



## NORTH SYDNEY COUNCIL

Council Chambers  
29 March 2023

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 5 April 2023 when your attendance is requested.

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

I would like to acknowledge the traditional owners of these lands in which we meet and to pay our respect to the ancestors, and spirits past and present.

**THERESE MANNS**  
**GENERAL MANAGER**

---

### BUSINESS

#### Minutes

Confirmation of Minutes of the previous Meeting held on Wednesday 1 March 2023.

(Circulated)

---

**LPP01: 37 Bay View Street, Lavender Bay - DA 418/21**

Applicant: P Dugal, C/- Architecture Saville Isaacs

Report of Jim Davies, Executive Planner

This development application seeks approval for construction of a dwelling house and associated works, demolition of the existing house having been approved under CDC 223/20, by a private certifier, internal parts of the building are understood to have been removed.

The application is reported to North Sydney Local Planning Panel for determination as 45 submissions were received during two separate notification periods.

The original application was notified in January 2022 and subsequently amended in response to issues raised by Council, including several concerns expressed regarding the first proposal. 29 submissions were received.

The applicant submitted amendments which suitably responded to a number of these concerns, which were notified over December 2022 and January 2023, the period having been extended due to the Holidays. 16 submissions were received, 15 of them were from people who made submissions during the first notification period.

Submissions raised concerns about a range of matters, the main issues being:

- Excessive bulk and scale,
- Incompatibility with local character,
- Variations to setbacks,
- Overshadowing of a neighbouring dwelling,
- Impacts on neighbour's views, and
- The amount of excavation proposed.

The report has considered these concerns in an appraisal of the application having regard to relevant State and Council planning requirements.

This assessment concludes the application is generally satisfactory, subject to further design amendments being made. Matters that require design refinement are:

- Increasing the southern side boundary setback of the garage to conform to the setback of the remainder of the house to this boundary, to improve the streetscape, be more compatible with local character, allow for landscaping to soften the dwelling's appearance, lessen the bulk and scale of the proposed dwelling (especially the garage) when viewed from the neighbouring dwelling south of the site and the street, and reasonably reduce overshadowing impacts on the front yard and bedroom of this dwelling,
- Removing the roof garden, as it does not meet the criteria of the DCP for rooftop open space,
- Replacing glass balustrades with solid balustrades, of balconies on the eastern façade, to reduce the glazing visible from Lavender Bay, adjacent public open space, venues including Luna Park and North Sydney Pool, and surrounding development, and to be more compatible with the character of other development on the western side of Lavender Bay, and
- Installing louvres, or similar, to both sides of the ground floor level balcony, to reasonably maintain privacy with neighbours either side of the site.

Accordingly, a deferred commencement consent is recommended, although the Panel may choose to defer the application for the recommended amendments to be made, to be subsequently approved via authority delegated to Council's Manager Development Services.

**Recommending:**

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

**THAT** the North Sydney Local Planning Panel exercising the functions of Council as the consent authority grant consent to Development Application No. 418/21 for erection of a dwelling house and associated works on land at 37 Bay View Street Lavender Bay, subject to the following Deferred Commencement and standard conditions:-

**AA. Deferred Commencement Condition**

This consent shall not operate until the following deferred commencement condition has been satisfied.

The applicant must satisfy Council as to the matters specified in the deferred commencement condition within 6 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 6 months from the date of this consent. It will lapse in accordance with Section 4.16(3) of the Environmental Planning and Assessment Act 1979.

Design amendments

AA1. Within six months of the date of this consent, plans are to be submitted to Council for the approval of the Manager Development Services, to make the following amendments to the proposed development:

- a) That the side building lines are to maintain/create gap views between the proposed dwelling and the dwellings on numbers 35 and 39 Bay View Street.
- b) In this regard, the southern side boundary setback of the garage and part of the first floor must be setback to conform to the setback of the remainder of the house to this boundary, being 1.542m. The amended design must also address any other adjustments to the building, driveway or landscape design, to achieve the increased setback.
- c) Before submitting the amended design required by paragraphs a) and b), the design must be assessed by a suitably qualified and experienced arborist (AQ5) and their assessment report submitted, to demonstrate the amendment does not negatively impact any of the three crepe myrtles on the footpath adjacent to and near the site. The report may include recommendations to effectively reduce, mitigate or avoid any potential impacts on those trees.
- d) Landscape the setback area between the garage and the southern boundary and, if agreed with the neighbour, erect a fence along the boundary.
- e) Remove the roof garden and replace it with pebbles or similar to prevent access to the roof for all purposes except maintenance and

repairs. Access for these purposes shall be provided by means other than directly from the bedroom.

- f) The sliding doors to the 1<sup>st</sup> floor bedroom are to be replaced with windows, and the windows be reduced in size by partly replacing them with a solid wall of a material that will be the same as or complement the other materials proposed to be used, between the finished floor level to a minimum height of 1.4m above the finished floor level, for the full width of the eastern bedroom wall.
- g) The lower levels of the rear/ harbour facing elements are to be visually recessive to reduce the visual impact of four levels by the use of recessive finishes and colours and the use of appropriate landscaping in the foreground.
- h) The solid to void ratio in the rear / harbour facing elevation shall be revised to reduce the amount of glazed area and increase the solid portions of the elevation in line with the predominant solid to void ratio evident in the neighbouring dwellings and heritage items in the vicinity of the site.
- i) To achieve the outcomes specified in paragraphs g) and h) the glass balustrades could be replaced with solid balustrades, of all balconies on the eastern façade. Materials used for this purpose, for the full width of each balcony, should be the same as or complement the other materials proposed to be used in the development.
- j) Install louvres, or similar, to both sides of the ground floor level balcony to the same depth as the awning above the balcony. The louvres or similar are to be angled to reasonably maintain privacy for occupants of the proposed building and dwellings at 35 and 39 Bay View Street Lavender Bay.
- k) Install gates on each side of the house for the safety and security of companion animals and people.
- l) Provide for as much of the roof area as possible to drain to the Bayview Street alignment.

(Reason: To ensure compliance and an acceptable impact on local character and the built environment.)

#### **LPP02: 40a McDougal Street, Kirribilli - DA 312/22**

Applicant: Pierre Younes (Ezy MP Pty Ltd)

Report of John McFadden, Consultant

This development application seeks approval to extend the trading hours of the existing convenience store from 7am - 11pm, 7 days per week and is reported to North Sydney Local Planning Panel for determination as the property is owned by Council and concerns have been raised from local residents and the Milson Precinct.

Notification of the proposal attracted five (5) submissions, four (4) from residents and one (1) from the Milson Precinct raising particular concerns about noise, litter, lack of adherence to existing hours, 'anti-social' activities,

and safety. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

Council's Environmental Health Officer has reviewed the Operational Noise Emission Assessment Report submitted as part of the application and raised the issue of noise disturbance if the hours of operation are permitted to extend past 10pm, as, according to the EPA guidelines, night time (which is considered sleeping hours) commences at 10pm.

Taking into consideration the Environmental Health Officer comments, submissions from adjoining owners and the Milson Precinct, it is considered that the applicant's initial request for 11pm closing 7 days is not supported. However, a 10pm closing time is more suitable compromise for the development, taking into consideration neighbours' concerns and North Sydney DCP 2013 requirements.

A number of other conditions have also been included to maintain the amenity of the neighbourhood.

Following this assessment, the development application is considered to be reasonable in the circumstances and is recommended for **approval** subject to conditions.

**Recommending:**

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

**THAT** the North Sydney Local Planning Panel exercising the functions of Council as the consent authority grant consent to Development Application No. 312/2022 to Extend trading hours of existing convenience store to 7am to 10pm - 7 days per week on land at 40A McDougall Street, Kirribilli subject to the attached standard conditions.

**LPP03: 2/5 East Avenue, Cammeray - DA 269/22**

Applicant: Dieppe Design Pty Ltd

Report of Michael Stephens, Senior Assessment Officer

This development application seeks consent for a roof addition for an existing dwelling (Unit 2) within a two storey attached dual occupancy to construct an additional bedroom with an ensuite within a new pitched roof form with dormer windows on land at 5 East Avenue, Cammeray.

The application is reported to the North Sydney Local Planning Panel for determination as the application seeks a variation to the development standards in clause 4.3 *Height of Buildings* and sub-clause 6.6(1)(c) *Minimum lot size for Dual Occupancies* in NSLEP 2013 by more than 10%. In accordance with the Ministers direction of 1 August 2020 a public determination meeting is not required because there were less than 10 Submissions.

The proposed development breaches the maximum permitted building height of 8.5m by up to 1.3m, equating to a variation of 15.2%. The proposed variation relates to the proposed roof addition. The applicant has submitted a written request to vary the development standard in sub-clause 4.3(2) pursuant to clause 4.6 in NSLEP 2013.

The provisions of clause 6.6 *Dual Occupancies* in NSLEP 2013 apply to the proposed alteration and additions. The existing dual occupancy is located on a

lot less than the minimum subdivision lot size required for dual occupancies. The applicant has submitted a written request to vary the development standard in sub-clause 6.6(1)(c) pursuant to clause 4.6 in NSLEP 2013.

The written requests referred to above are considered satisfactory to demonstrate that compliance with the development standard is both unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify the variation. The proposed development would be in the public interest. The submitted written requests are considered to be well founded and worthy of support.

The application and amended plans were notified in accordance with Council's Community Engagement Protocol and a total of 5 unique submissions were received raising concerns regarding the height variation, accuracy of information, inadequate clause 4.6 written request, loss of views and outlook, and consistency with the character of the area. The submissions informed the amended plans and all remaining issues have been addressed in this assessment report.

The proposed development would not have an adverse impact on the amenity of the adjoining properties with respect to privacy and solar access and would have an acceptable impact on the existing urban bushland outlook enjoyed from the adjoining property to the south given the potential impact is minimal and other more significant views are retained. The proposed element causing the view impact does relate to the non-compliance with the height of buildings development standard although has been justified and is in part caused by the historical evacuation of the site.

On balance, the application has met the relevant statutory requirements and the proposed development is considered reasonable and is therefore recommended for 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, 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 and 6.6(1)(C) in NSLEP 2013 to grant consent to Development Application No. 269/2022 for a roof addition to an existing dwelling within a two storey attached dual occupancy to construct an additional bedroom with an ensuite on land at No 5 East Avenue, Cammeray subject to the following site specific and attached standard conditions.

**Privacy Measures**

C11. The following privacy measures are to be provided:

- (a) Windows W.03 and W.04 on the southern elevation of the second floor level (drawing reference A1.11-4) should be fitted with obscure or frosted glazing and the opening aperture is to be limited to 100mm to still allow ventilation whilst retaining privacy between the subject dwelling and the adjoining property to the south.

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 maintain privacy between the subject dwelling and No. 3 East Avenue)

**LPP04: 72 Kurraba Road, Neutral Bay - DA 340/22**

Applicant: Thomas Virgona

Report of Michael Stephens, Senior Assessment Officer

This development application seeks consent for alterations and additions to an existing boarding house, relying on existing use rights, to provide two additional rooms and refurbish the existing premise at 72 Kurraba Road, Neutral Bay

The application is reported to the North Sydney Local Planning Panel for determination as the application relates to demolition, being part demolition of a heritage item and seeks a variation to a development standard by more than 10%. In accordance with the Ministers direction a public determination meeting is not required because there were less than 10 submissions received. The subject site is zoned R2 Low Density Residential where boarding houses were prohibited following the Standard Instrument (Local Environmental Plans) Amendment (Miscellaneous) Order 2021 made 26 November 2021 which coincided with amendments to SEPP (Housing) 2021. The existing registered boarding house became prohibited at this time and the application therefore relies on the existing use rights provisions of the Environmental Planning and Assessment Act 1979 for the continuation of the use, and the incorporated provisions to undertake the proposed works. The standards and non-discretionary standards in the SEPP are not considered to apply given that consent is not sought under the SEPP, however, the proposed development would otherwise perform well against these provisions.

The existing boarding house is privately owned and provides low-rental dwellings within the wider rental market. The proposed development would likely result in a net increase in affordable housing through the addition of two additional boarding rooms and refurbishment to the current premises which has a number of vacant rooms. However, the premises is not owned by or managed on behalf of the Land and Housing Corporation or managed by a register social housing provider and therefore is not guaranteed to remain affordable. Nevertheless, the matters for consideration in Part 3 *Retention of affordable housing* in SEPP (Housing) 2021 have been considered and the development is likely to contribute to affordable housing in the LGA by providing housing choice.

The property is listed as a heritage item "*Lucellen*" of local significance in Schedule 5 in NSLEP 2013 and the proposed works satisfy clause 5.10 in NSLEP 2013.

The proposed development generally complies with the objectives of NSDCP 2013, particularly Section 4 *Boarding Houses*. The refurbishment of the premises and provision of private facilities within each room would improve

the amenity of the existing boarding house and provide greater comfort and security for the residents. A Plan of Management has been prepared, and the existing premises has historically operated without incident according to Council's Property File.

The application was notified in accordance with Council's Community Engagement Protocol and no submissions were received.

The proposed development would facilitate the refurbishment of an existing boarding house, providing valuable housing, whilst having suitable regard to the heritage significant of the existing building and is therefore recommended for approval, subject to standard conditions including conditions relation to the ongoing management of the premises.

**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 2013 and grant consent to Development Application No. 340/2022 for alterations and additions to an existing boarding house on land at No 72 Kurraba Road, Neutral Bay subject to the following site specific and attached standard conditions.

**Upgrade of Existing Building - Fire Spread and Safe Egress**

C11. Pursuant to clause 64 of the EP&A Regulation 2021, aspects of the existing building must be brought into conformity with the National Construction Code.

Work must be carried out as part of the development so as to upgrade the building to bring it into compliance with the following provisions of the NCC:

(a) Sections C, D, & E of the NCC BCA 2019, Volume 1.

The Fire Upgrade Schedule to satisfy this condition is to be prepared in consultation with a heritage consultant and submitted to Council for approval by Council's Conservation Planner prior to the issue of any construction certificate. The schedule submitted to satisfy this condition is to ensure that the upgrade works do not materially affect any significant heritage fabric. Where any exception is sought an appropriate performance based solution or appropriate justification is required.

Plans and specifications showing the upgrading works which must be carried out under this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

Notes:

- 1) The Certifying Authority must be satisfied that the plans and specifications submitted prior to the issue of any Construction Certificate comply with the requirements of this condition.
- 2) The Certifying Authority issuing the Construction Certificate has no



power to remove the requirements to upgrade the existing building as required by this condition.

- 3) Where this condition specifies compliance with the performance requirements of the NCC, the Certifying Authority, subject to their level of accreditation, may be satisfied as to such matters.

(Reason: Application of Regulations relating to Fire and Life Safety with respect to Heritage Item)

#### **Reduction in length of Rear Addition**

C25. The length of the communal living area at the rear of the ground floor level (DA3.00) is to be reduced by 1.5m, measured from the rear (northern) elevation of the room. The associated external patio is to be shifted to the south by the corresponding distance so that it remain no greater in depth than 0.9m measured perpendicular from the rear elevation and the rear turf area extended accordingly. The Landscape Plans are to be amended accordingly.

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 minimise the site coverage non-compliance with Provision P1 in Section 1.5.5 of Part B in NSDCP 2013.)

#### **Privacy**

C26. The following privacy devices are to be provided:

- a) Fixed obscure or frosted glazing shall be installed to the window W2 in the eastern elevation of room 6 on the ground floor level (DA3.00) to a minimum height of 1.5m above internal finished floor level of the room.

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 ensure an adequate level of privacy is provided to adjoining property located at No. 74 Kurraba Road, Neutral Bay)

#### **Heritage requirements**

C27. The following heritage requirements are to be met:

- a) All patterned ceilings, decorative cornices, mantle pieces, fireplaces, skirtings and the original staircase are to be retained as detailed in the drawing titled Sections DA 6.03 Revision 2 by Graphio dated 3 February 2023 and received by Council on 6 February 2023.
- b) Wastewater plumbing for the new bathrooms and kitchens on the first floor level is to be routed from the proposed bathrooms horizontally between the flooring and ceilings into an existing wastewater pipe or through a new services void located in the corner of the southeastern enclosed ground floor level balcony to

minimise any loss of significant heritage fabric.

(Reason: To retain the heritage significance of the building)

**Boarding house - Operational Plan of Management**

14. The management of the boarding house shall be conducted in accordance with the Operational Plan of Management prepared for 72 Kurraba Road by Firstland and received by Council on 8 November 2022 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.

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

---



**NORTH SYDNEY LOCAL PLANNING PANEL**

**DETERMINATIONS OF THE NORTH SYDNEY LOCAL PLANNING PANEL  
MEETING HELD IN THE COUNCIL CHAMBERS, NORTH SYDNEY,  
ON WEDNESDAY 1 MARCH 2023, AT 2.00PM.**

**PRESENT**

**Chair:**

Jan Murrell in the Chair.

**Panel Members:**

Brendan Randles (Panel Member)  
Lloyd Graham (Panel Member)  
Meredith Trevallyn-Jones (Community Representative)

**Staff:**

Stephen Beattie, Manager Development Services  
David Hoy, Team Leader Assessments  
Robyn Pearson, Team Leader Assessments  
Miguel Rivera, Senior Assessment Officer  
Robin Tse, Senior Assessment Officer  
Thomas Holman, Assessment Officer

**Administrative Support:**

Peita Rose, Governance Officer (Minutes)

This meeting was conducted by remote (Zoom) means.

The Chair acknowledged the Cammeraygal people being the traditional custodians of the land on which this meeting is held.

A public meeting was held for Items 1 and 2 as each item received more than 10 objections. Items 3 and 4 were determined in closed session as these items received less than 10 unique submissions each.

**Apologies:**

Nil

**1. Minutes of Previous Meeting**

The Minutes of the NSLPP Meeting of Wednesday, 1 February 2023 were confirmed following that meeting.

## 2. Declarations of Interest

Meredith Trevallyn-Jones declared a non-pecuniary/non-significant interest in Item 4.

## 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.*

### Public Meeting

#### ITEM 1

<b>DA No:</b>	130/22
<b>ADDRESS:</b>	4 Honda Road, Kurraba Point
<b>PROPOSAL:</b>	Subdivision into two lots, construction of a new dwelling, stormwater works and alterations and additions to an existing dwelling.
<b>REPORT BY NAME:</b>	Thomas Holman, Assessment Officer
<b>APPLICANT:</b>	Floris Smith Architecture Pty Ltd

#### Registered to Speak

#### 9 Written Submissions

Submitter	Applicant/Representative
John Kenny - resident	Kerry Gordon - Planner representing applicant
Morgan & Hannah Kelly - resident	
MaryAnn Beregi - resident	
Bill Tulloch - resident	
Sandy Xuekui chen - resident - Observing Only	

#### Panel Determination

The Panel members have undertaken independent site inspections prior to the meeting and have considered all submissions prior to determination.

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 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 and the written request identifies sufficient environmental planning grounds to justify the contravention. Further, the Panel considers that the development is in the public interest because it is generally consistent with the objectives of the standard and the zone objectives.

The Council Officers Report, Recommendation and Conditions are supported subject to a Deferred Commencement Condition together with the following additional and amended conditions to minimise flooding and to further mitigate impacts on the conservation area and streetscape character.

#### **Part A Deferred Commencement Conditions**

This consent shall not operate until the following deferred commencement condition(s) 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 date of the grant of this consent this consent will lapse in accordance with Section 4.16(3) 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 76(5) 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.*

#### **Deletion of the media room and the front entry to House 1**

**AA1.** The front addition to House 1 comprising the media room and the main entry as shown in Drawing No. DA10 Rev B are to be deleted and replaced with soft landscaping (including turf, ground covers and/or shrubs). The roof and balcony above the ground floor front addition shown on Drawing No. DA11 Rev B is also to be deleted.

(Reason: The deletion of the front addition is required to minimise flooding within house 1 and to provide more soft landscaping within the front setback of house 1 to maintain the verdant character of the Kurraba Point Conservation Area in accordance with Provision P1, s6.2.6 of the NSDCP 2013)

#### **Deletion of the store /wine cellar to the rear on the ground floor of House 1**

**AA2.** The rear addition to House 1 including the wine cellar and store as shown in Drawing No. DA10 Rev B is to be deleted.

(Reason: The deletion of the rear addition is required to minimise the structural impact to adjoining properties, to minimise the risk of flooding within the dwelling, and to preserve land stability in accordance with Provision P1, s1.3.1 of the NSDCP 2013)

### **Deletion of the store /wine cellar within the lower ground floor of House 2**

**AA3.** The lower ground floor within house 2 (including the wine cellar, WC and store) as shown in Drawing No. DA16 Rev B is to be deleted.

(Reason: The deletion of the lower ground floor is required to minimise the risk of flooding within house 2 and to maintain the structural integrity of adjoining properties in accordance with the objectives of s1.3.1 of the NSDCP 2013)

The Applicant is to submit amended plans for the approval of Council's Manager Development Services and only after approval is given will the consent operate in accordance with the conditions in Part B.

### **Part B**

Condition C6 Heritage Requirements is to be amended to ensure the sandstone front boundary fence to Houses 1 and 2 is to be retained subject to Compliance with C13 Stormwater Management and Disposal Design Plan – Construction Issue Detail.

### **Heritage Requirements**

C6. The following heritage requirements are to be met:

- a) The sandstone front boundary fence to Houses 1 and 2 is to be retained at its existing height and restored if required with no increase in height. **Any restoration works to the sandstone fence are subject to compliance with the requirements of Condition C13 Stormwater Management and Disposal Design Plan – Construction Issue Detail.** Any new vehicular gate to House 1 is to be a painted steel palisade gate with a height to match the adjacent front boundary wall.
- b) New sandstone is to have a rock or split-faced finish.
- c) Privacy screens are to be painted to match the dwelling in a visually submissive tone. Metallic finishes are not to be used.
- d) The paved driveway to House 2 is to have a mid to dark tone and/or is to be detailed to create visual interest. A plain concrete slab is not to be used.
- e) The new garage door for House 2 is to be a panel lift door with materials and finishes for the garage door to include timber/earthy in appearance and if painted are to be in a matt finish.
- f) The garage door is to be setback 200mm from the outer face of the external garage wall of House 2 that faces Honda Road to reduce the build and scale of the garage as viewed from the street.
- g) The first floor glazing for House 2 is to be designed as shown in the House 2 Southern (DA22 Rev B) and Eastern Elevation (DA21 Rev C) not as shown in the House 2 First Floor Plan (DA18 Rev B).
- h) Window and doors that address the street shall be timber-framed. All other new windows and doors are to have aluminium or steel framing sections of a width 45mm or wider or are to be timber-framed.

The Certifying Authority must also 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 ensure the development is sympathetic to the character of the conservation area)

Condition C23 Privacy is to be amended as follows deleting any reference to the need to provide a privacy screen (deletion shown with strikethrough) and limiting the privacy measures to the first floor window (W12) to House 1 to be fixed obscure or frosted glass and deleting the words 'privacy screens' to ensure accuracy adequate privacy measures are implemented.

### **Privacy**

C23. The following privacy devices are to be provided:

- a) Fixed obscure or frosted glass ~~privacy screens~~ shall be attached to the western first floor window named W12. The window to comprise fixed obscure or frosted glass is clouded in red on House 1 First Floor Plan (DA11 Rev B).

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 ensure an adequate level of privacy is provided between the adjoining properties known as House 1 and House 2)

The Panel were also of the view that a Traffic and Construction Management Plan be required given the complexity of the proposal and the difficulties associated with road access. Accordingly, the following condition is imposed to minimise impacts to traffic flows within the locality:

### **Construction Management Program – Local Traffic Committee Approval**

B1. A Construction Management Program prepared by a suitably qualified and experienced traffic consultant must be submitted and approved in writing by North Sydney Traffic Committee PRIOR TO THE ISSUE OF ANY Construction Certificate. Any use of Council property will require appropriate approvals prior to any work commencing. At a minimum, the Construction Management Program must specifically address the following matters:

- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
  - i. Dedicated temporary construction site driveway entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways and footways;
  - ii. The proposed signage for pedestrian management to comply with the relevant Australian Standards, including pram ramps;
  - iii. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site:

- iv. The locations of any proposed Work Zones in the frontage roadways (to be approved by Council's Traffic Committee):
  - v. Locations of hoardings proposed:
  - vi. Location of any proposed crane standing areas:
  - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries:
  - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
  - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.
- b) A detailed heavy vehicle access route map through the Council area to Arterial Roads. Provision is to be made to ensure through traffic is maintained at all times.
  - c) The proposed phases of works on the site, and the expected duration of each phase.
  - d) How access to neighbouring properties will be maintained at all times and the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of process.
  - e) The road is not to be used as a waiting area for trucks delivering to or awaiting pick up of materials.
  - f) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising structural engineer and must not involve any permanent or temporary encroachment onto Council's property.
  - g) Proposed protection for Council and adjoining properties. Details are to include site fencing and the provision of "B" class hoardings over footpaths and laneways.
  - h) A Waste Management Plan. The Waste Management Plan must include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process.

All traffic control work and excavation, demolition and construction activities must be undertaken in accordance with the approved Construction Management Program and any conditions attached to the approved Program. A certificate of compliance with this condition must be obtained from Council's development engineers. The certificate and the approved Construction Management Program must be submitted as part of the documentation lodged with the application for approval of a construction certificate. A copy of the approved Construction Management Program and any conditions imposed on that Program, must be kept on the site at all times and made available to any officer of Council upon request.

Notes:

- 1) North Sydney Council's adopted fee for certification of compliance with this condition shall be payable on lodgement, or in any event, prior to the issue of the relevant approval.



- 2) Any use of Council property will require appropriate approvals and demonstration of liability insurances prior to such work commencing.
- 3) Failure to provide complete and detailed information may result in delays. It is recommended that your Construction Management Plan be lodged with Council as early as possible, as a minimum six (6) weeks' notice is required to refer items to the Traffic Committee.
- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed above.

(Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the demolition process in a manner that respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community)

Additional conditions I3, I4 and I5 be added:

#### **Stormwater Drainage Channel and Floor Levels and S. 88 Instrument.**

- I 3. The owner of House 1 is to maintain and not alter or affect the operation of the stormwater drainage channel and maintain ease of access to the stormwater drainage channel in accordance with the conditions of consent and as required by Condition J6.

The owner of House 2 is to maintain and not alter or affect the levels of the land which allow for flood storage.

(Reason: To ensure that the stormwater channel remains unencumbered)

#### **Ongoing maintenance of levels.**

- I 4. The owners of House 1 must not alter the floor levels below the floor levels approved by this consent, the lowest level at 21.19 mAHD being 1.03 m below the current Council stipulated minimum flood planning level of 22.2 mAHD for a new dwelling on this site, which represents the current 1% AEP (1 in hundred year) flood level of 21.9mAHD, plus freeboard (safety factor) of 0.3m.

The owners of House 2 must not alter the floor levels to be lower than 22.2m AHD, being the current Council stipulated minimum flood planning level for a new dwelling on this site, which represents the current 1% AEP (1 in a hundred year) flood level of 21.9 mAHD plus freeboard (safety factor) of 0.3m.

(Reason: To ensure that the stormwater channel remains unencumbered.)

#### **Documents to be maintained on site.**

- I 5. A copy of the Flood Risk Management Plan required by Condition G8 to be prepared by a qualified Hydraulic Engineer and the s88B instrument required by Condition J6 to be permanently retained on site for each property.

(Reason: To ensure awareness and compliance with the stormwater drainage easement and awareness for future owners of the flood affected lots.)

Condition J 6 to be amended as follows:

Stormwater Drainage Channel and Floor Levels.

- J6. A section 88B instrument and one copy are to be submitted with the application for a subdivision certificate. The final plan of subdivision and accompanying section 88B instrument are to provide for:
- a. The stormwater drainage channel easement as stipulated in GIO new Drainage Easement (Relocated Pipeline).
  - b. The floor levels of House 1 (lot 73) can be RL21.19 but any new work must have regard to the required levels for the 1 in 100 year flood event plus a freeboard of 300mm.
  - c. The floor levels for habitable rooms on lot 74 (House 2) must be at or above RL22.2 (including freeboard of 0.3m) to minimise the impact of flooding to residents during a 1 in 100 year flood event.

The instrument creating the restrictions, easements and covenants under the provisions of section 88B required by these conditions of consent must be lodged for registration with the plan of subdivision. North Sydney Council must be the prescribed authority in the instrument whose consent is required to release, vary or modify the burdens/benefits.

Proof or registration of the restrictions, easements and covenants under section 88B must be provided to council within 28 days of registration of the plan of subdivision.

(Reason: To alert future owners that the land is subject to flooding and the required floor levels and to create legal entitlements with the subdivision as required)

(Reason: To ensure awareness and compliance with the stormwater drainage easement and awareness for future owners of the flood affected lots)

**Panel Reason:**

The majority of the Panel found the proposal satisfactory given compliance with NSLEP 2013 and the North Sydney Development Control Plan 2013. At the same time the Panel has imposed further restrictions on the size of the dwellings because of the significant constraints of the site with changes in topography, the flooding hazard and the need to sensitively minimize impacts on the Conservation Area. Given these constraints the opportunity to maximize development of the site is not a reasonable expectation.

The Panel notes the conditions require large canopy trees, in particular in the front setbacks, and other vegetation to be retained, although removal of certain trees is required. The landscape plan also requires replacement plantings to provide a landscaped setting for the two dwellings.

The additional 'deferred commencement conditions' are imposed to minimise environmental impacts, including: the heritage Conservation Area; and flooding within houses 1 and 2 and to provide additional soft landscaping to maintain the verdant character of the Kurraba Point Conservation Area.

Condition I3 is to be added as above to ensure future owners/occupiers are informed about the stormwater drainage channel easement whereby Council have access rights to inspect, maintain and/or replace the stormwater channel. Condition I3 will also require future owners/occupiers are informed so as to not alter the floor level of House 2 ~~to be~~ which is at the Council-stipulated minimum 300 mm above 1 in 100 year flood level. Condition I3 will inform future residents of House 1 to be informed that the existing and approved levels are substantially below the 1 in 100 year flood level plus 300mm freeboard.

Brendan Randles did not agree with the majority decision. He is of the opinion the application should be refused because it fails to have regard to the Kurraba Point Conservation Area. In particular:

- the proposal fails to demonstrate that the subdivision is capable of achieving a built outcome that aligns with the desired existing and future scale and character of this significant conservation precinct; in particular, the proposal fails to align with the precinct's significant heritage which is described as an "irregular subdivision pattern with irregular street pattern and widths that allied to the topography and plantings and mature trees add to a high quality luxuriant character" (DCP 6.2.3 Statement of Significance). Hence the proposal does not satisfy the requirements of Clause 13.7 of NSDCP 2013, which requires that "the character of heritage conservation areas are not adversely affected from inappropriate development".
- despite the fact that several significant heritage buildings surround the site (designed by some of the Nation's most accomplished architects), the proposal does not include a well-considered context, site and heritage analysis to support siting, built form, front setbacks, relationship with adjacent built form, landscape, streetscape interfaces, etc. Rather than centrally site buildings on large irregular lots, the proposal includes two closely coupled buildings, uncomfortably pushed to the street and both side boundaries. Therefore, the proposal does not align with Clause 6.2.6 of NSDCP 2013, which requires the buildings are "centrally located on lots with front and rear gardens".
- the minimal setbacks proposed to both street frontages and all side boundaries result in a built form and street interface that is highly inconsistent with adjacent gardens, streetscape, and the landscape character of the precinct generally. In this regard the proposal fails to align with Clause 13.6.6 of NSDCP 2013, which requires that "new development is consistent in terms of materials, bulk, scale, character and setback with significant buildings in the heritage area" and Clause 13.7 of NSDCP 2013 as noted above.
- the built form includes a poorly resolved composite roof form, comprising tiled pitch and metal skillions, which do not align with adjacent heritage items' gabled and hipped roof forms. Hence the proposal does not align with Clause 13.6.3 of NSDCP 2013, which intends to "maintain the characteristic roof profiles and roofing materials within a heritage area"; Clause 13.6.2 of NSDCP 2013, which requires that new development must have a "compatible and complimentary building form and scale to that which characterises the conservation area"; and Clause 13.7 of NSDCP 2013 as noted above. These roofs are highly visible from adjacent heritage buildings, adjacent properties, public domain and streets at higher levels.
- the proposal does not demonstrate that it can adequately resolve the site's significant constraints without compromising streetscape and height controls : a major channel crosses the site forcing built form to be separated by an uncharacteristically narrow and parallel building separation; a required reservoir under house 2 appears open to vermin and potential structural damage; house 1 includes habitable space below the flood level; and the site's rear topography and trees significantly reduces buildable area, thereby forcing front and side setbacks to be minimised.

- The proposed built form, material and detailing do not suggest that the proposed building materials will be consistent with the distinctive high quality of adjacent heritage listed built form; apart from the composite roofs (neither hipped nor gabled but topped with flat metal sections), roof material is variously described as “imitation slate” and” imitation terracotta”; clearly this is inferior and inconsistent with the real slate and terracotta tiles that comprise adjacent roof scapes. Elevations provide little detail regarding wall finishes, aside from paint finished render, finished in “indicative colours”. Notably, painted render – unless of the highest quality - requires ongoing maintenance and is prone to cracking; for this reason, it is recommended generally that integral materials (such as brick or prefinished concrete) are used in new construction. Hence, the proposal does not demonstrate that it aligns with Clause 13.9.4 of NSDCP 2013, which requires that materials are “consistent with the characteristic elements of the heritage item or heritage conservation areas”.
- The site is very prominent as it is centrally located along a very public heritage walk through a highly valued conservation precinct. Due to adjacent topography, it is viewed from two different streets, from streetscape above and numerous adjacent properties, which surround it. Therefore, all the significant concerns raised that have been raised above – regarding built form, lot size, siting, landscape, street interface, roof form, material etc. - will be highly visible and impact greatly on the integrity and visual and physical amenity of the precinct.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Meredith Trevallyn-Jones	Y	
Brendan Randles		N			
Lloyd Graham	Y				

**ITEM 2**

<b>DA No:</b>	231/22
<b>ADDRESS:</b>	317 Pacific Highway, North Sydney
<b>PROPOSAL:</b>	Alterations and additions to the Former Masonic Temple (heritage Item 10961)
<b>REPORT BY NAME:</b>	Miguel Rivera, Senior Assessment Officer
<b>APPLICANT:</b>	N Rickard – Modog Pty Ltd

**Registered to Speak**

**7 Written Submissions**

Submitter	Applicant/Representative
Michael Parker - Resident	James Lovell - Town Planner - representing applicant
Joe Stanton - Resident	
Justine Butler - Resident	
Emmanuel & Kimberly - Resident (Observing Only)	

**Panel Determination**

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

The Council Officer's Report, Recommendation and Conditions are noted. The Panel however for the reason below has determined the application by refusal.

**Panel Reason:**

The proposed structure is not sympathetic to or respectful of the heritage significance of the Heritage Item of Masonic Temple which requires it to be read in the round and the current setback from the northern boundary provides this appreciation. Furthermore, the proposed built form will adversely impact on the adjacent residential buildings including to the north and the two developments to the east accessed from East Lane, in terms of outlook, breeze and visual bulk.

Voting was as follows:

<b>Panel Member</b>	<b>Yes</b>	<b>No</b>	<b>Community Representative</b>	<b>Yes</b>	<b>No</b>
Jan Murrell	Y		Meredith Trevallyn-Jones	Y	
Brendan Randles	Y				
Lloyd Graham	Y				

**Items considered in Non-Public Meeting****ITEM 3**

<b>DA No:</b>	224/22
<b>ADDRESS:</b>	232A Miller Street, North Sydney
<b>PROPOSAL:</b>	Use of the premises as a remedial massage clinic
<b>REPORT BY NAME:</b>	Julie Horder, Planning Ingenuity
<b>APPLICANT:</b>	Liselotte Kunz

**Registered to Speak****No written submissions**

<b>Submitter</b>	<b>Applicant/Representative</b>
	Alan Linklater - representing applicant

**Panel Determination**

The Panel members have undertaken independent site inspections prior to the meeting.

The Council Officer's Report, Recommendation and Conditions are endorsed by the Panel and the application is determined by approval subject to conditions:

**Panel Reason:**

The Panel is satisfied that the application will not have adverse environmental impacts and it facilitates the appropriate use of the premises for commercial purposes.

Voting was as follows:

<b>Panel Member</b>	<b>Yes</b>	<b>No</b>	<b>Community Representative</b>	<b>Yes</b>	<b>No</b>
Jan Murrell	Y		Meredith Trevallyn-Jones	Y	
Brendan Randles	Y				
Lloyd Graham	Y				

**ITEM 4**

Meredith Trevallyn-Jones declared a non-pecuniary/non-significant interest in this matter and left the room for the deliberation of this item.

<b>DA No:</b>	269/21/4
<b>ADDRESS:</b>	372 Military Road (aka 75 & 75A Parraween Street), Cremorne
<b>PROPOSAL:</b>	Section 4.55(2) application seeking modifications to Development Consent (D269/21) including various design changes to an approved five (5) storey mixed use development.
<b>REPORT BY NAME:</b>	Robin Tse, Senior Assessment Officer
<b>APPLICANT:</b>	Platino Properties Pty Ltd

**Registered to Speak**

**No Written submissions**

<b>Submitter</b>	<b>Applicant/Representative</b>
	Jack Prail - Platino Properties - applicant

**Panel Determination**

The Panel members have undertaken independent site inspections prior to the meeting.

The Council Officer's Report, Recommendation and Conditions are endorsed by the Panel. The application for modification is approved in part only.

The Panel concurs with the Officer's report that the setback to the upper level should be maintained as per the deferred commencement consent in accordance with revised condition C51 as follows:

**Design of Level 4**

C51. The design of Level 4 must be consistent with the following:

- (a) Bedroom 3 of the proposed apartment on Level 4 (unit 401) as shown on the drawings submitted accompanying S4.55 application (D269/21/4) must be deleted, the associated eastern and southern walls being setback accordingly
- (b) The southern building line of Level 4 must provide a minimum 8m setback from the southern (Military Road) property boundary: and
- (c) The design of the southern elevation and southern terrace for the apartment on Level 4 and the internal layout of this apartment the internal layout and the southern terrace on Level 4 shall be consistent with those as shown on the approved DA drawing (Drawing No. DA102 Issue F dated 29 November 2022 and DA301 Issue E dated 21 November 2022, all prepared by PA Studio).

Drawings demonstrating compliance with the above requirements must be submitted for the written approval of Council's Manager Development Services.

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate. The Certifying Authority must ensure that the building plans and specification submitted fully satisfy the requirements of this condition.

(Reason: To ensure consistency with the original deferred commencement consent and to maintain the significance of the adjoining heritage listed building)

Condition C50 reinstates the intention of the original design in terms of more sympathetic materials/colours having regard to the heritage item of the Orpheum Theatre.

**Panel Reason:**

To ensure consistency with the original deferred commencement consent and to respect and maintain the significance of the adjoining heritage listed building.

Voting was as follows:

<b>Panel Member</b>	<b>Yes</b>	<b>No</b>	<b>Community Representative</b>	<b>Yes</b>	<b>No</b>
Jan Murrell	Y		Meredith Trevallyn-Jones	Absent	
Brendan Randles	Y				
Lloyd Graham	Y				

The meeting concluded at 4:40pm.

The Panel Determination session commenced at 4:50pm.

The Panel Determination session concluded at 6:26pm.

Endorsed by Jan Murrell

North Sydney Local Planning Panel

**1 March 2023**