



NORTH SYDNEY COUNCIL

Council Chambers
01 September 2022

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 7 September 2022 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.

ROB EMERSON
A/GENERAL MANAGER

BUSINESS

Minutes

Confirmation of Minutes of the previous Meeting held on Wednesday 3 August 2022.

(Circulated)

LPP01: 9 Undercliff Street, Neutral Bay – DA 430/21

Applicant: HJ Three Pty Limited

Report of Michael Stephens, Senior Assessment Officer

This development application seeks consent for the demolition of an existing residential flat building and construction of a four storey residential flat building containing three apartments over basement parking for six cars, and associated works and landscaping on land at No. 9 Undercliff Street, Neutral Bay.

The application is reported to the North Sydney Local Planning Panel for determination as the application seeks a variation to a development standard by more than 10% and has attracted more than 10 submission by way of objection. In accordance with the Ministers direction of 1 August 2020, a public determination meeting is required because there were more than 10 submissions. Development for the purpose of a residential flat building is permitted within the R4 High Density Residential zone. SEPP 65 – (Design Quality of Residential Apartment Development) does not apply as the proposed building contains less than four apartments.

The proposed building results in a non-compliance with the height of buildings development standard in clause 4.3 of NSLEP 2013 by up to 4.08m or 33.6%. The extent of the variations relates primarily to the southern end of the upper level roof form, where the proposed floorplate overlaps the existing excavated basement parking areas, and a portion of a roof awning, and is reflective of the irregular steeply sloping topography of the site. The written request submitted pursuant to clause 4.6 in NSLEP 2013 demonstrates that compliance with the development standard is unreasonable and unnecessary as the objectives of the standard are achieved notwithstanding the variation, and that there are sufficient environmental planning grounds to justify the variation in the circumstances of the case. The variation would be in the public interest as the proposed development is consistent with the objectives of the standard and the objectives of the R4 High Density Residential zone.

The proposed development is also generally in accordance with the objectives in NSDCP 2013. The proposed building form complies with the maximum permitted site coverage provision for residential flat buildings, although relies on, in part, the non-compliant side setbacks of the existing building which is proposed to be demolished. The proposed built form, having regard to the existing building form, would provide for the redevelopment of the site having a similar impact regarding the retention of views, solar access and privacy in comparison to the existing development.

The application was notified in accordance with the community engagement protocol where Council received twenty-five (25) submissions objecting to issues including the proposed height variation, amenity impacts including view loss and overshadowing, tree removal, construction impacts including excavation, traffic congestion and insufficient on-site parking. The issues raised are considered to be generally acceptable or have been addressed through conditions of consent, particularly with regard to construction impacts including excavation.

On balance, the application is considered 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, 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. 430/2021 for demolition of an existing residential flat building and construction of a four storey residential flat building containing three apartments and basement parking for six cars on land at No. 9 Undercliff Street, Neutral Bay subject to the following site specific conditions and standard conditions:

External Privacy Screening

C1 The external privacy screening shown on the northwestern, northeastern and southeastern elevations are to be fixed and non-operable.

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 ensure that a reasonable level of privacy is provided for the surrounding dwellings.)

Soffit Finish

C2 The soffit of the front balcony roofs on each level is to be finished with a timber or engineered material to dampen the noise emission from the balconies. The colour and finish of the soffit is to be consistent with the character of the building having regard to the schedule of materials and finishes approved by this consent.

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 ensure that the external finishes are complementary to the character of the area.)

Mailboxes

C3 Individual Mailboxes for each apartments and the body corporate are to be incorporated into the design of the front fence.

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 ensure the provision of site facilities in accordance with Section 1.5.13 of Part B in NSDCP 2013.)

Landscape Plan

C38 The landscape plan must be amended as follows to provide an appropriate landscaped setting:

A minimum of 4 x *Bambusa textilis* var. *Gracilis* (75L) shall be planted along the western boundary adjacent to the foremost section of the proposed building i.e the living, dining and kitchen area of Unit 3.

1x *Melaleuca armillaris* (150l) shall be planted centrally within the front setback area of the subject site.

1x *Cupaniopsis* (75l) shall be planted in the eastern corner of the rear setback area of the subject site.

1 x *Tristaniopsis laurina* (75l) shall be planted in the southeastern garden of the rear setback area of the subject site.

No stormwater or any other pipework shall be directed through the TPZ of any tree to be retained.

An amended landscape plan 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 amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure residential amenity)

Allocation of Spaces

G14 Car parking spaces must be provided and maintained at all times on the subject site. The spaces shall be allocated to uses within the building in accordance the following table:

5	Residents
1	Visitors

The car parking spaces are to be identified on-site by line-marking and numbering upon the completion of the works and prior to issue of Occupation Certificate. Car parking spaces provided must only be used in conjunction with the approved uses contained within the development.

In the case of Strata subdivision any car parking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lots' unit entitlement.

Visitor parking facilities must be designated as common property on the strata plan. Visitor parking facilities must not at any time be allocated, sold, licensed or leased for the exclusive use of any occupier or owner and must be retained as common property by the Owners Corporation for use by building visitors.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

Covenant and/or Restriction (Basement Parking)

G16. An Instrument pursuant to Sections 88B, 88E and 88F Instrument pursuant to the Conveyancing Act 1919 in registrable form and 1 copy are to be submitted with the application for a subdivision certificate. The final plan of subdivision and Section 88E Instrument are to provide for:

a) Access to the parking spaces is restricted to B85 Vehicles.

The instrument creating the restriction and/or covenant under sections 88B, 88E and/or 88F required by the conditions of consent must be registered on Title prior to the issue of an Occupation Certificate or the occupation of the building, whichever occurs first.

Evidence of registration of the restrictions, easements and covenants under Section 88E must be provided to Council within 28 days of registration on the Title.

Should the building be subdivided under the Strata Development Schemes Act 2015, this restriction and/or covenant is to be transferred to any Strata Plan relating to the building constructed under this development consent.

(Reason: To advise future owners of the constraints of the basement parking level)

LPP02: 124 Benelong Road, Neutral Bay – DA 323/21

Applicant: Anthony Betros

Report of Brett Brown, Consultant Planner

This development application seeks approval for the construction of a four level boarding house with 20 rooms at 124 Benelong Road Cremorne.

The development application is reported to North Sydney Local Planning Panel for determination because the proposal has attracted more than 10 unique submissions. The development application is therefore required to be determined by the North Sydney Local Planning Panel in accordance with the Minister's directions.

Notification of the original proposal attracted a total of 82 submissions raising particular concerns about building height, density, overshadowing, visual privacy, traffic, car parking, impacts of the communal roof top facilities, blocking up of adjoining windows, safety concerns, inappropriate location for a boarding house, wind impacts, character of the building, impact on adjoining heritage item, construction impacts and various other concerns.

In response to the matters raised in the submission and Council assessment, a letter inviting the applicant to withdraw the application was sent on 13 April 2022. The matters of concern included:

1. The street setbacks are out of keeping with the character of the area and will result in the building having adverse visual impacts.
2. The side setback is out of keeping with the character of the area and has unreasonable adverse visual impacts on neighbouring properties and streetscape.
3. The proposed landscaped area is inadequate.
4. The proposed design does not meet the requirements of Cl25(2)(a) of the Housing SEPP.
5. The communal living area is inadequate in size.
6. The communal open space is inadequate in size.
7. The proposed parking is inadequate.
8. The issues raised by the Design Excellence Panel (DEP).

Council has not received a response from the applicant.

Following an assessment, the development application is considered to be excessive and unable to be supported and so is 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 refuse consent to Development Application No. 323/2021 for demolition of existing structures and construction of a four level boarding house with 20 rooms at 124 Benelong Road Cremorne for the following reasons:

- i. The proposal does not provide adequate parking having regard to the standards detailed in Clause 29(2)(e) of State Environmental Planning Policy (Affordable Rental Housing) 2009 and Clause 24(2)(i)(ii) of draft State Environmental Planning Policy (Housing) 2021. Further, the vehicles associated with the use cannot leave the site in a forward direction, contrary to the requirements of Transport for NSW;
- ii. The design of the boarding house is not compatible with the character of the area contrary to the requirements of Clause 30A of State Environmental Planning Policy (Affordable Rental Housing) 2009 and Clause 25(2)(a)(i) and (ii) of draft State Environmental Planning Policy (Housing) 2021. In this regard the bulk and scale of the building its excessive and its design and use of materials and colours is incompatible with the nature of existing development;
- iii. The proposal has inadequate setbacks having regard to the requirements of Clause 29(2)(b) of State Environmental Planning Policy (Affordable Rental Housing) 2009 and Clause 25(2)(b)(ii) of draft State Environmental Planning Policy

(Housing) 2021 in that they are out of keeping with the character of the area and will result in the building having adverse visual impacts on the streetscape and when viewed from surrounding development.

iv. The proposal has inadequate landscaped area having regard to the requirements of Clause 24(2)(d) of draft State Environmental Planning Policy (Housing) 2021 in that the provision is substantially less than the 40% required by Section 1.5.6 of Part B of Council's DCP;

v. The proposal does not provide adequate communal living space having regard to the standards detailed in Clause 24(2)(g)(i) of draft State Environmental Planning Policy (Housing) 2021;

vi. The proposal does not provide adequate communal open space having regard to the standards detailed in Clause 24(2)(h)(i) of draft State Environmental Planning Policy (Housing) 2021;

vii. The proposal has unreasonable privacy impacts as it fails to comply with the minimum building separation requirements of the Apartment Design Guide as referred to in Clause 25(2)(c) of draft State Environmental Planning Policy (Housing) 2021;

viii. Pursuant to Clause 4.6(2) and (4)(c) of State Environmental Planning Policy (Resilience and Hazards) 2021, consent cannot be granted as the proposal involves residential use of the land and complete knowledge of the history of the site has not been demonstrated.

ix. Pursuant to Clause 2.119 of State Environmental Planning Policy (Transport and Infrastructure) 2021, Gerard Street is a classified road and inadequate information has been provided in relation the annual average daily traffic volume of this road and whether an acoustic assessment is required.

x. The proposal breaches the 8.5m height control of Clause 4.3 of North Sydney LEP and has not been supported by a request to breach the control pursuant to Clause 4.6 of the LEP. The building height is excessive and out of keeping with the character of the area;

xi. The window openings to rooms G03, G04, 01.03, 01.04 and 2.03 are too small to provide adequate daylight, internal amenity and sustainable outcomes;

xii. The main building entry lacks a welcoming street address and is accessed via a long narrow side passage which is not visible from the street. The three separate entrances with no external cover are all exposed to southern wind and rain;

xiii. No external clothes drying area or letterbox has been provided contrary to the requirements of Section 1.5.14 of Part B of the DCP;

xiv. The proposed fences to the street frontages are excessively high and solid and contrary to the provision of Section 1.4.14 of Part B of the DCP and are out of keeping with the character of the area;

xv. The proposal does not adequately address the requirements for a green roof in Section 1.6.10 of Part B of the DCP;

xvi. The proposed waste storage area is inappropriately located and the proposal does not provide waste facilities in accordance with the requirements of Section 19 of the DCP;

xvii. The proposal is not consistent with the requirements of the North Cremorne and Waters Neighbourhood Character Statements in Part C of the DCP in that:

- it does not respect or maintain the existing characteristic built form as it is not adequately setback from all boundaries and have a suitably landscaped front garden to soften built form;
 - the front fences are not low and do not offer good outlooks of the building entry and landscaped setbacks;
 - it does not have a sympathetic relationship to other surrounding development in terms of height, bulk and scale and privacy.
- xviii. The proposal will have an adverse impact on the existing street tree in the Gerard Street road reserve due to the excavation in close proximity.

“In accordance with current guidelines for the operation of Local Planning Panels, the following items are to be determined by the panel in closed session as they have received less than 10 submissions.

Applicants for these items are invited to stay in the zoom waiting room in the event the panel needs any clarification from you.

All others who are not applicants or applicant representatives for these items are respectfully asked to leave the meeting at this time.”

LPP03: 372 Military Road, Cremorne – DA 269/21/2

Applicant: Platino Properties Pty Ltd

Report of Robin Tse, Senior Assessment Officer

This application under Section 4.55 of the Environmental Planning and Assessment Act 1979 seeks to modify Development Consent (D269/21) modifications to the deferred commencement approval for a five (5) storey mixed use development.

The application is reported to NSLPP for determination because the proposed modifications involve changes to the specific design requirements as contained in the deferred commencement conditions that was imposed by the Panel in accordance with the directions of the Minister for Planning.

Council’s notification of the proposal has attracted no submissions.

The proposed modifications are considered to be generally consistent with the originally approved development application and s.4.55 of the EP & A Act 1979.

The proposed modifications would result in a development which is substantially the same development as originally approved as the proposal would not materially change the overall building height and setback of the development as approved in the original deferred commencement consent.

The proposed design modifications to the southern (Military Road) façade on Levels 3 and 4 do not provide a respectful transition in building heights, built forms, building bulk and scale between the subject site and the heritage listed Orpheum Theatre. Therefore, this aspect of the subject Section 4.55 application is not supported and is recommended for deletion from the modification plans.

The other aspects of the proposed modifications, such as changes to the clerestory windows above the LEP height limit, the amalgamation of the apartments on Level 3 and the proposed amendments to Condition C45, can be supported because there would be no adverse impacts on the character of the locality and no material amenity impacts upon the adjoining properties in terms of the loss of significant views, solar access, visual and acoustic privacy.

The proposed modifications, with the exception of the design modifications to the southern (Military Road) façade on Levels 3 and 4, were found to be acceptable in the site circumstances and recommended for requiring modifications to existing conditions of consent and addition of a new condition.

Recommending:

PURSUANT TO SECTION 4.55 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Planning Panel exercising the functions of Council approve the modification of development consent D269/21 dated 6 March 2022 in respect of a proposal for the redevelopment of the subject site including the demolition of the existing two storey shop top housing building and the construction of a five (5) storey shop top housing (mixed use) development at No. 372 Military Road, Cremorne under the provisions of Section 4.55 of the Environmental Planning and Assessment Act only insofar as will provide for the following:

1. To modify the development consent (D269/21) and modify conditions AA1, C40, C41, C42, and C45 to read as follows:

Deferred Commencement Matters

AA1. Amended plans, addressing the following matters, must be submitted for the written approval of Council's Manager Development Services:

Design Modifications

a) The design of proposed building be modified to provide an 8m setback between the southern building line on Level 4 of the building and the southern (Military Road) property boundary to minimise the visibility of the top level of the proposed building and to provide a more respectful transition of built form and building height for the adjoining heritage listed Orpheum Theatre to the east of the subject site;

b) The modified fourth floor (Level 4) southern building line shall match the southern wall of the proposed lift shaft/overrun. The internal layout of the fourth floor shall be modified to provide a three bedroom apartment similar in layout to the other three bedroom apartments proposed on the first and second floor;

c) The internal layout of the amalgamated four (4) bedroom apartment on Level 3 shall be accommodated within the Level 3 building envelope of the original DA scheme as shown on Drawing No. DA101 Issue B, dated 18.11.21 and prepared by PA Studio;

d) Modifications to the clerestory windows on the roof level, including the removal of the clerestory windows from the southern side of the roof and reduction in the size of the clerestory windows on the northern side of the roof, as shown on Drawing DA102 Issue D, dated 19/07/22 and prepared by PA Studio. (Reason: To ensure that the development complements the locality in terms of streetscape and heritage significance of the adjoining Orpheum Theatre.)

Section 7.11 Contributions

C40. A monetary contribution pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979, in accordance with the North Sydney Council Local Infrastructure Contribution Plan 2020 for the public amenities/ services detailed in column A below and, for the amount detailed in column B below, must be paid to Council.

Contribution Categories/Facilities:	Contribution(\$)
Open space and recreation facilities:	\$35,882.05
Public domain:	\$14,715.76
Active transport:	\$839.99
Community facilities:	\$7,207.06
Plan administration and management:	\$875.26
Total:	\$59,520.12

* Contribution required for the current proposal offset by credit from the existing commercial development

The contribution MUST BE paid prior issue of any Construction Certificate.

The above amount will be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the North Sydney Local Infrastructure Contribution Plan 2020 can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at www.northsydney.nsw.gov.au.

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new development)

Security Deposits/Guarantee Schedule

C41. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Footpath Damage Bond	\$30,000.00
Engineering Construction Bond	\$36,000.00
TOTAL BONDS	\$66,000.00

Note: The following fees applicable

Fees	
S7.11 Contribution	\$59,520.12
TOTAL FEES	\$59,520.12

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date. (Reason: Compliance with the development consent)

(Reason: Compliance with the development consent)

BASIX Commitments

C42. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. 1224852M_04 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.

Note: A revised BASIX Certificate may be required to reflect the modified design as required by Condition AA1 of this consent.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

TfNSW

C45 The following TfNSW requirements must be complied with prior to the issue of a Construction Certificate for construction:

a) All buildings and structures (other than pedestrian footpath awnings), together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the Military Road boundary.

b) Detailed design plans and hydraulic calculations for any changes to the stormwater drainage system that are likely to have an impact upon Military Road are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au.

A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.

c) The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001.

d) The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to development.sydney@transport.nsw.gov.au.

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

e) The developer shall be responsible for all public utility adjustment/relocation works, etc necessitated by the above/approved work and as required by the various public utility authorities and/or their agents.

f) The proposed development, noting its use, should be designed, as per the requirements of clause 101 (2)(c) of State Environmental Planning Policy (Infrastructure) 2007 such that it includes measures to ameliorate potential traffic noise or vehicle emissions noise within the site of the development arising from Military Road. These measures shall be certified by an appropriately qualified noise and air quality expert and noted on the plans prior to issue of a construction certificate.

g) The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004, AS2890.6-2009 and AS 2890.2 – 2018 for heavy vehicle usage.

h) The swept path of the longest vehicle (including garbage trucks, building maintenance vehicles and removalists) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTRROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.

i) All demolition and construction vehicles are to access site via Parraween Street. A construction zone will not be permitted on Military Road.

j) A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Military Road during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>

(Reason: Compliance with TfNSW Requirements)

2. To insert a new condition A5 to read as follows:

Terms of Consent (D269/21/2)

A5. Approval is granted for the following modifications only:

a) Amalgamation of Units 301 (3 Bedroom) and 302 (Studio) on Level 3 to create a four (4) bedroom apartment resulting in a reduction in the overall number of apartments within the development from seven (7) to six (6);

b) Removal of the clerestory windows from the southern side of the roof;

c) Reduction in the size of the clerestory windows on the northern side of the roof; and

d) Amendments to consent condition C45 (TfNSW Requirements) to allow the requirements to be satisfied prior to the issue of the Construction Certificate for the construction works.

No approval is given or implied in this consent for any other works, both internal and external, particularly the proposed modifications to the southern (Military Road) façade on Levels 3 and 4, within the subject property unless specified in the consent.

(Reason: To ensure the terms of the consent are clear.)

LPP04: 15A Lower Wycombe Road, Neutral Bay – DA 395/21/2

Applicant: Alexander Laykoski C/- Nolan Planning Consultants

Report of Andrew Beveridge, Assessment Officer

This Section 4.55(1A) application seeks NSLPP approval to modify development approval of DA 395/21 proposing alterations and additions of an existing detached dwelling at 15A Lower Wycombe Road, Neutral Bay. DA 395/21 was granted consent by the North Sydney Local Planning Panel on 6 July 2022.

This application is reported to North Sydney Local Planning Panel for determination because the proposal will require modifications to a condition of consent imposed by the panel.

The proposed modification to retain the existing vehicular crossing will necessitate the deletion of a condition imposed by the panel, being Condition C8(2) (Driveway and Vehicular Access) of DA 395/21. This condition required the reduction of the concrete vehicular crossing over Council's footpath and verge to a maximum width of 3.5m, with the existing green verge being extended to the removed area of driveway.

The proposed change is considered to be acceptable, as it has been demonstrated that a minimum width of 4.8m is required for the crossing and driveway to ensure sufficient turning paths to the approved parking spaces. This means that the driveway could only be narrowed by 1.2m on the eastern side, which would only create a minimal 1m² area of additional green verge, and would not result in any improvement in on-street parking. This minimal increase is compared to the works required to reduce an existing crossing that was unchanged in the original proposal considered under DA395/21.

The proposal did not require notification, and the assessment has considered the performance of the application against Council's planning requirements.

It is considered that the proposed modification is acceptable as it will not result in any significant adverse impacts upon the locality or adjoining properties, and the streetscape character will be maintained, with the existing vehicular crossing and driveway retained at the same width. The proposal will also not result in any unreasonable impacts on the amenity of adjoining properties.

Having regard for the potential impacts upon the amenity of adjoining properties and the neighbourhood, subject to conditions, the development application is considered to be satisfactory 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, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment, and grant development consent to the modification of Development Consent No.395/21 dated 6 July 2022, application Ref. DA 395/21/2, on land described as 15A Lower Wycombe Road, Neutral Bay, under the provisions of Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 only in so far as will provide for the following: -

1. Condition C8 is amended as follows:

Driveway and Vehicular Access

C8. The proposed footpath boundary levels must match the level of the existing footpath boundary levels and if the internal parking slab levels are modified in order to accommodate the proposed turntable, any change to the existing driveway access must not cause scraping to the underside of vehicles and must be contained wholly within the subject property.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on, and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To maintain an acceptable vehicular access to the site.)

LPP05: 4F Whaling Road, North Sydney - DA 169/22

Applicant: House to Home Finishes Pty Ltd

Report of Andrew Beveridge, Assessment Officer

This development application seeks NSLPP approval for alterations and additions to the existing Unit 4F within the multi-dwelling development at 4 Whaling Road, North Sydney, including the addition of new windows with the roof and the extension of internal floor space by reducing the footprint of existing balconies and patios.

This application is reported to North Sydney Local Planning Panel for determination because the proposed works breach the building height limit by greater than 10% and results in additional floorspace, requiring determination by the panel.

The existing building has a maximum variance of 1.3m (15.3%) with the 8.5m height limit but the proposal will not result in any increase in the overall height of the existing building, the highest elements of which will have a variance of 1.1m (12.9%). However, the proposed alterations will also result in a floor space increase of approximately 12.6m² (19.8%) at ground floor level, and 12.82m² (20.9%) at first floor level, resulting in a total floorspace increase of 25.42m²

(20.3%). Therefore, as a result of the increase in floorspace with an existing height variance over 10%, the proposal is referred to the Panel for determination.

The applicant has submitted a written request seeking a variation to the building height development standard in accordance with Clause 4.6 of NSLEP 2013. The applicant's submission has been considered with reference to the Land and Environment Court's decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827 in order to justify the proposed variation. The applicant's Clause 4.6 is considered to be satisfactory given the site circumstances and on the basis that it will not have a significant impact upon the amenity of adjoining properties or the character of the conservation area.

Notification of the proposal has attracted no submissions and the assessment has considered the performance of the application against Council's planning requirements. The impacts of the overall development upon the Whaling Road Conservation Area have also been assessed and, subject to satisfying recommended conditions, was found to be generally acceptable on the basis that the works will maintain a sympathetic scale and will match the built form character of the existing building.

Having regard for the potential impacts upon the amenity of adjoining properties and the conservation area, the development application is considered to be satisfactory 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, assume the concurrence of the Secretary of The 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 grant consent to Development Application No. 169/22 for alterations and additional Unit 4F within the existing multi-dwelling development on land at 4 Whaling Road, North Sydney, subject to the attached site specific and standard conditions.

LPP06: 28 Darley Street, Neutral Bay – DA 115/22

Applicant: James Bowman, Archicode Architects Pty Ltd

Report of Ruth Bennett, Senior Assessment Officer

This development application seeks NSLPP approval for demolition of the existing rear wall and construction of a single storey rear addition including a patio to the rear to an existing single storey heritage-listed detached dwelling with associated landscaping located at 28 Darley Street, Neutral Bay.

The application is reported to North Sydney Local Planning Panel for determination as the proposed works involve partial demolition of a heritage item and determination of this type of application is required by the Local Planning Panel in accordance with the directions of the Minister for Planning, Industry and Environment.

notification of the proposal (original proposal and amended proposal) has attracted a total of two (2) joint submission from one (1) household which raised particular concerns including compliance with the LEP and DCP, loss of solar access, view loss, impacts on air flow, creates an 'unsightly' dwelling, has an insufficient setback from the boundary resulting in adverse effects on the enjoyment of their property. The assessment has considered these concerns as

well as the performance of the application against Council's planning requirements, including heritage considerations.

The development application has been assessed against the North Sydney Local Environment Plan 2013 and North Sydney Development Control Plan 2013 and was found to be satisfactory.

The proposal, including a new ground floor rear addition and landscaping, complies with the LEP maximum building height development standard of 8.5m, proposing a height of 4.302m for the rear extension. The height of the existing retained ridgeline over the front portion of the dwelling is 5.6m compliant with NSLEP 2013. The amended application exceeds the DCP site coverage of 50% proposing a site coverage of 51.84%, and the rear setback does not align with the adjoining dwellings.

Notwithstanding this minor variation from the DCP which is discussed later in this report, for the most part, the proposed amended development and the landscaping will not detract from the significance of the subject heritage-listed single storey dwelling.

The proposed amended development complies with the objective of the R2 (Low Density Residential) zone as the amended proposal will not detract from the significance of the subject heritage-listed building and is not visible from the street. The application was referred to Council's Conservation Planner who considered the amended proposal satisfactory as the additions did not adversely impact on the heritage significance of subject heritage-listed item.

The issues raised in the submissions have been addressed in this report.

Accordingly, the proposed development 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 as the consent authority, grant deferred commencement consent to Development Application No. 115/22 for alterations and additions to a detached dwelling on land at No. 28 Darley Street, Neutral Bay, subject to the following site-specific and attached standard conditions:-

AA. Deferred Commencement Conditions

This consent shall not operate until the following deferred commencement condition(s) has/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 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 Modifications (Length of Rear Addition)

AA1 The applicant must submit amended architectural drawings showing the rear elevation reduced in length by 1030mm, in order to reduce the floor area by 5.4m², and achieve compliance with site coverage of 50% of the site as required by NSDCP 2013.

Plans and specifications of the modified design must be submitted for the written approval of Council's Team Leader Assessments in consultation with Council's

Conservation Planner to ensure that the requirements of the conditions are satisfied.

(Reason: To retain the character of the existing dwelling and protect the heritage significance of the Darley Street Housing Group, and to ensure compliance with the requirement for site coverage to not exceed 50% of the site.)

Amended Landscape Plan

AA2 An amended landscape plan must be prepared and submitted for approval prior to the issue of a construction certificate. The landscape plan is to show the landscaping treatment for the front garden and rear garden including the species names, number and pot size of new planting.

The amended landscape plan must include the following:

- a) Details on planting within the front setback including Australian East Coast native plant palette of ornamental grasses, perennials and shrubs as outlined in Letter from James Bowman, Archicode Architect, dated 10 August 2022, subject: 'Strictly compliant landscaped area and additional tree plantings'.
- b) The provision of a winding path in traditional paving within front setback.
- c) A suitable selection and number of shrubs and trees within both the front and rear setbacks in order to provide suitable landscaping embellishment and mitigate privacy impacts with adjoining neighbours
- d) Details on protection of existing trees to be retained is to be provided
- e) Details on protection of existing street trees is to be provided
- f) Details on all new planting including name of the species, numbers and pot sizes, and planting details, establishment and maintenance is to be provided.

The revised landscape plan must be submitted for the written approval of Council's Manager Development Services in consultation with Council's Landscape Officer to ensure that the requirements of the condition are satisfied.

The Certifying Authority must ensure that the landscaping plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure a desirable landscaping outcome for the subject site and the locality.)

Heritage Requirements

AA3 The following heritage requirements are to be applied to the proposed development:

- a) New window W01 and door D01 to be timber-framed and not to be substituted with other materials.
- b) Mosaic tiles on front verandah to be retained.
- c) Existing cypress pine timber floors within the original dwelling to be retained and repaired with matching timber, or carpet may be laid above.
- d) Architectural features are to be reinstated as per Table 4 on pages 22-23 in the Heritage Impact Statement prepared by Chris Legge-Wilkinson and received at Council on 5 May 2022.
- e) Splayed chimney breasts to be reconstructed in the two front rooms with the salvaged mantle pieces and cast iron fireplaces. The new cast iron fireplace is to be similar to the existing salvaged fireplace. (Exterior chimneys do not have to be replaced).
- f) New decorative plaster ceilings in the Edwardian style may be installed where existing ceilings are damaged by rust and/or mould.
- g) Rear balustrade to new deck to be timber with a painted finish.
- h) Existing roof tiles may be replaced to match the existing where assessed by the heritage consultant as necessary.

(Reason: To ensure the heritage significance of the dwelling and Darley Street Group is retained.)

This consent shall not operate until such time as the written approval from Council's Manager Development Services stating that the requirements of the condition(s) have been satisfied.

Subject to the above deferred commencement conditions being satisfied within 12 months of the date of this determination, the consent shall operate in accordance with the attached conditions including the following standard and site-specific conditions:

Terms of the Consent

A5 Nothing in the approval of DA 115/22 grants consent for any physical works that have been carried out prior to the determination of this application (DA 115/22)

(Reason: To comply with Section 4.2 (Development that needs consent) in the EPA Act 1979)

Consolidation of Lots

G1 Prior to issue of Occupation Certificate, the lots shall be consolidated into one title which shall be registered with the NSW Land Registry Services (LRS)

(Reason: Orderly development of the land)
