

# A D D E N D U M

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## ADDENDUM TO REPORT OF PIERRE LE BAS & TIA GAO, TURNBULL PLANNING DATED 27 JANUARY 2021

**SUBJECT:** 11 BENNETT STREET, CREMORNE  
**APPLICATION NO.** D308/20  
**AUTHOR:** ROBIN TSE, SENIOR ASSESSMENT OFFICER  
**DATE:** 25 MAY 2021

**Attachment:**

1. Original NSLPP Report – LPP02 dated 27 January 2021
  2. Construction Certificate issued on 24 May 2021
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### BACKGROUND

This report should be read in conjunction with the report LPP02 dated 27 January 2021 (see **Attachment 1**), prepared by Pierre Le Bas & Tia Gao of Turnbull Planning, concerning a development application (**DA308/20**) seeking NSLPP approval for the construction of part two and part three storey dual occupancy on each lot following the demolition of existing dwelling and subdivision of the land under **DA237/18**. The report LPP02 was considered by the NSLPP at its meeting held on 3 February 2021.

The Panel's determination of the application is as follows:

*The Panel members have undertaken independent site inspections prior to the meeting and considers the application would be worthy of approval on its merits. However, the Panel is without power to approve the application at this time because the structures on the land have not been demolished. It is noted that demolition was approved in a separate application (DA 237/18) but has not been acted upon. Demolition is necessary prior to the granting of consent to this application, however, the 60-day time limit stipulated for demolition is deleted.*

*Following demolition the Panel would be satisfied pursuant to the provisions of Clause 4.6 of the LEP, 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 proposed development would be in the public interest because it is consistent with the objectives of the standard and zone objectives.*

*The Council Officer's Report and Recommendation is noted by the Panel and the Panel is in agreement with the merit assessment and the Clause 4.6 written request to vary the height.*

*In the circumstances, the Panel delegates to the Manager Development Services the power to determine the application following the demolition of all the existing*

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*structures onsite. In the event there is a change in circumstance then the matter is to be referred back to the Panel for an electronic determination.*

**PURPOSE**

The purpose of this addendum is to provide an update on the status of the subject site and its implications for the application and further consideration in relation to the determination of the application.

**HISTORY OF RECENT EVENTS**

The history of events occurred following the Panel's consideration of the application on 3 February 2021 is summarised as follows:

- **8 February 2021** – Council issued a letter advising the resolution of the panel. The letter also emphasised that the demolition of the existing dwelling is to be carried out in a timely manner to provide certainty and clarity for the application.
- **23 February 2021** – Council received a letter from the Applicant's planner indicating that the property owner would proceed with the steps required for the demolition of the existing structures on site and the subdivision of the property under the previous Development Consent (**D237/18**).
- **14 April 2021** – Council received advice from the Applicant's planner that the subject site has been sold.
- **14 April 2021** – A letter was sent to the Applicant noting the sale of the subject site and requested the withdrawal of the application due to the lack of certainty as to whether the demolition of the existing dwelling would occur. The Applicant was also advised that the application would be referred back to the NSLPP for consideration/determination.
- **15 April 2021** – Council received a letter from the town planner for the new property owner indicating that the demolition work would occur after property settlement on 24 April 2021.
- **27 April 2021** – Council received a message from the new property owner's lawyer confirming the settlement of the subject property. The former property owner/applicant also submitted a copy of Power of Attorney authorising the new property owner (CMBR Marine Pty Ltd) to pursue the subject DA with Council.
- **28 April 2021** – A letter was sent to the planning consultant for CMBR Marine Pty Ltd requesting the submission of documentary evidence after the issue of the Construction Certificate for **DA237/18** and the demolition of the existing structures within the subject site within 14 days.
- **12 May 2021** – Council received a message from the planning consultant for CMBR Marine Pty Ltd indicating that the Construction Certificate is being finalised.
- **24 May 2021** – The Construction Certificate for the previous DA (**D237/18**) was issued by the Principal Certifier.

**CONSIDERATION**

Consideration has been given to the above matters as follows:

- (a) *NSLPP Determination – 3 February 2021*

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The final paragraph of the Panel's determination stated the following:

*In the circumstances, the Panel delegates to the Manager Development Services the power to determine the application following the demolition of all the existing structures onsite. In the event there is a change in circumstance then the matter is to be referred back to the Panel for an electronic determination.*

The Panel's determination of 3 February 2021 clearly stated that the application is to be referred back to the Panel for an electronic determination in the event of a change in circumstance. It is considered that the sale of the property is a major change in circumstances and warrants a referral to NSLPP for determination.

**(b) Demolition of the Existing Dwelling – Evidence (Physical/Documentary)**

As mentioned earlier in this addendum report, a Construction Certificate for **DA237/18** has been issued on 24 May 2021 (Attachment 2). An examination of the documents attached to the Construction Certificate has revealed that the dilapidation survey and a report on the visible and structural conditions of the adjoining properties, required by Condition C4 of the consent, have not been included in the Construction Certificate documentation. Council was advised that the Principal Certifier issued the Construction Certificate based on statutory declarations.

Demolition of the existing structures on site has not commenced at the time of writing of this addendum report.

**(c) Prohibition of the Proposed Dual Occupancy**

The following comments were provided by the consultant planner on pages 18 and 19 in the report to NSLPP (LPP02 dated 27 January 2021) in relation to the permissibility of the proposed dual occupancy development:

***Permissibility***

*The proposed development for a dual occupancy development (two dual occupancy proposals each on its own lot with 'side by side' configuration reminiscent of semi-detached dwellings) is a permissible proposal in the zone with development consent. The proposed works are only permissible in circumstances where 'there is no existing building erected on the land'. This is not the case because the existing dwelling still remains on site.*

*There is an existing dwelling house and an outbuilding (garage) on the land (and a tennis court, if the court is considered to be a building) as of 6 January 2021, when a site visit was conducted.*

*A deferred commencement consent (as suggested by the applicant's town planner) cannot be granted in our opinion, as clause 6.6(2)(a) of the NSLEP gives rise to a prohibition on development for the purpose of dual occupancy. See extract from NSLEP under:*

**6.6 Dual occupancies**

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- (1) *Development consent must not be granted for the erection of a dual occupancy unless—*
- (a) *the form of the building will appear as a dwelling house, and*
  - (b) *the dwellings in the dual occupancy will be attached by at least 80% of the common wall or 80% of the common floor or ceiling, and*
  - (c) *the area of the lot on which the dual occupancy is to be situated is at least 450 square metres.*
- (2) *A dual occupancy must not be erected on land that is located within a heritage conservation area or on which a heritage item is located unless—*
- (a) *there is no existing building erected on the land [emphasis added], or*
  - (b) *the dual occupancy—*
    - (i) *will be situated substantially within the fabric of an existing building, and*
    - (ii) *will conserve the appearance of the existing building, as visible from a public place, and*
    - (iii) *will conserve the majority of the significant fabric of the existing building.*

*It follows from the provisions above, that for Council to grant an operative development consent or indeed a deferred commencement consent, in circumstances where there are existing buildings on the land would be beyond the powers of the consent authority. Granting consent is a step in the process of erection of dual occupancy buildings.*

*A cautious approach suggests that the Council should not issue any consent until the existing buildings on the land are demolished. Granting development consent this time is likely to be contrary to the clear intent of the legislative draftsman in this case. The site is located in a heritage conservation area. In the writer's opinion, the development is currently prohibited, and Council is not empowered to grant consent to this application until the buildings, as a matter of fact, are removed. The proposal is currently in breach of clause 6.6(2)(a) of the NSLEP.*

The Panel determination on 3 February 2021 also acknowledged the current prohibition of development if the existing dwelling on site is not demolished:

*...the Panel is without power to approve the application at this time because the structures on the land have not been demolished. It is noted that demolition was approved in a separate application (DA 237/18) but has not been acted upon. Demolition is necessary prior to the granting of consent to this application,...*

**Conclusion**

On 3 February 2021, the subject application (**D308/20**) for the construction of a pair of dual occupancy on each lot following the demolition of existing dwelling and subdivision of the land under **DA237/18** within the subject site was considered by NSLPP.

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A detached dwelling and a tennis court that occupy the subject site at No.11 Bennett Street and these structures have not been demolished at the time of writing of this report.

The Panel noted that the proposed development is prohibited in accordance with Clause 6.6(2)(a) of the North Sydney LEP 2013 because this clause only permits the construction of a dual occupancy within a conservation area if there is no building erected on site. Consequently, the Panel acknowledged that it was beyond its power to approve the application because the structures on the land have not been demolished regardless of the merits of the proposed development.

Therefore, the Panel resolved to delegate the power to determine the application to Council's Manager Development Services following the demolition of all the existing structures on site or the matter be referred back to the Panel should there be a change in circumstance.

Council has been notified that the subject property has a new owner (CMBR Marine Pty Ltd). Whilst a Construction Certificate has been issued for the previous DA (**D237/18**) for demolition of the existing structures on site and the subdivision of the subject site, demolition of the existing structures has yet to be executed on site.

It is therefore considered that the circumstances of the subject application have changed and a referral to the Panel for determination of the application would be necessary.

Given that the existing structures on site have not been demolished, it is considered that the proposed dual occupancy is prohibited in accordance with Clause 6.6(2)(a) of the North Sydney LEP 2013. It is therefore recommended that the application be **REFUSED**.

If the Panel were of the mind of an approval of the subject application (**D308/20**), or a deferral of determination of the application, it is recommended that a new condition **C23** be added requiring the submission of documentary evidence regarding the registration of the plan of subdivision for the creation of the two allotments within the subject site at the NSW Land and Property Information Office to ensure that the development for the proposed dual occupancies are to be carried out in a form (i.e. each allotment contains a dual occupancy development) that is permissible on land zoned R2 (Low Density Residential).

**RECOMMENDATIONS:**

- A. THAT** the addendum be noted.
- B. THAT** the North Sydney Local Planning Panel, exercising the functions of Council as the consent authority, resolve to **refuse** Development Application No. 308/20 for the construction of a pair of dual occupancy development, on land at No. 11 Bennett Street, Cremorne for the following reason: -

- 1. The proposed dual occupancy is prohibited on the subject site because it is located within a conservation area.**

The proposed dual occupancy is a form of development prohibited within a conservation area where existing structures on site have not been demolished.

**Particulars:**

- a) The proposed development is contrary to Clause 6.6(2)(a) in NSLEP 2013.

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SIGNED

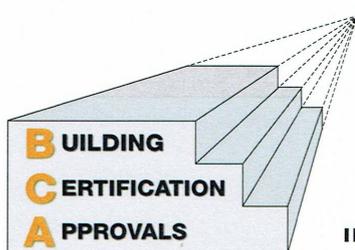
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**ROBIN TSE**  
**SENIOR ASSESSMENT OFFICER**

**Endorsed by**

**ROBYN PEARSON**  
**TEAM LEADER ASSESSMENTS**

**GAVIN MCCONNELL**  
**A/MANAGER DEVELOPMENT SERVICES**

**To locate the previous report, click on the hyperlink next to 1. under attachments on the top of page 1.**



Cameron Macdonald c/O CMBR Marine P/L  
 Level 11, 22 Market Street,  
 Sydney, NSW 2000

CC-021021

21 May 2021

## Construction Certificate

The *Environmental Planning and Assessment Act 1979*  
 Sections 6.4 (a), 6.6 and 6.7

### DETERMINATION

<b>Development</b>	
Land to be developed: address:	Lot 1, DP 1110849, Lot B, DP 350785, 11 Bennett Street, Cremorne NSW 2090
Construction work proposed:	Demolition of existing dwelling, garages and other structures.
Owner's name:	Cameron Macdonald c/O CMBR Marine P/L
Owner's address:	Level 11, 22 Market Street, Sydney, NSW 2000
Applicant if not owner:	AS ABOVE
Applicant Address:	AS ABOVE
<b>Building Code of Australia Classification</b>	Class 1a & 10a
<b>Construction Certificate Determination</b>	Approved
<b>Date of this certificate</b>	21 May 2021
<b>Relevant plans and specifications used in the determination</b>	<p>The following plans and specifications were used in the determination of this application: -</p> <ol style="list-style-type: none"> <li>1. Survey showing Relative Heights and Features of Lot 1 DP 1110849 and Lot B DP 350785, Cremorne</li> <li>2. Waste management plan on North Sydney Application form, filled out by CMBR Marine P/L.</li> <li>3. Subdivision plan issued by North Sydney Council, dated 13/11/2018</li> <li>4. Heritage impact statement, prepared by Weir Phillips Heritage, dated July 2018</li> <li>5. Arborist report, prepared by Complete Arborcare, dated 20/09/2018</li> <li>6. Arborist report plan survey Drawing Number 33267-01, prepared by Frank M Masob &amp; Co P/L, dated 12.07.2017</li> <li>7. Relining of existing easement stormwater drainage, prepared by Clapham design services, dated 20/04/2021</li> <li>8. Transfer Granting Easement, folio A/350785</li> <li>9. Statutory Declaration provided by Tasnum Jahan,</li> </ol>

	<p>dated 20/05/2021</p> <ol style="list-style-type: none"> <li>10. Building Plan Approval, Tap IN Number 1120968, issued by RAR P/L, dated 23/04/2021</li> <li>11. Stamped BPA plan, ref number 1120968, dated 23/04/2021</li> <li>12. Public Domain Dilapidation report, prepared by Craigmar Consulting Services, P/L, dated 2 March 2021</li> <li>13. Sediment Control Plan, prepared by Clapham Design Services</li> <li>14. Hazardous Construction Materials Survey, prepared by P.Clifton Associates, dated 29/04/2021</li> <li>15. Dial Before You Dig Documentation and plans</li> <li>16. Engineering Design Verification, prepared by Clapham Design Services, dated 5 May 2021</li> <li>17. Statement of Environmental Effects, prepared by Longitude planning P/L, dated 30 July 2018</li> <li>18. Intention to grant easement to drain issued by John Alexander &amp; Angela Maree Duncan, dated 21 June 2018</li> </ol>
<b>Right of appeal</b>	<p>Under Section 8.16, an applicant may appeal to the Land and Environment Court against the refusal to issue a construction certificate within 6 months from the date of the decision.</p>

## CERTIFICATE

<b>Certificate</b>	<p>I, Joseph Malouf, hereby certify that the work if completed in accordance with these plans and specifications will comply with the requirements of the <i>Environmental Planning and Assessment Regulation 2000</i> as referred to in Section 6.6 and 6.7 of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <div style="text-align: center;">  </div>
<b>Signature</b>	
<b>Certificate No.</b>	<p>CC-021021</p> <p>* prior to commencement of work S 6.6 (2) (a), (c) and (e) of the <i>Environmental Planning and Assessment Act 1979</i> must be satisfied.</p>
<b>Principal Certifier</b>	
Name	Joseph Malouf (Malouf Building Consultants P/L)
Registration No	BDC0245
Accreditation Body	Fair Trading
Address	P.O.Box 4060, Lugarno NSW 2210
<b>Development Consent</b>	
Development Consent No.	DA-237/2018
Date of determination	16.11.2018
Name of Council	North Sydney Council

### ATTACHMENTS

Construction Certificate Application  
 Approved Construction Plans  
 Engineers Details  
 Relevant Receipts  
 Builders Details