



**NORTH SYDNEY COUNCIL**

Council Chambers  
26 July 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 2 August 2023.

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**

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## BUSINESS

### **LPP01: 4 Warung Street, McMahons Point - DA 235/2022**

Applicant: Neda Khorsandian, SN Architects

Report of Ruth Bennett, Senior Assessment Officer

This development application seeks consent for alterations and additions to an existing dwelling house including internal reconfigurations, installation of a lift, a rear addition on the first and second floor levels with a gable roof form, installation of skylights, new balcony balustrades with privacy screens and privacy walls, and a new awning at the rear on land at 4 Warung Street, McMahons Point.

The application is reported to the North Sydney Local Planning Panel for determination in accordance with the Minister's Direction "Local Planning Panel Direction – Development Applications" dated 30 June 2020 as the proposed works seek a variation to the development standard in clause 4.3 *Height of Buildings* by more than 10%.

The proposed development breaches the maximum permitted building height of 8.5m by up to 4.17m, equating to a variation of 49%. The existing building has a maximum height of 12.67m at the front of the building, representing a variation of 49%. The proposed variations relate to the proposed alterations at the front of the building, including construction of a privacy screen on the first floor level and balustrading on the second floor level, internal installation of a lift, and the rear addition where the proposed pitched roof form breaches by 0.79m, equating to a variation of 9.2%.

The applicant has submitted a written request to vary the development standard in clause 4.3 made pursuant to clause 4.6 in NSLEP 2013. The written request demonstrates 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 written request is considered to be well founded and worthy of support.

The subject site is identified as a neutral item in the McMahons Point South Conservation Area. The proposed works would have an acceptable impact on the significance of the conservation area given that the rear addition to the dwelling is not visible from Warung Street and provides a pitched tiled roof form at the rear which when viewed from Blues Point Road is characteristic of the house typology in the conservation area.

The proposed development would not have an adverse impact on the amenity of the adjoining properties with respect to privacy, overlooking and solar access. The proposed pitched roof rear addition provides for an ensuite and accommodates the proposed stairwell and lift, and a void at the rear to improve solar access to the north facing rear living area on the level below. The proposed rear additions are consistent with the envelope controls for the site, having regard to the characteristic setbacks within the area, however, would give rise to a breach to the maximum permitted building height control of 8.5m. No view impacts result from the proposed development.

The application and amended plans were notified in accordance with Council's Community Engagement Protocol and a total of 3 unique submissions were

received raising concerns regarding the proposed height variation, potential for overlooking and overshadowing impacts, detriment effect on the adjoining dwelling due to the proposed bulk, height and scale, and consistency with the character of the McMahons Point South Conservation Area.

On balance, the application has met the relevant statutory requirements and the proposed development is considered reasonable and is therefore recommended for approval subject to site-specific and standard conditions of consent.

**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 and Environment to invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 in NSLEP 2013 to grant consent to Development Application No. 235/2022 for alterations and additions to an existing dwelling house alterations and additions to an existing dwelling house, including an internal reconfiguration, rear addition on the first and second floor levels, and associated works on land at No. 4 Warung Street, McMahons Point subject to the following site specific and the attached standard conditions.

**Privacy Measures**

C12. The following privacy measures are to be provided:

- (a) Window W19 on the western elevation of the first floor level (Dwg 1102 Level One Floor Plan by Superdraft Australia Pty Ltd, Revision B, dated 17/05/2023) must 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 west.

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. 2 Warung Street)

**LPP02: 63 Victoria Street, McMahons Point - DA 357/22**

Applicant: A Machkevitch – Corona Projects Pty Ltd

Report of Miguel Rivera, Senior Assessment Officer

The application seeks development consent from the North Sydney Local Planning Panel (NSLPP) for alterations and additions to an existing 2 Storey semi-detached dwelling on land identified as No. 63 Victoria Street, McMahons Point.

The application is required to be reported to the NSLPP for determination, as directed by the Minister of Planning, as the development application involves

a departure from a development standard that is greater than 10% and 10 or more unique submissions have been received objecting to the proposal.

Council's notifications of the proposed development has attracted a total of 10 submissions from neighbouring properties and from the Edward and Union (Combined) Precincts Committee raising concerns and issues associated with proposal: bulk, scale, massing and density; excessive height; overdevelopment; impacts on party wall; visual privacy and amenity impacts; acoustic privacy impacts, visual impacts and design; overshadowing; view loss impacts and heritage. Following receipt of a revised scheme, the application was re-notified and a total of six (6) submissions were received. A similar set of issues were raised by these additional submissions.

The development application has been assessed against relevant State Planning Policies and Council policies including the North Sydney Local Environmental Plan 2013 (NSLEP 2013) and North Sydney Development Control Plan 2013 (NSDCP 2013). The proposed development is disproportionate to the undersized allotment (comprising a land size of only 74.5m<sup>2</sup>) and is not considered contextually appropriate nor acceptable in terms of design and the extent of impacts generated. The proposal is considered to be an overdevelopment of a constrained and does not achieve environmental planning controls. Of particular concern is the proposed roof terrace, which involves a substantial height breach of 1.48m or 17.4% and will have significant view loss and privacy impacts.

The application involves a non-compliance to the maximum height of buildings development standard (8.5m) under Clause 4.3 of NSLEP 2013 as the proposal features a building height of 8.8m (for the new roof) and 9.98m (for the glass balustrades on the roof terrace) above existing ground level. These maximum height represents a departure of 1.48m or 17.4% from the development standard. The Applicant has submitted a written request pursuant to Clause 4.6 of the NSLEP 2013, which seeks to justify the height breach. However, the Clause 4.6 statement is not well founded and insufficient planning grounds are provided. The Applicant has failed to demonstrate that compliance with this development standard is unreasonable or unnecessary in the circumstances.

Having regard to the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), the application is recommended for refusal given the proposal's failure to achieve compliance to and consistency with critical objectives, provisions and controls under Council policy.

**Recommending:**

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

- A. In consideration of the written request made by the Applicant pursuant to Clause 4.6 of the North Sydney Local Environmental Plan 2013, the consent authority is not satisfied that compliance with the development standard contained in Clause 4.3 – Maximum Height of Buildings of NSLEP 2013 is well founded.

The consent authority has identified that there are no sufficient environmental planning grounds which have been identified which would justify contravening the development standard.

The consent authority has identified that the proposed development is not in the public interest as it fails to achieve consistency with the relevant objectives of Clause 4.3 – Maximum Height of Buildings and the E3 – Productivity Support zone under NSLEP 2013.

- B. **THAT** the North Sydney Local Planning Panel, exercising the functions of Council as the consent authority, resolve to refuse development consent to Development Application No. 357/22 for development involving alterations and additions to an existing semi-detached dwelling on land at No. 63 Victoria Street, McMahons Point (Lot 1 in DP 202869), as shown on Architectural Plans, prepared by Archispectrum and dated 16/06/23, for the following reasons:
1. Under Part 3, Section 24 (1)(b) of the EP&A Regulation, the development application fails to contain all the information and documents required by the approved form and as per the Act or Regulation in that the proposal indicated works within No. 65 Victoria Street, McMahons Point and owner's consent from this property was not obtained and provided to Council. As such, the consent authority is unable to grant consent for the respective works.
  2. Pursuant to Section 4.15 (1)(a) of the EP&A Act 1979, the proposed development does not comply with the following relevant environmental planning instruments and development controls as follows:
    - a. North Sydney Local Environmental Plan 2013 – Aims of the Plan – unable to satisfy the key aims (2)(a), (2)(b)(i) and (2)(c)ii).
      - i. The proposal fails to promote development that is appropriate to its context and enhances the amenity of the North Sydney Community and environment. It involves introducing a built form that is not contextually appropriate, is excessive and disproportionate to the respective undersized allotment, and features a substantial height breach that will generate view loss and privacy impacts.
      - ii. The proposal fails to provide a compatible built form that is acceptable in terms of streetscape response, bulk, scale and appearance. The provision of a roof terrace is a key concern as it promotes a height breach that will result in view loss and amenity impacts.
      - iii. The proposal is unable to maintain and protect residential amenity due to the roof terrace generating view loss and privacy impacts.
      - iv. The proposal fails to not adversely affect residential amenity in terms of visual and acoustic privacy and view sharing.
    - b. North Sydney Local Environmental Plan 2013 – objectives of E3 zone relating to permitting development that is compatible with the scale, intensity and character of the surrounding residential area.
    - c. North Sydney Local Environmental Plan 2013 – objectives of Clause 4.3 – unable to satisfy the objectives (1)(b), (1)(d), (1)(e) and (1)(f).

- d. North Sydney Local Environmental Plan 2013 – Clause 4.6 – the consent authority is not satisfied as per provisions (3) and (4).
  - e. North Sydney Development Control Plan 2013, Part B, Section 1 – Environmental Criteria (Section 1.3.6 and Section 1.3.10) – failure to meet objectives and controls with respect to Views and Visual Privacy.
  - f. North Sydney Development Control Plan 2013, Part B, Section 1 – Quality Built Form (Section 1.4) – failure to meet objectives and controls with respect to Form, Massing and Scale; Built Form Character; Roofs and Materials.
  - g. North Sydney Development Control Plan 2013, Part C, Section 9 – McMahons Point Business Precinct (Section 9.2) – failure to meet objectives and controls.
3. Pursuant to Section 4.15(1)(b) of the EP&A Act 1979, the proposed development is likely to have adverse impacts on the following aspects on the environment: view loss, privacy and amenity.
  4. Pursuant to Section 4.15(1)(c) of the EP&A Act 1979, the subject site is not suitable for the proposed development for the following reasons: excessive height and adverse impacts on neighbouring properties.
  5. Pursuant to Section 4.15(1)(e) of the EP&A Act 1979, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent including poor design and planning response to the re-development of a substantially undersized and built-up allotment and endorsement of an unacceptable non-compliance to the maximum building height provision under Clause 4.3 and non-compliances with provisions and controls under Council policy.

**LPP03: 2 Sutherland Street, Cremorne - DA432/2021/5**

Applicant: AP Development No 1 Pty Ltd

Report of Michael Stephens, Senior Assessment Officer

This application made under Section 4.55(2) of the Environmental Planning and Assessment Act 1979 seeks consent to modify development consent DA432/2021 for the demolition of an existing residential flat building and construction of a part 4, part 5 storey residential flat building containing 11 apartments with basement parking for 18 vehicles, and landscaping and associated works at 2 Sutherland Street, Cremorne.

The application is reported to the North Sydney Local Planning Panel for determination as the application relates to a Section 4.55(2) modification which involves modifications relating to condition of consent endorsed by the Panel.

The assessment of the original development application recommended a deferred commencement condition (AA1) to delete a subterranean bedroom for Unit 1 located on the lower ground floor of the building. The Panel in determining the application, endorsed the recommended condition and further outlined the reasons for the imposition of the condition in the granting of development consent.

In accordance with Section 4.55(3) of the Act, the consent authority must take into consideration the reasons given by the consent authority, in this instance the Panel, for the grant of the consent that is sought to be modified.

The proposed modifications reduce the depth of the apartment to provide improved amenity towards the rear of the apartment to accommodate an additional bedroom, which is located substantially below ground the adjacent footpath level, however, would achieve reasonable amenity due to the favourable northern aspect of the apartment which is otherwise located at or above existing ground level.

The proposed modifications to the apartment have achieved the intent of Condition AA1, in that the additional bedroom is located predominantly at ground level and would achieve a reasonable degree of amenity.

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

On balance the modification application is considered to be reasonable and is 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, under Section 4.55 of the EP&A Act grant consent to modify Development Consent DA432/2021 for the demolition of an existing residential flat building and construction of a part 4, part 5 storey residential flat building containing 11 apartments with basement parking for 18 vehicles, and landscaping and associated works only so far in so:

**A. Impose Condition A6 as follows:**

**Development in accordance with Plan (S4.55 Modifications)**

A6. The development being carried out in accordance with plans identified in Condition A1 of the consent and endorsed with Council's approval stamp, except as modified by the modifications shown in colour on:

Plan Nos.	Issue	Description	Dated	Prepared by	Received
DA0203	2	Lower Ground Floor Plan	17 March 2023	3EM Architects	3 July 2023
DA0504	2	West Elevation	17 March 2023		3 July 2023
DA0602	2	Section B	17 March 2023		3 July 2023
DA0604	3	Section E & E1	17 March 2023		3 July 2023

DA0605	3	Section F	17 March 2023		3 July 2023
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except as amended by the following conditions and this consent.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public information)

**B. To amend condition C46 as follows:**

**BASIX Certificate**

C46. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. **1256357M\_6** dated **8 March 2023** for the development are fulfilled. 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 the proposed development will meet the Government's requirements for sustainability and statutory requirements)

**LPP04: Unit 4, 35 Murdoch Street, Cremorne - DA 9/2023**

Applicant: Slade Hugal

Report of Thomas Holman, Assessment Officer

This development application seeks consent for alterations and additions to an existing apartment in a residential flat building, including internal alterations and construction of new window openings on the northern side elevation, two skylights and a dormer addition.

The development application is reported to the North Sydney Local Planning Panel for determination because the proposed development contravenes a development standard imposed by an environmental planning instrument by more than 10% in accordance with the Ministers Direction "Local Planning Panel Direction – Development Applications" dated 30 June 2020, published to the NSW Planning Portal.

The proposed dormer addition has a maximum height of 9.8m (15% variation) measured from existing ground level which does not comply with the maximum permitted height of 8.5m in Clause 4.3 in NSLEP 2013. Consideration has also been given to the written request made pursuant to Clause 4.6 in NSLEP 2013 which was considered to be well founded in the site circumstances. The proposed development is permissible, subject to the savings provision in Clause 1.8 in NSLEP 2013, meets the development standards and relevant provisions of NSLEP 2013, subject to Clause 4.6, and is generally in accordance with the objectives of the NSDCP 2013.

The proposed side dormer is located on the northern roof slope of the existing residential flat building and generally complies with the provisions in Section



1.4.11 *Dormers* of Part B in NSDCP 2013. The proposed dormer is not located on the front street elevation and the design and proportioning is appropriate having regard to the character of the existing building. The proposed works would not adversely impact the significance of the Cremorne Conservation Area in which the site is located, nor would it adversely impact the amenity of the adjoining properties in terms of retaining reasonable solar access and privacy.

Council's Conservation Planner and Building Surveyor raised no objection to the proposed works, subject to appropriate conditions of consent.

The application was notified in accordance with Council's Community Engagement Protocol. Council received one submission in support of the proposed works.

Following this assessment, the proposed development 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 (AS AMENDED)

**THAT** the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning and Environment to invoke the provisions of Clause 4.6 in NSLEP 2013 regarding the non-compliance with Clause 4.3 and grant consent to Development Application No. 09/2023 for alterations and additions to an existing residential flat building on land at 35 Murdoch Street, Cremorne subject to the following site specific and the attached standard conditions of consent.

**Heritage Requirements**

C4. The following heritage requirements are to be met:

- a) The new plumbing and wiring for the new bathrooms and kitchen shall not impact the apartment below. New services located on the exterior of the building shall be incorporated into existing services where possible. Any new pipes/ducts and the like, shall be painted to be visually submissive colour.
- b) The structural soundness of the north-western chimney is to be certified by a structural engineer to ensure its retention at roof level. Any necessary works required by the structural engineer within the attic space to ensure the structural soundness of the chimney are acceptable.
- c) New windows are to be timber framed with a painted finish to match the existing windows.
- d) The fibre cement weatherboard cladding to the dormer shall be laid horizontally as shown on the elevations.

The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition prior to the release of the Construction Certificate.

(Reason: To be sympathetic to the heritage significance of the building)

**LPP05: 115, 117, 119 Holt Avenue Cremorne - 115/2023**

Applicant: Mersonn Pty Ltd

Report of Jim Davies Executive Assessment Planner

This development application seeks approval for demolition of the dwelling house on each of the 3 lots that comprise the site and construction of a 16 unit, 3-storey residential flat building, with a basement comprising 20 resident parking spaces and 4 visitor parking spaces, storage and plant, with a rooftop communal open space. The grounds are proposed to be landscaped with planting of native and exotic species, also involving removal of 7 trees, temporary removal and replanting of 9 trees, preservation of 3 trees on-site, 4 street trees and protection of 6 trees on neighbouring properties.

Determination of the application by the North Sydney Local Planning Panel is required due to the application being subject to the provisions of SEPP 65 – Design Quality of Residential Apartment Development, the application proposing to breach the height maximum by more than 10% and more than 10 objections having been received. The site is also subject to a Interim Heritage Order.

Notification of the proposal attracted 45 submissions objecting to the proposed development, raising key issues including:

- Loss of heritage
- Noncompliance with the building height development standard,
- The proposal being out of character with the streetscape and other development in the locality
- Loss of privacy
- Overshadowing
- Impacts on views
- Potential property damage due to depth and proximity of excavation to property boundaries

A more comprehensive summary of issues raised by submitters is included in the report.

By way of background, this application was preceded by DA 243/21, which is the subject of a Class 1 appeal to the Land & Environment Court. This earlier application has been the subject of a conciliation conference process which has resulted in the design of the proposed development. Two separate development applications (the subject DA 115/23 and the on appeal DA 243/21), for the one site are now effectively identical.

The subject application was lodged as integrated development, as approval under the Heritage Act 1977 is required to demolish the three existing dwelling houses on the site. Approval for their demolition is necessitated by the houses being the subject of an Interim Heritage Order, issued on 11 March 2023 by the Minister for Heritage and Environment.

As the consent authority for the demolition application, the Heritage Council of NSW advised Council the application would not be approved, as approval cannot be granted to an application to demolish a building the subject of an Interim Heritage Order, per s. 63 (2) of the Heritage Act 1977. Approval was also denied, for reason that the houses have been assessed by Council-appointed consultants GML Heritage, as having historic, aesthetic, rarity and

representative values and because it is not possible to mitigate or minimise the impacts (of demolishing the three houses).

Upon receipt of the refusal advice from the Heritage Council, the applicant was asked to consider withdrawal of the development application. At the time of writing, no reply had been received.

In these circumstances, consent cannot be granted to the development application. Granting consent is prevented by s. 4.47 (4) of the Environmental Planning & Assessment act 1979. The development application is accordingly recommended for refusal.

**Recommending:**

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

**THAT** the North Sydney Local Planning Panel, exercising the functions of Council as the consent authority, resolve to refuse development consent to Development Application No. 115/23 for demolition of 3 dwelling houses and associated works, and construction of a 3-storey residential flat building of 16 dwellings on land at 115, 117, 119 Holt Avenue Cremorne, for reason that the application must be refused in accordance with section 4.47 (4) Environmental Planning & Assessment Act, 1979.



**NORTH SYDNEY LOCAL PLANNING PANEL**

**DETERMINATIONS OF THE NORTH SYDNEY LOCAL PLANNING PANEL  
MEETING HELD IN THE COUNCIL CHAMBERS, NORTH SYDNEY,  
ON WEDNESDAY 13 JULY 2023, AT 3.00PM.**

**PRESENT**

**Chair:**

Jan Murrell

**Panel Members:**

Grant Christmas (Panel Member)  
John McInerney (Panel Member)  
John Bohane (Community Representative)

**Staff:**

Stephen Beattie, Manager Development Services  
Miguel Rivera, Senior 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.

**Apologies:**

Nil

**1. Declarations of Interest**

Nil.

**2. Business Items**

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

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

**Item considered in Non-Public Meeting**

**ITEM 1**

<b>DA No:</b>	296/22/3
<b>ADDRESS:</b>	50 Blues Point Road, McMahons Point
<b>PROPOSAL:</b>	To modify a consent to delete Condition C1
<b>REPORT BY NAME:</b>	Miguel Rivera, Senior Assessment Officer
<b>APPLICANT:</b>	P Redmond

**0 Written Submission**

**Registered to Speak**

<b>Submitter</b>	<b>Applicant/Representative</b>
	Kristin Utz Architect - representing applicant

**Panel Determination**

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

The Council Officer's Report and Recommendation are endorsed by the Panel. This has the effect of condition C1 being deleted.

**Panel Reason:**

The Panel notes this is a modification application to a development application determined by the same Panel dated 3 May 2023. The modification is substantially the same development and is not contrary to the reason the condition was imposed having regard to the fact that it is an existing wall, and for construction purposes it would be unreasonable to require it to be a setback further from the boundary.

The Panel are satisfied there are no significant environmental adverse impacts arising by the approval of the modification in the circumstances. Furthermore, the reasons for granting consent would remain satisfied if the modification is approved.

Condition C1 is deleted.

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		John Bohane	Y	
Grant Christmas	Y				
John McInerney	Y				

The meeting concluded at 3.10pm.

The Panel Determination session commenced at 3:12pm.

The Panel Determination session concluded at 3:20pm.

Endorsed by Jan Murrell

North Sydney Local Planning Panel

**13 July 2023**