



**NORTH SYDNEY LOCAL PLANNING PANEL**

**DETERMINATIONS OF THE NORTH SYDNEY LOCAL PLANNING PANEL  
MEETING HELD IN THE COUNCIL CHAMBERS, NORTH SYDNEY,  
ON WEDNESDAY 5 OCTOBER 2022, AT 2.00PM.**

**PRESENT**

**Chair:**

Jan Murrell in the Chair.

**Panel Members:**

Peter Brennan (Panel Member)  
Brendan Randles (Panel Member)  
Lindsey Dey (Community Representative)

**Staff:**

David Hoy, A/Manager Development Services  
Robyn Pearson, Team Leader Assessments  
Michael Stephens, Senior Assessment Officer  
Rachel Wu, Graduate Assessment Officer

**Administrative Support:**

David Hoy, A/Manager Development Services  
Robyn Pearson, Team Leader Assessments  
Peita Rose, Governance Officer (Minutes)

This meeting was conducted by remote (Zoom) means.

A public meeting was held for Item 1 as there were more than 10 objections and Items 2 and 3 were determined in closed session as there were less than 10 unique submissions for these agenda items.

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

**Apologies:**

Nil.

**1. Minutes of Previous Meeting**

The Minutes of the NSLPP Meeting of Wednesday, 7 September 2022 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**

<b>DA No:</b>	232/20/3
<b>ADDRESS:</b>	5 Rodborough Avenue, Crows Nest
<b>PROPOSAL:</b>	Section 4.55(2) modification application relating to Development Consent DA232/20 for the demolition of the existing buildings and the construction of a 4 storey residential flat building with basement parking and associated landscaping including strata subdivision.
<b>REPORT BY NAME:</b>	Michael Stephens, Senior Assessment Officer
<b>APPLICANT:</b>	Matthew Billing, Rodborough Development Pty Ltd

**Registered to Speak****No Written Submissions**

<b>Submitter</b>	<b>Applicant/Representative</b>
Myron Hartley-Holl - Resident	Brett Brown - Ingham Planning - Representing Applicant
	Michael Clark - Platform Project Services - Applicant

**Panel Determination**

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

The Council Officers Report and Recommendation to refuse the modification application is endorsed by the Panel for the following amended reasons:

## 1. Inconsistent with the reasons for the original approval

The modification application is refused because it would be contrary to the reasons for approval of the original development application on the 7 July 2021. The consent authority must take into account the reasons for the granting of consent when making its determination, as required by section 4.55(3) of the Act.

### Particulars

- a) The original application limited the extent of the third-floor level on the basis that this allowed for an acceptable variation to the height of buildings development standard which had regard to the topography. Furthermore, the additional roof top communal area was considered to provide excellent open space amenity, and complied with the requirements for the quantity and amenity of the communal open space to serve the development.
- b) The roof top open space area as approved provides very good amenity for the occupants of the development and satisfies the Apartment Design Guidelines (ADG) requirements for communal open space. The proposed modification significantly reduces the quality and quantity of roof top communal open space from 395sqm to 83sqm, and as a consequence the modification application would not satisfy the ADG requirements.
- c) Furthermore, the modification would increase the demand for communal open space by increasing the number of apartments while decreasing the amenity of the communal open space.

## 2. Objectives of the zone

The proposed modification is refused because it is inconsistent with the objectives of the zone.

The subject site is zoned R4 High Density Residential. The objectives of the R4 High Density Residential zone are:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the development of sites for high density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a reasonably high level of residential amenity is achieved and maintained.*

### Particulars

- a) The modification application does not satisfy the above dot point 4 because the massing and scale of the proposed development is inconsistent with the desired character of the area and would diminish the amenity of the cul-de-sac and surrounding properties given the overbearing nature of the non-complying portion of the additions.
- b) The proposed modification is inconsistent with dot point 5 because the approved rooftop communal open space area is proposed to be significantly reduced from 395sqm to 83sqm. The total useable outdoor communal open space equates to 334sqm or 12% of the site area, with less than 50% of the area receiving solar access for at least 2hrs in mid-winter. The overall quantity and quality of communal open space for the future residents of the approved development would be significantly diminished for the additional development yield and a high level of residential amenity would not be achieved.

### 3. Building Height

The modification application is refused because it contravenes the maximum height of buildings, development standard, in clause 4.3 in NSLEP 2013.

The objectives of the height of buildings development standard are:

- a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- b) *to promote the retention and, if appropriate, sharing of existing views,*
- c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- e) *to ensure compatibility between development, particularly at zone boundaries,*
- f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
- g) *to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.*

#### Particulars

- a) A 12m height of buildings development standard applies to the subject site pursuant to subclause 4.3(2) in NSLEP 2013.
- b) The proposed additional apartment contravenes the development standard by between 1m-1.8m or 8.3-15%.
- c) The proposed development would be inconsistent with objectives a), c), e) and f) of the development standard.

### 4. SEPP 65 – Design Quality Principles

The modification application is refused because it would detract from the design quality of the approved development.

#### Particulars

- a) The proposed building form is contrary to design quality principles: 1 *Context and neighbourhood character*, and 2 *Built form and scale*. Further increase to the breach of height creates an overbearing built form and poor streetscape outcome.
- b) The proposal does not comply with the design quality principle 5 *landscape*. The communal open space does not comply with the area and amenity requirements of the ADG's.
- c) The proposal does not comply with design quality principle 6 *amenity*. The basement communal room does not have windows and is not suitable for habitable space.
- d) The proposal does not comply with design quality principle 8 *housing diversity and social interaction*.
- e) The communal open space provided is inadequate for a project of this scale and does not align with the principles and objectives of the ADG.

## 5. Form, Massing and Scale

The modification application is refused because it does not comply with the form, massing and scale controls.

### Particulars

- a) The proposed development does not comply with the height requirement in Provision P1 as required by provision P8(a) in Section 1.4.7 of Part B in NSDCP 2013 to justify the proposed flat roof.
- b) The proposed development does not comply with the top-most storey setback control of 36 degrees as required by Provision P8(b) in Section 1.4.7 of Part B in NSDCP to justify the proposed flat roof.

## 6. Communal Open Space

The modification application is refused because it would detract from the amenity of the approved communal open space arrangements and would then not meet the ADG requirements.

### Particulars

- a) The proposed modified roof top communal open space has been reduced from 395sqm to only 83sqm in size (3% of the site area) and is inconsistent with objective 3D of the ADG.
- b) The supplementary communal open space at ground level within the southern side setback area would receive no solar access to the principal usable portion of the space and only marginal solar access to the fringes of the space between 9am to 3pm in mid-winter.
- c) The Panel does not accept the basement room should form part of the open space provision given its limited utility.

## 7. Insufficient Information

The modification application was lodged with insufficient information. Nonetheless, it fails for all the fundamental reasons above.

### Particulars

- a) An amended landscape plan has not been provided to reflect the amended architectural plans lodged 1 August 2022.
- b) An amended strata plan has not been provided to reflect the amended architectural plans lodged 1 August 2022.

### Panel Reason:

The Panel considers the modification application does not warrant approval, and the reasons for refusal above are symptomatic that it would result in an overdevelopment of the site in its context.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Lindsey Dey	Y	
Peter Brennan	Y				
Brendan Randles	Y				

**Items considered in Non Public Meeting**

**ITEM 2**

<b>DA No:</b>	249/22
<b>ADDRESS:</b>	11 Ernest Street, Crows Nest
<b>PROPOSAL:</b>	Change of use of commercial tenancy to retail (shoe shop) over the existing two storeys with operating hours 8am – 9pm and two employees on site.
<b>REPORT BY NAME:</b>	Rachel Wu, Graduate Assessment Officer
<b>APPLICANT:</b>	Jack Nicholas James

No persons elected to speak on this item.

**No Written Submissions**

**Panel Determination**

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

The Council Officer's Report, Recommendation and conditions are endorsed by the Panel subject to the deletion of Condition I.2.

**Panel Reason:**

The Panel is satisfied the change of use of the commercial premises will not have adverse environmental impacts and warrants approval.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Lindsey Dey	Y	
Peter Brennan	Y				
Brendan Randles	Y				

**ITEM 3**

<b>DA No:</b>	313/21
<b>ADDRESS:</b>	48 Edward Street, North Sydney
<b>PROPOSAL:</b>	Alterations and additions to dwelling
<b>REPORT BY NAME:</b>	Planning Ingenuity, Town Planning Consultants
<b>APPLICANT:</b>	Fengrong Li

**Registered to speak****2 Written Submissions**

<b>Submitter</b>	<b>Applicant/Representative</b>
	John Oultram - John Oultram Heritage & Design
	Katherine Burdett - Nobile Architecture
	Joe Wang - applicant/owner

**Panel 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 consistent with the objectives of the standard and the zone objectives.

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

The Council Officer’s Report, Recommendation and conditions are endorsed subject to conditions C1.1 and C1.9 being deleted and the imposition of the following additional conditions:

- The dwelling is to be used only as a single occupancy.
- The reconstructed top floor balcony must include solid balustrades to the northern and southern elevations.

**Panel Reason:**

The Panel is satisfied the proposed alterations and additions to the local heritage item will not adversely impact on the heritage significance of the dwelling and the Edward Street Conservation Area, its streetscape and adjacent context.

Voting was as follows:

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Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Lindsey Dey	Y	
Peter Brennan	Y				
Brendan Randles	Y				

The public meeting concluded at 2:51 pm.

The Panel Determination session commenced at 3:00pm.

The Panel Determination session concluded at 4:15pm.

Endorsed by Jan Murrell  
North Sydney Local Planning Panel  
**5 October 2022**