
NORTH SYDNEY LOCAL PLANNING PANEL**DETERMINATIONS OF THE NORTH SYDNEY LOCAL PLANNING PANEL
MEETING HELD IN THE COUNCIL CHAMBERS, NORTH SYDNEY,
ON WEDNESDAY 7 JUNE 2023, AT 2.00PM.****PRESENT****Chair:**

Jan Murrell in the Chair.

Panel Members:

Helen Lochhead (Panel Member)

Ian Pickles (Panel Member)

Ken Robinson (Community Representative)

Staff:

Stephen Beattie, Manager Development Services

Robin Tse, A/Team Leader Assessments

Damon Kenny, Executive Planner

Michael Stephens, Senior Assessment Officer

Administrative Support:

Miranda Shoppee, Meeting Administration Coordinator (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 Item 1 as it received more than 10 objections. Items 2, 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, 3 May 2023 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.

Public Meeting

ITEM 1

DA No:	3/23
ADDRESS:	13 Shellcove Road, Kurraba Point
PROPOSAL:	Alterations and additions to existing dwelling house and associated works
REPORT BY NAME:	Annelize Kaalsen of AK Planning
APPLICANT:	Karen Chow C/- APlus Architecture

One Written Submission

Registered to Speak

Submitter	Applicant/Representative
Bill Tulloch – local resident speaking on behalf of multiple residents of 11 Shellcove Rd	Jason Tran - Associate, A+ Design Group
Chris Barton – owner of 1/15 Shellcove Rd	Tony Leung - Design Director, A+ Design Group not present
Mark Tolhurst – owner of 2/15 Shellcove Rd	
Sally Christiansen – <i>observing only</i>	

Panel Determination

The Panel members have undertaken a group site inspection of the house and its interior with the architect prior to the meeting, and have considered all written submissions and those made to the public panel meeting.

The Council Officer's Report and Recommendation are endorsed by the Panel.

Panel Reason:

The Panel concurs with the reasons given in the independent assessment report subject to the amendments to Reasons 4, 5 and 6 as shown below:

4. **The application results in adverse impacts on the heritage significance of the dwelling and the Kurraba Point Conservation Area due to its failure to satisfy the heritage requirements of Clause 1.2 and Clause 5.10 of the North Sydney Local Environmental Plan 2013 as well as the heritage requirements of Section 13 the North Sydney Development Control Plan 2013.**

Particulars:

- a) Clause 1.2(2) Aims in Part 1 of NSLEP 2013, specifically aim (f) to protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance;
- b) Clause 5.10(1) in Part 5 of the NSLEP 2013, specifically objective (a) and (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views;
 - i) The additional two new levels and the demolition of the original architectural detailing within the existing dwelling will cumulatively detract from, and dilute the character of, the Arts and Crafts style dwelling, which was designed by eminent architect B.J. Waterhouse, resulting in a loss of aesthetic and associative significance.
 - ii) The proposed landscaping and swimming pool will result in a loss of Arts and Crafts style character and aesthetic significance to the heritage listed site as a result of the construction of the new retaining walls, the reduction in soft landscaping within the eastern setback and the style of the new landscaping proposal.
 - iii) The proposal will result in a significant loss of heritage significance to the dwelling and its setting. It is a heritage item listed in the NSLEP 2013.
- c) Clause 5.10(4) in Part 5 of the NSLEP 2013, specifically the adverse effect of the proposed development on the heritage significance of the item and the Kurraba Point Conservation area;
- d) The proposal will detract from the setting of the adjoining heritage item at No.11 Shellcove Road, and is inconsistent with Section 13.4 *“Development in the vicinity of heritage items”* of the NSDCP 2013;
- e) The proposed development is inconsistent with:-
 - objectives O1 of Section 13.5.1 *“Heritage Item”* of the NSDCP 2013 as it fails to ensure that changes to the heritage item are based on an understanding of the heritage significance of the heritage item;
 - provision P5 of Section 13.5.1 *“Heritage Item”* of the NSDCP 2013 as it fails to locate change away from original areas of the heritage item that are intact;
 - objectives O1 of Section 13.5.2 *“Form massing and scale”* of the NSDCP 2013, as it fails to allow for alterations and additions to the heritage items which do not impact on the heritage significance of the heritage item;
 - objectives O1 of Section 13.5.3 *“Additional Storeys”* of the NSDCP 2013, as it fails to minimise the visual dominance of the new work from public places;
 - objective O1 of Section 13.5.5 *“Interior layouts”* of the NSDCP 2013 as it fails to ensure that significant interior elements are retained and preserved;
 - Objective O1 of Section 13.6.1 *“General objectives”* of the NSDCP 2013 as it fails to ensure that new development is designed to retain and complement the character and significance of the conservation area;
 - Objectives O2 of Section 13.9.3 *“Verandahs and balconies”* of the NSDCP 2013 as it fails to retain the original front verandah especially where it is significant or contributory to the individual building;
 - Objective O1 of Section 13.9.4 *“Materials, colours and finishes”* of the NSDCP 2013 as it fails to ensure that materials and finishes are consistent with the characteristic elements of the heritage item;
 - Objective O1 and provision P5 of Section 13.9.5 *“Garages and Carports”* of the NSDCP 2013 as it fails to ensure that vehicular accommodation does not determinately impact on the significance of the heritage item and failing to retain the original garages for heritage items;

- Provision P1 of Section 13.9.6 “*Fences*” of the NSDCP 2013 as it fails to retain the original street boundary fence and gate;
 - Provision P3 of Section 13.9.7 “*Gardens*” of the NSDCP 2013 as it fails to retain the strong visual relationship to the existing terraced gardens and topography;
 - Provision P2 of Section 13.10.3 “*Larger scale single dwellings*” of the NSDCP as it fails to locate new additions forward of the original eastern building façade altering its perceived storey height.
- 5. The proposed excavation is considered excessive resulting in a detrimental impact on the subject heritage item and the surrounding areas, pursuant to Clauses 5.10 (1) and 6.10(1) of the North Sydney Local Environmental Plan 2013 as well as the requirements of Section 1.3.1 the North Sydney Development Control Plan 2013.**

Particulars:

- a) The proposal will result in extensive excavation below the subject dwelling and within its gardens to allow for the proposed two new levels. Cumulatively, these will result irreversible impacts on the heritage item and loss of character, particularly when viewed from the harbour and from the Federation Houses Walk which forms part of the Bondi to Manly Walk within Cremorne Reserve. This is contrary to Clause 5.10 (1) and Clause 6.10(1) of NSLEP 2013.
- b) The proposed excavation is inconsistent with O4 of Section 1.3.1 of NSDCP 2013, as the proposal will result in major site disturbance due to the amount of excavation proposed not just the depth but also beyond the existing building footprint;
- c) The proposed excavation with a maximum depth of 16.1m will have a detrimental impact on the existing landform within the subject site and surrounding properties and is contrary to O1 of Section 1.3.1 of NSDCP 2013;
- d) The extent of the excavation would result in the removal of sandstone retaining wall and the sandstone base of the heritage listed dwelling contrary to P2 of Section 1.3.1 of NSDCP 2013;
- e) New finished floor levels will be greater than 500mm below existing ground level contrary to P3 Section 1.3.1 of NSDCP 2013;
- f) New habitable rooms will be located more than 1m below existing ground level for more than 50% of the rooms floor area contrary to P4 of Section 1.3.1 of NSDCP 2013;
- g) The proposal will result excavation and associated works to occur within 200mm from the property boundary is contrary to the P5 of Section 1.3.1 of NSDCP 2013.

6. Uncharacteristic form of development

The application results in a built form which is not subservient to the heritage item. The proposed development would contain a total of six (6) levels, including subterranean/basement levels, with a proposed floor area 1.25 times of the area of the subject site. The proposed development would have a detrimental impact upon the characteristics features of the heritage item resulting in a massing that is likely to overwhelm the heritage item contrary to the following provisions within NSDCP 2013.

Particulars:

- a) Objectives of the R2 Low Density zone, specifically dot point 3 relating to then amenity of the surrounding area and the natural and cultural heritage within the area;
- b) The proposal fails to retain the visual character of the dwelling, contrary to objective O1 in Part B, Section 1.3.5 *Visual Impact* in NSDCP 2013;
- c) The proposed bulk and scale within the side setbacks results in a massing which dominates the heritage item contrary to Objective O2, in Part B, Section 1.4.6 *Setbacks* in NSDCP 2013;
- d) Objective O1 in Part B, Section 1.4.7 in NSDCP 2013 (*Form, massing & scale*);

- e) Objective O1 in Part B, Section 1.4.8 in NSDCP 2013 (*Built form character*);
- f) Provision P6 in Part B of Section 1.5.1 in NSDCP 2013 (*High quality residential accommodation*);
- g) Objective 1 in Part B Section 1.5.2 in NSDCP 2013 (*Lightwells and Ventilation*);
- h) Provision P3 of Section 1.5.4 in NSDCP 2013 (*Vehicle access and parking*);
- i) The proposal provides excessive site coverage across the site contrary to O1 and O2 in Part B, Section 1.5.5 *Site Coverage* in NSDCP 2013;
- j) Objectives O1 and O2 in Part B Section 1.5.8 in NSDCP (*Front Gardens*); and
- k) The proposal is contrary to P2 in Part C in Section 6.2.6 in NSDCP 2013 in relation to number of storeys for detached dwellings within Kurraba Point Conservation Area.

The proposal will overwhelm the integrity of the Arts and Crafts cottage. It will no longer function as a dwelling, given that there is excessive floorspace devoted to individual uses not normally associated with a dwelling. The amenity of these underground facilities is unsatisfactory and not characteristic of dwelling houses, in particular of the arts and crafts era. The extensive basement levels will not be ancillary to the dwelling itself but rather the dwelling will be overwhelmed by the excessive size and new floor space area of the new development.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Ken Robinson	Y	
Helen Lochhead	Y				
Ian Pickles	Y				

Items considered in Non-Public Meeting

ITEM 2

DA No:	239/21/2
ADDRESS:	131-139 Holt Avenue, Cremorne
PROPOSAL:	Section 4.56 modification relating to development consent DA239/2021 for excavation (not including demolition) and construction of a part four-part five storey mixed use development with basement parking, and stratum subdivision.
REPORT BY NAME:	Michael Stephens, Senior Assessment Officer
APPLICANT:	Helm Pty Ltd

No Written Submissions

Registered to Speak

Submitter	Applicant/Representative
	Kit Cunningham-Reid – Helm Properties

Panel Determination

The Panel members have undertaken independent site inspections where considered necessary prior to the meeting, submissions made, and the address to the Panel from the Applicant prior to determination.

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

Panel Reason:

The Panel notes this is a modification application and is satisfied that it will result in substantially the same development and the reasons for the original decision have been considered.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Ken Robinson	Y	
Helen Lochhead	Y				
Ian Pickles	Y				

ITEM 3

DA No:	2/22
ADDRESS:	127-129 Willoughby Road, Crows Nest
PROPOSAL:	Demolition of existing structures and construction of a new mixed use building containing 10 apartments, commercial space and basement parking.
REPORT BY NAME:	Damon Kenny, Executive Assessment Planner
APPLICANT:	Ultraflex Holdings Pty Ltd

No Written Submissions**Registered to Speak**

Submitter	Applicant/Representative
	Jack Prail -Platino Properties

Panel Determination

The Panel members have undertaken independent site inspections where considered necessary prior to the meeting and have considered all written submissions and the applicant's address 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 requests to the contravention of the Height of Buildings development standard in clause 4.3 and Clause 6.6 (1) (c) of the LEP, adequately address the required matters in clause 4.6 of the LEP. In the opinion of the Panel the written requests demonstrates that compliance with the development standard is unnecessary in the circumstances of the case and the written requests identified sufficient environmental planning grounds to justify the contraventions. 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 Officer's Report and Recommendation are endorsed by the Panel. The panel has taken further advice in regard to the imposition of conditions C14 and C18 and has formed the view that these should remain at this time with the applicant undertaking further discussion with the Council should these conditions result in a material increase in the height of the building or access issues. With respect to the conditions these are generally endorsed subject to amendments to Conditions C14 sub-heading Drainage Works Item (e) and C18 as follows:

C14. Required Infrastructure Works - Roads Act 1993

Drainage works

- e) The floor level of the commercial lot is to be set at the 1% AEP level. The Residential floor levels and all basement entrances are to be set at the 1% AEP level + 300mm. The use of mechanical flood devises are not acceptable due to the long period between flooding events and the possibility that the device may not be in working condition or may otherwise be impeded in operation when a flood occurs.

C18. Floor Levels for Flooding

The floor level of the commercial lot is to be set at the 1% AEP level. The Residential floor levels and all basement entrances are to be set at the 1% AEP level + 300mm.

Note: The use of mechanical flood devises are not acceptable due to the long period between flooding events and the possibility that the device may not be in working condition or may be impeded in operation when a flood occurs.

Plans and specifications which comply 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: Prevention of damage to dwellings as a result of flood events)

Panel Reason:

The Panel is satisfied the proposed development will sit comfortably on the site and is consistent with the planning regime objectives with no significant adverse impacts.

It is open to the proponent to undertake further discussions with Council staff regarding flood mitigation measures and seek modification to this consent.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Ken Robinson	Y	
Helen Lochhead	Y				
Ian Pickles	Y				

ITEM 4

DA No:	348/22
ADDRESS:	2 Byrnes Avenue, Neutral Bay
PROPOSAL:	Alterations and additions to an existing dwelling
REPORT BY NAME:	Andrew Beveridge, Assessment Officer
APPLICANT:	Fadi Fadhil, Creative Spaces Architects

No Written Submissions**Registered to Speak**

Submitter	Applicant/Representative
	Fadi Fadhil - Creative Spaces Architects
	Michael Ternes and Sarah Cervin (property owners)

Panel Determination

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

The Panel determines the application by the granting of consent subject to the imposition of standard conditions and the additional conditions imposed by the panel as detailed below.

The Council Officer's Report, Recommendation and Conditions are endorsed subject to an additional condition (C20) requiring a reduction in the wall height of the rear addition by 300mm, the removal of the pergola of the upper level, and a reduction in the width of the privacy screens to 1.2m at its uppermost point, no higher than the eaves line.

The panel has been made aware that the set of conditions was not attached to the assessment report on Council's website due to a technical oversight. At the same time given the standard nature of these conditions it remains appropriate to determine the application.

Design Modifications (Rear Addition)

C20. The design of the proposed rear addition must be modified as follows:

- a) The height of rear addition shall be reduced by 300mm (by a reduction in upper wall height) with the top of the roof ridge line at RL92.28 and the eave line for the proposed addition at RL90.99;
- b) The upper level pergola on the northern (rear) elevation shall be deleted;
- c) The width of the privacy screens on the eastern and western elevations of the proposed rear addition shall be reduced to 1.2m maximum, as measured from the northern (rear) building line of the proposed addition, at the upper most point ;
- d) The height of the modified privacy screens shall match the modified eave line at RL 90.99.

The modified design demonstrating compliance with the above requirements must be submitted for the written approval of the Manager Development Services.

The Certifying Authority must ensure that building plans and specifications submitted must be fully consistent with Council's written approval prior to the issue of any Construction Certificate.

(Reason: To minimise bulk and scale of the new addition and to reduce amenity impacts on the adjoining properties.)

Panel Reason:

The Panel supports the recommendation with the above amendment. The reason for the additional condition is to minimise the bulk and scale, and solar and privacy impacts on neighbouring properties.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Ken Robinson	Y	
Helen Lochhead	Y				
Ian Pickles	Y				

The meeting concluded at 3.08pm.

The Panel Determination session commenced at 3.30pm.

The Panel Determination session concluded at 5.11pm.

Endorsed by Jan Murrell
North Sydney Local Planning Panel
7 June 2023