwelling that:

(a) is established in conjunction with another dwelling (the principal dwelling), and

(b) is on the same lot of land as the principal dwelling, and

(c) is located within, or is attached to, or is separate from, the principal dwelling."

In the Panel's opinion, the proposed secondary dwelling satisfies these definition. In order to make this clearer still, the Panel will impose an amended condition B.28 as set out below.

- b) Secondly, whether the identification of the 'established building line' is erroneous. This submission was referable to the following part of the council officer's assessment report in section D12.5 Front building line:

"The control states that the minimum front building line shall be 6.5m or the established building line, whichever is the greater. "Established building line" is defined as a de facto building line, being the line of the facade of structures created by the location of structures on nearby properties. The subject site is located on the section of Whale Beach Road between the northern entrance to Morella Road and Surf Road. Along the western side of this section, the front setbacks of existing development are staggered, with minimum setbacks of 6.5m on several sites, and therefore it is considered that there is no definitive established building line. The minimum front building line for subject site is 6.5m and the proposed development is technically compliant."

It was submitted that: there was no definition of 'established building line' in the Pittwater 21 Development Control Plan and consequently the assessment report was in error in indicating that there was a definition; If it is the de facto building line then it should be by reference to the neighboring properties resulting in 10.1m not 6.5m; and the report should have not said there was no "definitive established building line".

The Panel does not accept the submission. The premise that there is not such definition in the Development Control Plan is erroneous. That Development Control Plan in clause A 1.9 includes the following definitions:

'de facto building line

means the line of the facade of structures created by the location of structures on nearby properties. There may be separate de facto building lines for dwellings and decks, verandahs, etc. See also established building line.'

'established building line

means a building line that is established by map (foreshore building line) or a de facto building line'

It was open to the assessing officer to conclude that there was no definitive establish building line and that the minimum front building line was 6.5m.

- c) Thirdly, it was submitted that the Council officer's assessment report discloses legal error by failing to address fundamental questions in that the investigation and assessment required to underpin a meaningful recommendation has not been carried out. It was said that this was so because there was no careful investigation of the qualitative aspects of the development and compliance with the landscape area control. In the Panel's opinion, a fair reading of the report as a whole demonstrates that the submission lack substance and should not be accepted.

Amendments to conditions in Assessment Report:

1. The deletion of condition C.2 and the substitution of condition AA.1 (before condition A) as follows:

AA. Deferred Commencement Condition:

1. The architectural drawings are to be updated to incorporate the following amendments to the satisfaction of Council's Manager Development Assessment, within 12 months from the date of this consent:
- a) The maximum height of the secondary dwelling component of the development is limited to RL44.6m. This may be achieved by the entire secondary dwelling being lowered by 1.3m, partially in-ground, the internal floor-to-ceiling height of Level 4 being a maximum of 2.7m, and the roof amended to a low pitch skillion roof or flat roof;
 - b) The En-suite to the Master Bedroom of the secondary dwelling is to be deleted;
 - c) The balcony to the Living/Dining area of the secondary dwelling is to be reduced in length on the south-eastern side to a maximum length of 7m and a maximum width of 1.8m;
 - d) The balcony located off the Level 4 Bedroom of the principal dwelling is to be deleted;
 - e) The carport width is limited to a maximum of 3.85m;
 - f) Privacy measures are to be provided as follows:
 - The southern window to the Family Room is to have a minimum sill height of 1.7m above the finished floor level;
 - The southern window to the Media Room is to be translucent glazing or is to have a minimum sill height of 1.7m above the finished floor level;
 - Both windows on the northern elevation of the Living area of the principal dwelling are to incorporate privacy louvres or translucent glazing or a minimum sill height of 1.7m above the finished floor level;
 - A privacy screen a minimum height of 1.8m is to be provided along the north-eastern edge of the Level 2 balcony.
2. The amendment of condition B.11 to read as follows:
11. Landscaping is to be implemented in accordance with the approved Landscape Concept Plan, Plan no. 17093 DA1, Rev A dated 4/8/2017, and as amended by conditions of this development consent. The new landscaping is to be approved as completed by the accredited certifier upon issue of the Occupation Certificate unless further conditions regarding the completion timeframe are imposed. This landscaping is to then be maintained for the life of the development.

3. The amendment of condition B.13 to read as follows:

13. Two (2) *Banksia serrata* (or similar species) trees are to be planted in Morella street frontage to offset vegetation removal. The trees are to be evenly spaced and have a minimum 100Litre in pot size and are to be protected by a permanent tree guard of either metal or timber to facilitate establishment. Timber guards are to consist of a minimum of 4 x 95mm square posts and rails of 150 x 50mm at two heights. Timber is to be stained or painted an approved colour. Street trees, guards and planting works as approved are to be maintained for a period of 12 months after issue of the Occupation Certificate.

4. The amendment of condition B.28 to read as follows:

28. For the life of the development the principal dwelling and the secondary dwelling are to be capable of being occupied or used as separate domiciles.

5. The amendment of condition C.3 to read as follows:

3. Prior to the issue of a Construction Certificate, an updated Landscape Plan is to be provided which retains the proposed landscaping within the Landscape Plan prepared by Vision Dynamics, dated 04/08/2017, and includes the following:
- a) Updated to reflect the amended plans, dated March 2018;
 - b) A minimum of one (1) canopy tree is to be provided within the front setback area to Whale Beach Road. The tree is to have a maximum maturity height of 8m in order to screen the development as viewed from the street. Species selection is to be native species;
 - c) A minimum of one (1) canopy tree is to be provided within the area to the northeast of the secondary dwelling, between the secondary dwelling and the pool. The tree is to have a maximum maturity height of 8m. Species selection is to be native species;
 - d) The screen planting along the north-eastern boundary between the pool and the boundary is to have a maximum maturity height of 2m above existing ground level and is to be maintained at this height;
 - e) Any further landscaping required by the conditions of this development consent.

6. The amendment of conditions G.4, 5, 6 and 7 to reference the updated sections of the *Environmental Planning and Assessment Act 1979*.

Vote: 4/0

3.3 DA2018/0262 - 2 VIOLET STREET, BALGOWLAH - DEMOLITION, CONSTRUCTION OF TWO SEMI-DETACHED DWELLINGS AND TORRENS TITLE SUBDIVISION OF EXISTING LOT

PROCEEDINGS IN BRIEF

The proposal includes demolition works, construction of two mirrored semi-detached dwellings and Torrens Title subdivision.

The Panel viewed the site and its surrounds. At the public meeting which followed the Panel was addressed by four neighbours and a representative of the applicant.

DECISION ON DEVELOPMENT APPLICATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/0262 for demolition, construction of two semi-detached dwellings and Torrens Title subdivision of existing lot at Lot 9 DP 13882, 2 Violet Street, Balgowlah subject to the conditions and for the reasons set out in the Assessment Report, subject to the following:

Additional reasons:

1. The Panel considers that the two carports should be relocated so that they are central and adjoining, and will impose a condition to that effect, in order to provide protection for the large Lilli Pilli tree on 39 Wanganella Street close to the common boundary fence.
2. The Panel considers that the storage structures behind the carports should be deleted, and will impose a condition to that effect, so as to improve landscape opportunities in the front setback area, to minimise the building bulk on the streetscape and to enable passive surveillance to and from the street.

Amendments to conditions:

1. The amendment of condition 2 to read as follows:
 2. **Amendments to the approved plans**

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

 - The two carports are to be centrally relocated and adjoin each other
 - The store rooms behind the carports and the structures below them are to be deleted
 - The timber batten doors on the southern elevation of the carports are to be deleted and the carports are to be unenclosed. A dividing screen to a maximum height of 1.7m is permissible between the carports
 - The existing street tree in Violet Street likely to be impacted as a result of these changes to the driveway access is to be removed and replaced with two trees, one on either side of the new driveway access.
2. The amendment of condition 16 to read as follows:
 16. **Vehicle Crossings**

The provision of one vehicle crossing in accordance with Northern Beaches Council Drawing No A4-3330/7 ML and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

Details demonstrating compliance are to be submitted to the Council for approval under the *Roads Act 1993*.

Reason: To facilitate suitable vehicular access to private property

3. The amendment of condition 21 to read as follows:

21. Required Planting

Trees shall be planted in accordance with the following schedule and as required by condition 2:

Minimum No. of Trees Required.	Species	Location	Minimum Pot Size
All trees	As indicated on Landscape Plan Dwg No.1 B dated 30.1.18 prepared by Paul Scrivener	As indicated on the Landscape plan	As indicated on the Landscape plan

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To maintain environmental amenity. (DACLAF01)

4. The amendment of condition 19 to read as follows:

19. Trees Condition

During the construction period the applicant is responsible for ensuring all protected trees referred to in the Arboriculture Impact Assessment Report referred to in condition 1 are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected trees on this site shall not exhibit:

- A general decline in health and vigour.
- Damaged, crushed or dying roots due to poor pruning techniques.
- More than 10% loss or dieback of roots, branches and foliage.
- Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- Yellowing of foliage or a thinning of the canopy untypical of its species.
- An increase in the amount of deadwood not associated with normal growth.
- An increase in kino or gum exudation.
- Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented. The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees. (DACLAEO3)

Vote: 3/1 (Community Representative dissenting)

4.0 REVIEW OF DETERMINATIONS

Nil

5.0 PLANNING PROPOSALS

Nil

6.0 ADOPTION OF INSTRUMENT OF DELEGATION

The Panel resolved to adopt the below Instrument of Delegation.

Vote 4/0

Instrument of Delegation

Environmental Planning and Assessment Act 1979

Delegation of Appeal Functions from Northern Beaches Local Planning Panel to Council's General Counsel

1. Definitions

In this instrument:

Act means the Environmental Planning and Assessment Act 1979.

Appeal means an appeal under Division 8.3 of Part 8 of the Act against a determination or decision made by the Panel and any subsequent appeal arising from a decision in those proceedings.

Council means Northern Beaches Council.

General Counsel means the person for the time being holding, or otherwise acting from time to time in, the position of Council's General Counsel.

Panel means Northern Beaches Local Planning Panel.

2. Appeal Functions Delegated

Pursuant to s2.20(8) of the Act and a resolution passed at a meeting of the Panel held on 6 June 2018, the Panel delegates to Council's General Counsel, with immediate effect, the functions of the Panel referred to in s8.15(4) of the Act of control and direction of Appeals, subject to the conditions and limitations described below.

3. Conditions & Limitations Applying to Delegated Functions

In the case of an Appeal relating to a determination or decision of the Panel that is contrary to a Council officer's development assessment report, the General Counsel (or delegate) will consult with the Chair of the Panel that made the determination or decision (or the Chair's nominee) as to the conduct of the Appeal. In the case of all Appeals the General Counsel (or delegate) will keep that Panel Chair (or the Chair's nominee) informed as to major developments in, and the outcome of, the Appeal.

The meeting concluded at 6.32pm

This is the final page of the Minutes comprising 13 pages
numbered 1 to 13 of the Northern Beaches Local Planning Panel meeting
held on Wednesday 6 June 2018.