

NORTH SYDNEY COUNCIL

Council Chambers
25 November 2021

I wish to inform you that a Meeting of the **NORTH SYDNEY LOCAL PLANNING PANEL** will be held in the Council Chambers, North Sydney at 2.00pm on Wednesday, 1 December 2021 when your attendance is requested.

Your attention is directed to the accompanying statement of the business proposed to be transacted at such meeting.

KEN GOULDTHORP
GENERAL MANAGER

BUSINESS

1. Minutes

Confirmation of Minutes of the previous Meeting held on Wednesday, 3 November 2021.
(Circulated)

2. LPP01: 313 Pacific Highway, North Sydney – 95/21

Applicant: Elton Consulting

Report of Lara Huckstepp, Executive Planner

This development application seeks approval for the construction of a four level mixed use building with a basement level containing 31 boarding house rooms, ground level non-residential use and basement ancillary uses at No.313 Pacific Highway, North Sydney.

The development application is reported to North Sydney Local Planning Panel for determination because the proposal involves a breach of development standards of greater than 10% for motorcycle parking requirements under the Affordable Rental Housing State Environmental Planning Policy, non-residential floor space pursuant to Clause 4.4A NSLEP 2013 and the height of building standard pursuant to Clause 4.3 NSLEP 2013. The development application also attracted more than 10 unique submissions. The development application is therefore required to be determined by the North Sydney Local Planning Panel in accordance with the Minister's directions.

The original development application originally proposed a five level building, with the fifth level comprising a communal room as well as an open roof terrace. Basement parking was also proposed for 5 vehicles, 8 x motorcycle parking spaces and bicycle parking. A total of 36 boarding rooms were proposed.

Notification of the original proposal attracted a total of 31 submissions raising particular concerns about building height, density, overshadowing, visual privacy, traffic, car parking, impacts of the communal roof top facilities, blocking up of adjoining windows, safety concerns, inappropriate location for a boarding house, wind impacts, character of the building, impact on adjoining heritage item, construction impacts and various other concerns.

Following concerns raised by Council, the applicant submitted amended plans which detail a number of amendments including deletion of level 5 communal rooftop facilities and outdoor terrace, deletion of the basement parking level in lieu of a providing a part basement with bicycle parking and ancillary uses, a reduction in the number of boarding rooms to 31, and various other amendments. Amended plans were notified to adjoining properties and a further 13 submissions were received.

On balance, the amended scheme is considered to provide an acceptable response to the relevant planning controls and provide an acceptable response to its surrounding context.

A Clause 4.6 request for variation has been submitted for the non-compliance with building height pursuant to Clause 4.3 NSLEP 2013. The breach of the building height is generally limited to the lift overrun and roof plant. The amended plans deleted all the habitable roof top structures above the building height control.

A Clause 4.6 request for variation has also been submitted in relation to the provision of non-residential floor space at ground level pursuant to Clause 4.4A NSLEP 2013, where a minimum of 0.5:1 is required however only 0.48:1 is required. The applicant's Clause 4.6 request for variation is considered to be well-founded and it is considered that the breach in part, is due to the whole of building front setback provided on the Pacific Highway elevation. This setback provides an appropriate interface with the adjoining heritage item. Should this setback not be provided, the proposed development would likely be able to comply.

Recommending:

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with the motorcycle provisions of Clause 30 ARH SEPP, Clause 4.4A NSLEP (Non-residential floor space) and Clause 4.3 NSLEP (Building height) and grant consent to Development Application No. 95/2021 for demolition of existing structures and construction of a four level building with basement services providing a boarding house, with retail on the ground level on land at 313 Pacific Highway, North Sydney, subject to the following site specific and standard conditions:-

NSW Police Conditions

B2. The following requirements shall be incorporated into the proposed design:

1. The boarding house should be clearly identified with the street number visible from the street. This will enable all emergency services to locate the premises. Where possible visibility into the building should not be obscured by vegetation or any type of structure which can create opportunities for concealment.
2. Appropriate signage should be erected inside and around the perimeter of the entire property to warn of security treatments in place e.g. This site is under 24 hour video surveillance.
3. Lighting in and around the proposed development should comply with Australian Standard AS: 1158 and should provide for adequate, uniform illumination. External lighting should be of a white light source. Note that high or low pressure sodium orange lighting is not compatible with quality surveillance systems. Internal lighting should be controlled away from public access. If this is not possible, use tamper-resistant switches. Luminaries (light covers) should be designed to reduce opportunities for malicious damage.
4. Lighting in and around the site will need to be positioned in a way to reduce opportunities for offenders to commit crime i.e vandalism and graffiti. The lighting will also need to be sufficient to support images obtained from any CCTV footage. Please note that some low or high pressure lighting is not compatible with surveillance systems.
5. Doors should be of solid construction, and should be fitted with quality deadlock sets that comply with the Building Code of Australia and Australian Standards ñ Lock Sets AS:4145.
6. Windows should be of solid construction. These windows should be fitted with quality window lock sets that comply with the Australian Standards ñ Lock Sets AS:4145. Glass within doors and windows should be reinforced to restrict unauthorised access. The glass can be either fitted with a shatter-resistant film or laminated to withstand physical attacks.
7. An electronic surveillance system should be included to provide maximum surveillance of all areas including entry/exits, mail boxes, car parks and bicycle storage. The system should be capable of recording high-quality images of events. The recording equipment should be locked away to reduce the likelihood of tampering.

8. An emergency control and evacuation plan should be implemented within the boarding house and residents should be aware of this plan in case of emergency situations.
9. All recording made by the CCTV system must be stored for at least 30 days and ensure that the system is accessible by at least one person at all times it is in operation, and provide any recordings made by the system to a police officer or inspector within 24 hours of any request by a police officer or inspector. The CCTV cameras will need to be placed in suitable locations to enhance the physical security and assist in positively identifying an individual, who may be involved in criminal behaviour.
10. Wheelchair access should at no time be blocked nor impede access to anyone with a disability.
11. Signs should be placed in the basement warning people against leaving valuables.
12. Mail boxes should be placed in a secure room or area.
13. The premise is surrounded by residential properties and therefore noise emissions need to be considered when using an outdoor area.
14. A standard of behaviour should be enforced by the on site manager so residents do not have a detrimental effect on the surrounding neighbourhood.

(Reason: NSW Police requirements)

No approval for new lighting in Hazelbank Lane

- C1. No approval is granted or implied for new lighting in Hazelbank Lane. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To comply with the terms of this development consent)

Covenant for windows on north-western boundary

- G1. A covenant pursuant to the provisions of Part 6, Division 4 of the Conveyancing Act shall be placed on title indicating that all windows on or near the north-western (side) boundary are not protected from any redevelopment of the adjoining property at No.317 Pacific Highway, St Leonards that may be allowed to build to the boundary and these windows or openings could be blocked off.

North Sydney Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Evidence of the lodgement of the instrument referred to in this condition is to be provided to Council with a copy of the Occupation Certificate.

(Reason: To ensure owners are aware that the north-western boundary windows are not protected and could be blocked by future development)

Provision of washing machines

- I6. A minimum of 5 x washing machines and dryers shall be provided in the common laundry facilities in the basement.

(Reason: To provide appropriate facilities for occupants)

Boarding house - Operational Plan of Management

- I8. The management of the boarding house shall be conducted in accordance with the Operational Plan of Management submitted to Council on 27 September 2021, and must comply with the requirements of the following

relevant legislation:

- a) Schedule 2 (Standards for Places of Shared Accommodation) to the Local Government (General) Regulation, 2005
- b) the Public Health Act, 1991,
- c) Boarding Houses Act 2012; and
- d) North Sydney Council's Boarding House controls under Section 4 of Development Control Plan 2013.

except where otherwise amended by the conditions of this consent

The Plan of Management shall be updated to reflect all relevant conditions of consent.

(Reason: To ensure the ongoing operation of the boarding house is in accordance with the terms of this consent)

Registration of Boarding House

I12. The boarding house must be registered with Council.

(Reason: To allow Council to maintain appropriate records)

No Subdivision

I13. No approval shall be granted for the strata subdivision or community title subdivision of the boarding house.

(Reason: To comply with Part 4, provision 52 of SEPP ARH 2009)

Provision of Affordable Housing

I14. All rooms in the proposed boarding house must only be used for the purpose of affordable housing, as defined in *State Environmental Planning (Affordable Rental Housing 2009)* (or any SEPP relating to Affordable Housing that may replace this SEPP in the future) for the life of the proposed development.

(Reason: To ensure that the development provides affordable housing and to ensure that the purpose built boarding house is not used for any other purpose)

Minimum Occupancy Period

I15. The minimum occupancy period of any tenant of the boarding house shall be not less than minimum of three (3) calendar months.

(Reason: To comply with the terms of this development consent and for safety/amenity)

Use of common outdoor terrace

I16. The use of the common outdoor terrace on the Pacific Highway frontage (Level 4) shall not occur between the hours of 9.00pm and 7am daily.

(Reason: To protect the amenity of surrounding properties)

CCTV Coverage

I18. CCTV coverage of the premises is to be provided 24 hours a day seven days per week. The camera placement and operation of the system shall be in accordance with the following requirements:

- a) The CCTV system shall provide a 24 hour 7 day visual time stamped recording with a good quality resolution minimum rate of ten (10) frames per second at a resolution of at least 640 pixels by 480 lines/pixels and include sound recording.
- b) The positioning of all surveillance cameras shall be made in consultation and agreement with the Commander, Harbourside Local Area Command or his or her delegate
- c) A sign is to be erected in a prominent location within the premises advising that the premises are under CCTV surveillance for the purpose of protecting the amenity of the adjoining properties.

- d) The Managing Agent is responsible for ensuring the tenants of the premises comply with the conditions imposed by this consent and the approved Management Plan of the Premises. If the CCTV system identifies a customer or visitor breaching the conditions of consent then the manager is to take action, including removal from the premises, and prohibition of future entry as appropriate, to ensure that the is compliance with the conditions of consent.
 - e) The CCTV recordings shall be kept for a period not less than 3 months and shall be provided to Council upon request.
- (Reason: To promote the safety/minimise impact on neighbours)

3. LPP02: 21 King George Street, Lavender Bay - DA 216/21

Applicant: Margaret Beazley

Report of Annelize Kaalsen of AK Planning

This development application seeks approval from the North Sydney Local Planning Panel (NSLPP) for the demolition of the existing dwelling and the construction of a new two storey dwelling plus basement garage accessed off Bay View Street and associated landscape and stormwater drainage works at No. 21 King George Street, Lavender Bay.

This application is reported to NSLPP for determination because the development applications attracted more than 10 unique submissions. The development application is therefore required to be determined by the North Sydney Local Planning Panel in accordance with the Minister's directions.

The original application included the partial demolition of a heritage listed sandstone street wall along the Bay View Street frontage. The independent heritage assessment by Kemp and Johnson Heritage Consultants did not support this demolition. Amended plans were sought which now proposes to retain the existing sandstone wall in its entirety.

The amended application allows for a maximum building height of 8.4m, complying with the permitted 8.5m pursuant to Clause 4.3 of the NSLEP 2013 compared with the application as originally submitted at 9.02m.

The first notification period from between 30 July 2021 and 13 August 2021 attracted a total of **seventeen (17) submissions**. The amended application was re-notified between 9 and 23 November 2021 and attracted a further **seven (7) submissions**. The submissions raised particular concerns with respect to the non-compliances with building height; extent of excavation; view loss; bulk and scale; non-compliance with setbacks; roof is inconsistent with characteristic roof forms; size of deck/terrace; solar access and visual and acoustic privacy. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

The application was referred to Council's Development Engineer and Landscape Officer who both raised no objections to the proposal, subject to conditions of consent.

The subject application does not comply with the front setback (primary street) control pursuant to Section 1.4.6 of the NSDCP 2013. The subsequent massing on the intersection of King George and Bay View Streets is considered inconsistent with the objective O2 which seeks to control bulk and scale and

objective O4 to preserve amenity in terms of views. Accordingly, a condition of consent is recommended in order to remove the metal blade structures / window box from the proposed first floor terrace and to allow for a glass balustrade to wrap around in lieu of a solid metal balustrade. This will minimise the massing and prominence of the structure on the street corner whilst assist in retaining more of the existing views across the front of the subject site of the Harbour Bridge and Opera House from units within No. 21 Waiwera Street.

As such, following this assessment, and having regard to the provisions of S4.15(1) of the Environmental Planning & Assessment Act 1979, the application is recommended for approval on the basis that the proposed new dwelling will not result in adverse environmental, heritage or construction impacts.

Recommending:

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Local Planning Panel, exercising the functions of Council as the consent authority, and **approve** Development Application No. 126/21 for the demolition of the existing dwelling and the construction of a new two storey dwelling with basement garage accessed off Bay View Street and associated landscape and stormwater works, subject to the following site-specific condition and the attached standard conditions.

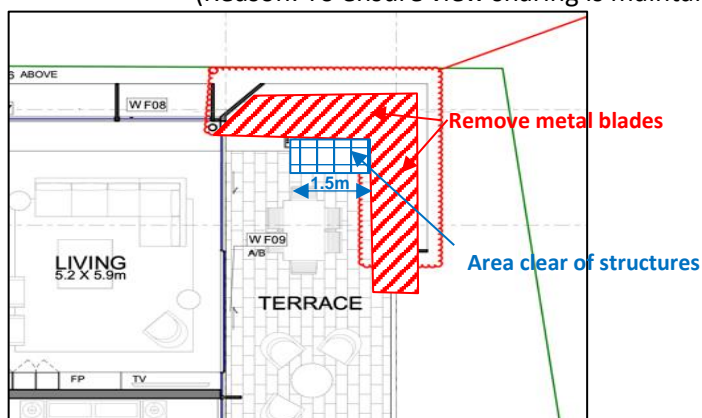
Design Amendments

C1. Prior to the issue of any construction certificate the following design amendments are required to the plans forming part of Condition A1 of this consent:-

1. The fixed metal blade structures located on the northern and eastern elevations of the proposed first floor terrace is to be deleted from the proposal.
2. The proposed fixed metal / solid balustrade on the northern and eastern elevations of the proposed first floor terrace, is to be deleted from the proposal and replaced with a glass balustrade.
3. The north-eastern corner of the proposed first floor terrace is to remain clear of any structures / BBQ facilities and cabinetry. The area measuring 1.5m from the NE corner along the northern elevation.

Architectural plans satisfying the requirements of this condition must be submitted to the Council for assessment and approval, prior to the issue of any Construction Certificate.

(Reason: To ensure view sharing is maintained)



4. LPP03: 80 Cairo Street, Cammeray (T) - DA 209/21

Applicant: Belinda Walter, Atlas Urban

Report of Andrew Beveridge, Assessment Officer

This development application seeks NSLPP approval for extensive alterations and additions of the existing dual occupancy building on site including a new car space in the existing garage, and a roof extension.

This application is reported to North Sydney Local Planning Panel for determination because the proposed works breach the building height limit by greater than 10% and requires determination by the panel.

As the proposal involves works to the existing residential dwelling that are in exceedance of the maximum permitted height limit by 2.7m (31.76%), the applicant has submitted a written request seeking a variation to the building height development standard in accordance with Clause 4.6 of NSLEP 2013. The applicant's submission has been considered with reference to the Land and Environment Court's decision in *Wehbe v Pittwater Council [2007] NSWLEC 827* in order to justify the proposed variation. The applicant's Clause 4.6 is considered to be satisfactory given the site circumstances and on the basis that it will not have a significant impact upon the views or general amenity of adjoining properties.

Notification of the proposal has attracted no submissions and the assessment has considered the performance of the application against Council's planning requirements. The view impacts resulting from the western roof extension have been assessed with regard to the Tenacity planning principle, where the impacts are considered to be minor and acceptable within the site circumstances.

The impacts of the overall development upon the heritage significance of the site, being located within the Plateau Conservation Area, have also been assessed and, subject to satisfying recommended conditions, was found to be generally acceptable on the basis that the majority of the works will be contained within the existing footprint of the dwelling and will maintain a sympathetic scale in relation to the existing dwelling.

However, the proposed additional dormer on the western roof extension, and the ground and lower ground floor level deck extensions, however, are not considered to be acceptable on the basis that these works are over-scaled, will detract from the original dwelling, and will be highly visible from the street and the public domain. The proposed replacement steel balustrade, slate roof and the proposed colour palette are also considered to be unsympathetic to the heritage values of the dwelling and conservation area. These alterations and additions are recommended to be altered and/or deleted from the plans by deferred commencement condition.

Subject to the satisfaction of conditions, it is considered that the proposal is acceptable as it will not result in any significant adverse impacts upon the locality or adjoining properties, and the overall heritage significance of the site and streetscape character will be maintained. The proposal will also not result in any unreasonable impacts on the amenity of adjoining properties such as impacts to views, overshadowing or loss of privacy.

Having regard for the potential impacts upon the amenity of adjoining properties and the heritage significance of the site, subject to conditions,

including satisfying deferred commencement conditions, the development application is considered to be satisfactory and is recommended for **part approval**.

Recommending:

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 and grant **deferred commencement consent** to Development Application No. 209/21 for substantial alterations and additions to an existing dual occupancy including a new car space in the existing garage, and a roof extension, on land at 80 Cairo Street, Cammeray, subject to the following attached conditions:-

AA. Deferred Commencement Condition

This consent shall not operate until the following deferred commencement conditions have been satisfied.

The applicant must satisfy Council as to the matters specified in the deferred commencement conditions within 12 months of the date of the grant of this consent.

If the applicant fails to satisfy Council as to the matters specified in the deferred commencement conditions within 12 months of the dated of the grant of this consent this consent will lapse in accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979.

NOTE: Consideration should be given to providing the evidence to Council to allow sufficient time to consider the same and form a view as to whether the deferred commencement conditions are satisfied or not. You are also advised of your appeal rights under clause 95(6) of the Environmental Planning and Assessment Regulation 2000, which provides that: *If the consent authority has not notified the applicant within the period of 28 days after the applicant's evidence is produced to it, the consent authority is, for the purposes only of section 8.7 of the Act, taken to have notified the applicant that it is not satisfied as to those matters on the date on which that period expires.*

Deferred Commencement Matters

Amended Plans (Heritage)

AA1. The following items are not approved by this consent and are to be deleted from the plans:

- a) The submitted Materials Schedule ('A-005') by Atlas Urban dated 5 October 2021, titled Drawing DA_3 and received at Council on 21 October 2021, to be replaced with more appropriate materials that are compatible with the character of the conservation area such as Marseilles unglazed terracotta roof tiles, timber picket style balustrades, face brick to be unpainted.
- b) The proposed new dormer to the north-western roof plane.
- c) The proposed deck extensions to the Lower Ground and Ground Levels.
- d) Alterations to the existing balustrade materials on the northern dormer from timber to steel palisade.

- e) The submitted exterior colour scheme ('Painting Specifications'), dated 6 June 2021, and prepared by Design Research Associates, comprising 'Resene Nocturnal', 'Half Nocturnal' and 'Black White', are not recommended given their likely detrimental impact upon the significance of the conservation area.

The following heritage requirements are to be met, and the lodged plans herein listed in the Schedule of Condition A1 must be amended to show the following:

- a) New roof tiles are to match the existing roof tiles.
- b) Face brickwork on the original dwelling is not to be painted.
- c) Replacement balustrades, staircase and handrails are to be constructed in timber and are to be painted to match the building's exterior colour scheme.
- d) New retaining walls are to match the existing materials.
- e) New windows and doors on the North Elevation are to be timber framed. All other new windows are to have aluminium or steel framing sections of a width 45mm or wider, or are to be timber framed.
- f) New front door to be a timber high-waisted Federation style door with two or three vertical moulded panels at the base and glazed upper panel.

The applicant must submit architectural plans and documentation complying with the requirements of this consent for the written approval of Team Leader Assessments.

(Reason: To retain the heritage significance of the Federation style building in the conservation area; and to ensure the use of materials, finishes, and colours that are consistent with the character of the Conservation Area and the original dwelling)

Updated BASIX Certificate

AA2. The applicant must submit an updated BASIX Certificate complying with the requirements of this consent as amended under **Condition AA1**, for the written approval of Team Leader Assessments.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

This consent shall not operate until such time as the written approval stating that the requirements of these conditions have been satisfied.

Upon satisfaction of the deferred commencement conditions, the attached conditions apply:

5. LPP04: 34 (&36) Cammeray Road, Cammeray – DA 299/21

Applicant: Max Chipchase

Report of Michael Stephens, Senior Assessment Officer

This development application seeks consent for the subdivision of Lot 19 in DP 15073 into two lots and minor alterations to an existing dual occupancy (attached) to create a pair of semi-detached dwellings with one dwelling on each proposed lot at 34 (& 36) Cammeray Road, Cammeray

The application is reported to the North Sydney Local Planning Panel for determination as the application seeks a variation to a development standard by more than 10% for each proposed lot. In accordance with the Ministers Direction dated 1 August 2020 a public determination meeting is not required because there were less than 10 Submissions.

The subject site is zoned R2 Low Density Residential. Semi-detached dwellings are a permitted form of development within the zone.

The proposed subdivision would not achieve the minimum subdivision lot size development standard of 450sqm resulting in a variation of 34.88% and 39.33% respectively for the proposed lots. The applicant has submitted a written request to justify the variations to the development standard pursuant to clause 4.6 in NSLEP 2013 which satisfactorily demonstrates that compliance with the development standard is both unreasonable and unnecessary, that there are sufficient environmental planning grounds and that approval of the development would be in the public interest. The written request submitted to Council is considered to be well founded and worthy of support for both variations.

The size, dimensions and orientation of the proposed lots are consistent with the existing development on the site and the prevailing character of this section of Cammeray Road that includes a mix of detached and semi-detached dwellings that are generally located on similar small lots.

The existing siting and layout of the building is consistent with the proposed use as a pair of semi-detached dwellings and requires only minor subdivision works to provide fire separation between the two dwellings where openings have previously been created. The building was likely constructed as two separate dwellings and altered to its current form some time in the past.

Notification of the proposal resulted in no submissions.

On balance, the application is recommended for approval subject to various site specific and standard conditions.

Recommending:

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Local Planning Panel, exercising the functions of Council, as the consent authority, assume the concurrence of the Secretary, Department of Planning, Industry and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliances with Clause 4.1 of NSLEP 2013 and grant consent to Development Application No. 289/2021 for subdivision of one lot into two lots and alterations to an existing dual occupancy (attached) to create a pair of semi-detached dwellings on land at No 34 & (36) Cammeray Road, Cammeray, subject to standard conditions of consent.

6. LPP05: 8 Baden Road, Kurraba Point (V) - D206/21

Applicant: Anne Colville

Report of Robin Tse, Senior Assessment officer

This development application seeks NSLPP approval for alterations and additions to a dual occupancy including an attic addition and partial enclosure of the ground floor verandah.

The application is reported to North Sydney Local Planning Panel for determination as the proposal involves a variation to the building height development standard which is greater than 10%. It also involves part demolition of a heritage item, that requires determination of the application by the Panel as directed by the Minister of Planning, Industry and the Environment.

Notification of the proposal has attracted a total of eight (8) submissions raising particular concerns about non-compliance with the LEP building height limit, inappropriate bulk and scale, adverse view impacts and privacy impacts. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

The development application has been assessed against the North Sydney LEP 2013 and North Sydney DCP 2013 and was found to be unsatisfactory.

The applicant has submitted a Clause 4.6 statement seeking a variation to the permissible height limit. However, the variation to the building height development standard is not supported because the uncharacteristic design of the building elements above the LEP maximum building height limit would result in a full third level within a two storey heritage listed building. Furthermore, the unsympathetic design for the attic addition would cause a minor loss of water views from the adjoining properties. Therefore, a variation to the LEP building height control is not considered to be well-founded and strict compliance with the standards is necessary.

The proposed development is contrary to the objective of the R3 (Medium Density Residential) zone because the proposal would detract from the significance of the subject heritage listed building.

Furthermore, the proposal would result in an addition on the front elevation of the existing roof of a heritage listed building and is contrary to the requirement in Clause 6.6 (2)(b)(i) of the LEP requiring dual occupancies to be contained substantially within the existing building fabric of a heritage item.

The application was referred to Council's Conservation Planner who considered the proposal unacceptable because of the adverse impacts on the heritage significance of subject heritage item.

Accordingly, the proposed development is recommended for **refusal**.

Recommending:

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Local Planning Panel, exercising the functions of Council, resolve to refuse development consent to Development Application D206/21 for alterations and additions to an existing attached dual occupancy at No.8 Baden Road, Kurraba Point for the following reasons:-

1. The written request pursuant to clause 4.6 of NSLEP is not supported

The written request pursuant to clause 4.6 of NSLEP seeking a variation to the height of building development standard in clause 4.3 of NSLEP is not considered to be well founded.

Particulars:

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- (i) The proposed attic addition breaches the 8.5m maximum height of building development standard specified in clause 4.3(2) in NSLEP 2013.
 - (ii) The written request submitted with the application seeking a variation to the maximum height of building development standard has inadequately addressed the matters required to be addressed in subclause (3) in clause 4.6 in NSLEP 2013.
 - (iii) The written request has failed to adequately demonstrate that compliance is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the height of building development standard.
 - (iv) The proposed development is not considered to be in the public interest as the development is not consistent with the objectives of the height of building standard in clause 4.3(1) in NSLEP 2013 and the objectives of the R3 (Medium Density Residential) zone (dot point 4) under NSLEP 2013.

2. Unacceptable heritage impacts

The proposed development is unacceptable because of the adverse impacts on the subject heritage item and the adjoining heritage item.

- (i) The proposed development does not satisfy Clause 5.10(1)(a), Clause 5.10(1)(b) and Clause 5.10(4) in Part 5 of NSLEP 2013 due to the detrimental impacts of the proposed development on the subject heritage listed item, in particular the introduction of an uncharacteristic third storey and the partial enclosure of the original ground floor verandah.
 - (ii) The proposal does not satisfy the aims of North Sydney Local Environmental Plan 2013 (NSLEP 2013) as listed in Clauses 1.2 (2)(a), (2)(b)(i), and (2)(f) in Part 1 of NSLEP 2013.
 - (iii) The proposed development does not satisfy the objective of the R3 (Medium Density Residential) zone in the Land Use Table in Part 2 of NSLEP 2013 because of the adverse impacts of the proposed development on the significance of the subject heritage listed item, particularly dot point 4.
 - (iv) The proposed development does not satisfy the provisions for dual occupancies on a heritage item because the proposed attic addition will not be substantially located within the fabric of the existing building in Clause 6.6 (2)(b)(i) and will not conserve the appearance of the existing building in Clause 6.6 (2)(b)(ii) in Part 6 of NSLEP 2013.
 - (v) The proposed development does not satisfy the Area Character Statement for South Cremorne Planning Area in Section 6.0 in Part C of North Sydney DCP 2013 (NSDCP 2013) given that the proposal does not promote a quality built form within the planning area because the design of the proposal fails to reflect and reinforce the distinctive built form of the existing heritage listed building.
 - (vi) The application fails to satisfy the development controls for the following sections in Part B of the NSDCP 2013 and is therefore
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considered unacceptable:

- a. Section B – 13.5.1 – Protecting heritage significance
- b. Section B – 13.5.2 – Form massing and scale
- c. Section B – 13.5.3 – Additional Storeys
- d. Section B – 13.5.4 – Roofs
- e. Section B – 13.5.5 – Interior Layout
- f. Section B – 13.5.7 – Group heritage items
- g. Section B – 13.9.3 – Verandah and Balconies
- h. Section B – 13.9.4 – Materials

3. Inappropriate context, excessive height, bulk and scale

The proposed development is unacceptable because of the proposed attic addition is inappropriate for the two storey built form of the existing building.

Particulars

- (i) The proposed development is inappropriate to its context being a heritage item because the proposed attic addition provides a third storey which is contrary to aim 1.2 (2)(a) in NSLEP 2013 as well as section 1.4.1 in Part B of NSDCP 2013.
- (ii) The proposed development is contrary to Section 1.4.7 and 1.4.8 in Part B of NSDCP 2013 because the proposed attic addition will increase the bulk and scale of the existing building with an uncharacteristic built form due to the creation of a full third storey that would detract from the significance of the subject heritage item.

4. View loss

The proposed development is unacceptable because the proposed attic addition will cause some loss of water views that could be retained with a more skilful design.

Particulars

- (i) The proposed attic addition will cause some loss of water view of Shell Cove currently seen from the adjoining property to the west and is contrary to aim 1.2 (2)(a) in NSLEP 2013 as well as section 1.3.6 in Part B of NSDCP 2013.
- (ii) The proposed development does not satisfy the objective of the R3 (Medium Density Residential) zone in the Land Use Table in Part 2 of NSLEP 2013 because of the adverse impacts of the proposed development on the amenity of the neighbouring properties in terms of the loss of existing water views.

5. Public Interest

The approval of the proposed development is not in public interest because of the adverse impacts on the significance of the subject heritage listed item and the adverse impacts on the amenity of the neighbouring properties.

7. LPP06: 4-6 MacPherson Street, Cremorne - D229/21

Applicant: Corben Architects

Report of Robin Tse, Senior Assessment Officer

This development application seeks NSLPP approval for demolition of semi-detached dwellings and the construction of a four (4) storey residential flat building containing eleven (11) apartments and basement parking for twelve (12) cars.

The application is reported to North Sydney Local Planning Panel for determination because the proposal is subject to SEPP 65 that requires determination of the application by the Panel as directed by the Minister of Planning, Industry and the Environment.

Notification of the proposal has attracted five (5) submissions raising particular concerns about the bulk and scale of the proposed development, adverse amenity impacts for an adjoining property and traffic impacts. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

The proposal has been assessed against the North Sydney LEP 2013 and North Sydney DCP 2013 and SEPP 65 – Design Quality of Residential Flat Building and generally found to be satisfactory.

The variation to the building height development standard is justifiable because the building elements above the LEP maximum building height are unlikely to have material impacts on the overall character of the locality and would not cause material amenity impacts for the adjoining properties in terms of view loss, overshadowing and loss of privacy.

The proposed four storey apartment building is considered to be appropriate in terms of height and built form within a R4 (High Density Residential) zone. Furthermore, the proposal would not result in unacceptable impacts on the amenity of the adjoining properties subject to the imposition of appropriate conditions.

The proposed site coverage, unbuilt upon and landscaped areas are considered to be acceptable because of the increase in landscaping within the subject site as compared to the existing site condition. The additional landscaping would make valuable contribution to streetscape with the provision of a landscaped open space area along the Parraween Street frontage including the retention of an established pine tree.

The issues raised in the submissions received have also been addressed in the report.

Having regard to the merits of the proposal, the application is recommended for approval subject to the imposition of appropriate site specific and standard conditions.

Recommending:

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Local Planning Panel, exercising the functions of Council, as the consent authority, assume the concurrence of the Secretary, Department of Planning, Industry and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 of NSLEP 20013 and grant consent to Development Application No. 229/21 for the demolition of the existing buildings and the construction of a residential flat building containing eleven apartments with basement parking and

associated landscaping on land at Nos.4-6 MacPherson Street, Cremorne , subject to the attached conditions:-

Communal Open Space

- C1. The design of the communal open space to the south of apartment building must be modified to provide a 'gazebo-type' open structure (3m x 4m) for some shelter, with barbeque facilities and seating nearby to promote social interaction amongst the residents and to promote the use of the communal area.

The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Compliance with Acoustic Report

- C2. All recommendations contained in the acoustic report prepared by Acoustic Logic Pty Ltd, dated 10 May 2021, must be implemented during construction, and use of the development as an on-going requirement.

A detailed acoustic review of all mechanical plant (car lift, air conditioning, exhaust systems, fans, laundry, lift etc.) shall be undertaken at CC stage to determine acoustic treatments necessary to control noise level emissions to satisfactory levels to comply with conditions of this consent.

A statement from an appropriately qualified acoustical consultant eligible for membership of the Association of Australasian Acoustical Consultants, certifying that the acoustic mitigation measures outlined in the above stated report and the further detailed acoustic review of all mechanical plant, have been suitably incorporated into the development, and that relevant noise criteria have been satisfied, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)



NORTH SYDNEY LOCAL PLANNING PANEL

DETERMINATIONS OF THE NORTH SYDNEY LOCAL PLANNING PANEL MEETING HELD IN THE COUNCIL CHAMBERS, NORTH SYDNEY, ON WEDNESDAY 3 NOVEMBER 2021, AT 2.00PM.

PRESENT

Chair:

Jan Murrell in the Chair.

Panel Members:

David Logan, Panel Member
Brendan Randles, Panel Member
Ken Robinson, Community Representative

Staff:

Administrative Support

Stephen Beattie, Manager Development Services
Robyn Pearson, Team Leader Assessments
David Hoy, Team Leader Assessments
Michael Stephens, Senior Assessment Officer
Peita Rose, Governance Officer (Minutes)

In accordance with the Covid 19 Public Health Order this meeting was conducted by remote (Zoom) means.

Apologies: Nil.

1. Minutes of Previous Meeting

The Minutes of the NSLPP Meeting of Wednesday, 6 October 2021 were confirmed following that meeting.

2. Declarations of Interest

Nil

3. Business Items

The North Sydney Local Planning Panel is a NSW Government mandated Local Planning Panel exercising the functions of North Sydney Council, as the Consent Authority, under Section 4.8(2) of the Environmental Planning and Assessment Act, 1979 as amended, and acts pursuant to a Direction of the Minister for Planning issued under Section 9.1 of the Act, dated 23 February 2018.

The Panel has considered the following Business Items and resolves to determine each matter as described within these minutes.

ITEM 1

DA No:	122/21
ADDRESS:	1 Baden Road, Kurraba Point
PROPOSAL:	Demolition of all existing structures and construction of a part 4, part 5 storey dwelling house with an integrated garage, swimming pool and associated landscaping.
REPORT BY NAME:	Michael Stephens, Senior Assessment Officer
APPLICANT:	Charbel Hazzouri

Public Submissions

1 Written Submission

Submitter	Applicant/Representative
Chris Shaw on behalf of Units 1, 2 and 7 No.200 Kurraba Rd	Anthony El- Hazzouri - Revelop Development (Applicant)
	Ian Cady - Town Planner
	Jane Maze-Riley - Urban Designer
	Nicola Ghirardi - Architect

Panel Determination

The Panel members have undertaken independent site inspections prior to the meeting and considered all submissions, both written and oral.

The Council Officer's Report, Recommendation and Conditions are noted by the Panel.

The Panel in its deliberations has concluded the matter be deferred and the Applicant given the opportunity to prepare a new Clause 4.6 written request that is not hampered by the former lockdown restrictions due to COVID. The Clause 4.6 written request is a threshold question to be satisfied prior to determination. The Panel has decided, on balance, a deferral is appropriate in the circumstances as this will allow the Applicant to seek access for the purpose of view assessments from the properties where owners have made submissions. In this regard owners are encouraged to grant permission for access to allow this to be undertaken in a timely manner.

The Panel notes that it was unclear whether the preliminary view analysis was in respect of the amended plans or earlier plans and technically the current plans must be addressed in a written request under Clause 4.6, even if the impact is reduced. Furthermore, the Panel is not persuaded the clause 4.6 written request should rely on a preliminary report that only makes a reference to 'Tenacity'. It is also noted this preliminary analysis states "at this time a detailed Tenacity assessment cannot be undertaken...based on the information available ...potential view loss for units at 200 Kurraba Road and 3 Baden Road is unlikely to meet the threshold test to proceed to Step 1 in Tenacity." This report also states ... "If, as a conservative measure, a Tenacity assessment were undertaken it would find that view loss is negligible..."

Notwithstanding the preliminary view analysis, it is the written request for variation on which the Panel as the consent authority must be satisfied.

The Applicant is to submit a new Clause 4.6 written request in a timely manner to allow a Supplementary Report to be prepared for the Panel's consideration and determination. The Panel will then determine the development application electronically.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Ken Robinson	Y	
David Logan	Y				
Brendan Randles	Y				

ITEM 2

DA No:	211/21
ADDRESS:	35 Bay View Street, Lavender Bay
PROPOSAL:	Substantial alterations and additions to a dwelling house including a new attic level and double garage.
REPORT BY NAME:	Sophie Griffiths, Student Town Planner
APPLICANT:	Bronwyn Litera

Public Submissions

No Written Submissions

Submitter	Applicant/Representative
	Bronwyn Litera - Applicant
	Chris Trotta - Applicant
	Yvette Middleton - Town Planner
	Henry Cheung - Owner (observing only)

Panel Determination

The Panel members have undertaken independent site inspections prior to the meeting and considered all submissions, both written and oral.

The Council Officer's Report and Recommendation is noted. The Panel has considered the amenity of adjoining properties and the streetscape, and the relevant controls in North Sydney Local Environmental Plan 2013, and guidelines in the DCP.

Pursuant to the provisions of Clause 4.6 of the North Sydney Local Environmental Plan 2013 ("the LEP"), the Panel is satisfied that the written request in relation to the contravention of the height of buildings development standard in clause 4.3 of the LEP, adequately addresses the required matters in clause 4.6 of the LEP. In the opinion of the Panel the written request demonstrates that compliance with the development standard is unnecessary in the circumstances of the case. Further, the Panel considers that the development will be in the public interest because it is consistent with the objectives of the standard and the zone objectives.

The Panel has determined that consent be granted subject to the satisfaction of Deferred Commencement Conditions requiring amended plans to be approved by the Manager of Development Services.

The Deferred Commencement Conditions are to be imposed to give effect to the following:

- The **garage** is to be amended to become a carport structure to be more visually transparent including the following:
 - The proposed panel lift door is to be deleted and may be replaced by gates to a maximum height of 1.5 metres. The metal or open timber batten gates are to have a transparency factor no less than 70%.
 - The existing wall to the southern (side) boundary is to be reduced in height by 500mm.
 - The roof is to be a light weight structure only
- **Dwelling Entry** - The proposed entry to the dwelling is to be either: relocated to the front elevation of the dwelling, and may be visually distinguished from the carport with a change in paving and the roof over the entry to the house could also be distinguished from the carport roof; **or if the side** entry is to be retained it must be designed to resolve issues having regard to the adjoining property to the north and presentation to the streetscape.
- **Dormer to eastern elevation** -The rear dormer in the eastern elevation is to be amended to have a curved roof or skillion roof form and reduced to have a **gable face height** of two (2) metres with a corresponding setback from the existing eastern gutter line.
- **Dormer to western facing elevation** - The front dormer in the western elevation is to be amended to have a flat, skillion or curved roof form to minimise the visual impact to the street.
- **Relocation of Ground Level Deck (Condition C2)** - The location of the lower ground level deck in the rear garden is to be amended to reflect the plan submitted to the Panel 1 November 2021.

A full set of amended plans are to be submitted and approved by Council’s Manager Development Services before the operational consent becomes effective. The Panel delegates to the Manager of Development Services the power to also impose appropriate Deferred Commencement conditions in accordance with the above requirements.

To reflect the amended plans required by the Deferred Commencement, Condition numbers C1, C2 & C3 are to be deleted from the consent. Council’s Manager Development Services is further granted delegation under Section 2.20(8) of the EP & A Act 1979 to amend conditions of consent that is necessary to reflect the changes required by the Panel’s decision.

Panel Reason:

With the Deferred Commencement Conditions to satisfy the above requirements, the Panel considers the development warrants approval.

The Panel has imposed a deferred commencement condition to allow a number of design issues to be resolved to ensure a satisfactory and improved presentation to the streetscape and the Harbour. The western elevation requires changes to ensure the design outcome does not overwhelm the existing dwelling to be achieved by amended plans to delete the garage and replace it with a carport and gates, and resolution of details for entry to the dwelling house. Further consideration also needs to be given to the dormer space in terms of the stair access and space and the design of the dormers.

The panel considers a Deferred Commencement that requires amended plans, to be submitted for the approval of the Manager Development Services is necessary, to ensure a satisfactory outcome when viewed from the public domain.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Ken Robinson	Y	
David Logan	Y				
Brendan Randles	Y				

The public meeting concluded at 4.08pm.

The Panel Determination session commenced at 4.15pm.

The Panel Determination session concluded at 5.00pm.

Endorsed by Jan Murrell
North Sydney Local Planning Panel
3 November 2021