



**NORTH SYDNEY LOCAL PLANNING PANEL**

**DETERMINATIONS OF THE NORTH SYDNEY LOCAL PLANNING PANEL  
MEETING HELD IN THE COUNCIL CHAMBERS, NORTH SYDNEY,  
ON WEDNESDAY 7 SEPTEMBER 2022, AT 2.00PM.**

**PRESENT**

**Chair:**

Jan Murrell in the Chair.

**Panel Members:**

John McNerney (Panel Member)  
Gerard Turrisi (Panel Member)  
Meredith Trevallyn-Jones (Community Representative)

**Staff:**

Stephen Beattie, Manager Development Services  
Robyn Pearson, Team Leader Assessments  
George Youhanna, Executive Planner  
Robin Tse, Senior Assessment Officer  
Michael Stephens, Senior Assessment Officer  
Andrew Beveridge, Assessment Officer

**Administrative Support:**

Stephen Beattie, Manager Development Services  
Robyn Pearson, Team Leader Assessments  
Peita Rose, Governance Officer (Minutes)

This meeting was conducted by remote (Zoom) means. In accordance with current guidelines the meeting was not held in public. However, applicants and their advisors were available to assist the panel with any enquires.

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, 3 August 2022 were confirmed following that meeting.

**2. Declarations of Interest**

Meredith Trevallyn-Jones declared a non-significant/non-pecuniary interest in Item 2.  
Gerard Turrisi declared a pecuniary interest in Item 5.

**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.*

A public meeting was held for Items 1 and 2 as there were more than 10 objections and Items 3,4,5, and 6 were determined in closed session as there were less than 10 unique submissions for these agenda items.

**ITEM 1**

<b>DA No:</b>	430/21
<b>ADDRESS:</b>	9 Undercliff Street, Neutral Bay
<b>PROPOSAL:</b>	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.
<b>REPORT BY NAME:</b>	Michael Stephens, Senior Assessment Officer
<b>APPLICANT:</b>	HJ Three Pty Limited

**2 Written Submissions**

The Panel acknowledges the additional written submission and has taken this into consideration in its determination.

**Registered to Speak**

<b>Submitter</b>	<b>Applicant/Representative</b>
Brian and Elizabeth Adams - Residents	Andrew Vingilis -Corben Architects - representing applicant
Geoff Jaeger - Resident	Kerry Gordon - KGPS - representing applicant
Jules Christensen - Resident	
Bob Thomas (observing only)	

**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 prior to determination.

The Council Officers Report, Recommendation and Conditions are endorsed subject to the following amendments to conditions as outlined below:

## Materials and Finishes

- A4. External finishes and materials must be in accordance with the submitted schedule DA24 B Finishes Board, drawn by Corban Architects, dated 3 June 2022, and received by Council, subject to the following amendments, unless otherwise modified by Council in writing, or as specified below:

**A) Garage Door - external finish to be specified as a mid-tone finish.**

**B) Driveway Surface - within the front setback area to be specified as mid-tone colour.**

(Reason: To ensure the development relates to the existing streetscape and has regard to the character of the area.

## 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 soffit material is to be an acoustic absorptive material having an NRC (Noise reduction coefficient) of 0.7 or higher.** 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 and provide noise attenuation)

## Dilapidation Report Private Property (Excavation)

- C5. A full dilapidation survey and report on the visible and structural condition of all neighbouring structures within the 'zone of influence' of the required excavations must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The zone of influence is to be defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

The dilapidation report and survey are to be prepared by a consulting structural/geotechnical engineer agreed to by both the applicant and the owner of any affected adjoining property. **A copy of the report is to be provided to Council and the relevant property owners whose property are the subject of the report,** if Council is not the Certifying Authority, prior to the issue of any Construction Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by the developer or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: To record the condition of property/i.e., prior to the commencement of construction)

### **Dilapidation Survey Private Property (Neighbouring Buildings)**

- C6. A photographic survey and dilapidation report of adjoining properties **Nos. 7 and 23 Undercliff Street** and **No's 1 and 5 Harriette Street** detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. **A copy of the report is to be provided to Council and the relevant property owners whose property are the subject of the report**, if Council is not the Certifying Authority, prior to the issue of any Construction Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the photographic survey and dilapidation report is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: Proper and transparent management of records)

### **Structural Adequacy of Adjoining Properties - Excavation Works**

- C8. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining properties **Nos. 7 and 23 Undercliff Street (Heritage Item)** and which certifies their ability to withstand the proposed excavation and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties during the course of the works, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

(Reason: To ensure the protection and structural integrity of adjoining properties in close proximity during excavation works and this includes the heritage item at No. 23 Undercliff Street)

### Geotechnical Report

- C9. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following:
- a) The type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;
  - b) The appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended;
  - c) The proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site);
  - d) The existing groundwater levels in relation to the basement structure, where influenced;
  - e) The drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilized in controlling groundwater. Where it is considered there is the potential for the development to create a “dam” for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilized; and
  - f) Recommendations to allow the satisfactory implementation of the works **and in particular this must address the heritage item at No. 23 Undercliff Street**. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/hydro geological engineer or suitable qualified expert with previous experience in such investigations and reporting.

It is the responsibility of the consulting geotechnical/ hydrological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate.

The design principles for the geotechnical report are as follows:

- a) no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure;
- b) no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- c) no changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- d) vibration is to be minimized or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development;
- e) appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and
- f) An adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage.

The report, satisfying the requirements of this condition, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The professional recommendations, implementation program, monitoring program, mitigation measures and the like contained in the report must be implemented in full during the relevant stages of excavation and construction.

(Reason: To ensure the structural integrity of the subject site and adjoining sites, including the adjoining heritage item at No.23, during the excavation process)

### **Amendments to the 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.
- **Incorporate the changes as required by Condition C39 Amendments to plans**

An amended landscape plan complying with this condition must be submitted to Council's **Landscape Development Officer** 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 the development sits within a landscaped setting and contributes to the canopy and greening of the neighbourhood)

*Insert additional condition as follows:*

#### **Amendments to Plans**

**C39. The plans referenced in Condition A1 are to be amended as follows:**

- a) **The retaining wall within the northwestern side setback that aligns with the front building line of the basement level (DA04 C) is to be set back an additional 2m behind the front building line to break down the width of the building form as viewed from the street. The area in front of the retaining wall is to be landscaped to soften the built form.**

**Plans and specifications which comply with this condition, including the amended landscape plan approved by Council's landscape development officer, 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 fully satisfy the requirements of this condition.**

(Reason: **To reduce the bulk from the street and provide a more appropriate juxtaposition with the adjoining heritage item.**)

#### **Panel Reason:**

The Panel has carefully considered the concerns of residents in its determination and has formed the view that it will not result in unreasonable impacts on adjoining properties given the R4 zone and planning framework with consideration against all relevant controls. The 4.6 written submission to allow for a height exceedance is approved and this is a precondition to the consent.



On a merits assessment the Panel notes from the Assessment Report that the height has the same RL as the existing roof. The R4 zone permits the existing residential flat building to be replaced with another flat building and does not rely on the existing use rights.

The Panel also notes that the front setbacks of the development along Undercliff Street are varied and that the proposed street setback for the subject site is not considered uncharacteristic. Furthermore, the development is compliant with the rear setback as well as the site coverage controls.

Although there is additional overshadowing on the adjoining property to the southeast it is generated by that part of the built form that is compliant with Council's height control, and the rear and side setback controls. Furthermore, the additional overshadowing impacts areas are secondary to the principle living areas and private open space of the adjoining property.

The Panel notes concerns about excavation and proximity to the heritage item at No. 23 Undercliff and in this regard has amended conditions C6, C8 and C9 (f).

The Panel has also imposed additional condition C39 to require a reduction in the building mass at ground level to have regard for the heritage item interface. This also entails the need to amend the landscape plan noting also that condition C38 requires additional landscaping to provide a more appropriate landscaped setting for the development. This condition is also amended to require the amended plan to be submitted for the approval of Council's Landscape Development Officer. Consequential amendments are also required to conditions C2 and A4.

The Panel does not agree with the Applicant's request to amend the condition for fixed shutters to be operable. This would require a full assessment of all windows to ensure privacy to adjoining properties.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Meredith Trevellyn-Jones	Y	
John McInerney	Y				
Gerard Turrisi	Y				

## ITEM 2

<b>DA No:</b>	323/21
<b>ADDRESS:</b>	124 Benelong Road, Cremorne
<b>PROPOSAL:</b>	Demolition of existing structures and construction of four (4) storey boarding house with 20 rooms.
<b>REPORT BY NAME:</b>	Brett Brown, Consultant Planner
<b>APPLICANT:</b>	Anthony Betros

Meredith Trevallyn-Jones declared a non-significant/non-pecuniary interest in this item and left the meeting.

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

Submitter	Applicant/Representative
Matthew Clearly - Resident	
Marc Johnson - Resident	

**Panel Determination**

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

The Council Officers Report and Recommendation is endorsed by the Panel and the application is refused.

The Panel wishes to add to refusal No. XI an additional room that is room no. 3.03.

**Panel Reason:**

The Panel concurs with the report that this proposal is not in character with the area and is an inappropriate built form. The internal amenity of the rooms is also considered to provide a poor level of amenity.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Meredith Trevellyn-Jones	Absent	
John McInerney	Y				
Gerard Turrisi	Y				

**ITEM 3**

<b>DA No:</b>	269/21/2
<b>ADDRESS:</b>	372 Military Road, Cremorne
<b>PROPOSAL:</b>	Section 4.55(2) application seeking modifications to Development Consent (D269/21) including various amendments to the deferred commencement approval for a five (5) storey mixed use development.
<b>REPORT BY NAME:</b>	Robin Tse, Senior Assessment Officer
<b>APPLICANT:</b>	Platino Properties Pty Ltd

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

Submitter	Applicant/Representative
	Paula Mottek - Platino Properties - Applicant
	Phillip Lord - Architect Platino Properties - Applicant

**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.

**Panel Reason:**

It is noted that the Applicant sought to table amended concept plans, however, the Panel did not accept these because they would require assessment. The Panel also did not agree to defer the matter as the changes proposed may constitute re-notification and should be the subject of a separate modification application.

The Panel agrees with the Applicant that condition AA1(d) of the deferred commencement should be deleted.

The Panel considers that part of the modification recommended for approval is substantially the same development as the original consent, it has been notified and assessed having regard to the relevant provisions of s4.15 of the Environmental Planning and Assessment Act, and the Panel has taken into consideration submissions received and the reasons in the original approval of the application.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Meredith Trevallyn-Jones	Y	
John McInerney	Y				
Gerard Turrisi	Y				

**ITEM 4**

<b>DA No:</b>	395/21/2
<b>ADDRESS:</b>	15A Lower Wycombe Road, Neutral Bay
<b>PROPOSAL:</b>	Modification of DA 395/21 to delete Condition C8(2)
<b>REPORT BY NAME:</b>	Andrew Beveridge, Assessment Officer
<b>APPLICANT:</b>	Alexander Laykoski, C/- Nolan Planning Consultants

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

Submitter	Applicant/Representative
	Alex Laykoski - Applicant
	Natalie Nolan – Consultant Planner

**Panel Determination**

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

The Council Officer's Report and Recommendation is not supported and therefore the modification application is refused.

**Panel Reason:**

The Panel is of the opinion that the original reason for the imposition of the condition still stands. The applicant's submission to justify the width of the crossing implies that vehicles will exit the garage without the need to use the turntable. If the turntable is utilised with both entry and exits, then there is not a need for the wider crossing. It is also considered that the approval as issued provides an improved streetscape and the opportunity for increased green verge.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Meredith Trevallyn-Jones	Y	
John McInerney	Y				
Gerard Turrisi	Y				

**ITEM 5**

<b>DA No:</b>	169/22
<b>ADDRESS:</b>	4F Whaling Road, North Sydney
<b>PROPOSAL:</b>	External alterations and additions to existing dwelling and associated works.
<b>REPORT BY NAME:</b>	Andrew Beveridge, Assessment Officer
<b>APPLICANT:</b>	House to Home Finishes Pty Ltd

Gerard Turrisi declared a non-significant/non-pecuniary interest in this item and left the meeting.

**No Written Submissions**

**Registered to Speak**

Submitter	Applicant/Representative
	Adrian Habib - Applicant
	Joumana Moore - representing applicant
	Melissa Rodrigues - Gat and Associates - representing the applicant

**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 consistent with the objectives of the standard and the zone objectives and therefore in the public interest.

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

The Council Officers Report, Recommendation and Conditions are endorsed by the Panel.

**Panel Reason:**

The Panel is satisfied that the development will not create unreasonable impacts and is acceptable.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Meredith Trevallyn-Jones	Y	
John McInerney	Y				
Gerard Turrisi	Absent				

**ITEM 6**

<b>DA No:</b>	115/22
<b>ADDRESS:</b>	28 Darley Street, Neutral Bay
<b>PROPOSAL:</b>	Alterations and additions to a heritage listed dwelling including demolition of the existing rear wall and construction of single storey rear addition with a patio.
<b>REPORT BY NAME:</b>	Ruth Bennett, Assessment Officer
<b>APPLICANT:</b>	James Bowman, Archicode Architects Pty Ltd

## 1 Written Submission

The Panel acknowledges the additional written submission and has taken this into consideration in its determination.

### Registered to Speak

Submitter	Applicant/Representative
	James Bowman - Archicode - Applicant
	Peri Webb - Owner

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

### Panel Determination

The Council Officers Report, Recommendation and Conditions are endorsed by the Panel.

### Panel Reason:

The Panel has carefully considered the adjoining neighbours concerns about: the overall height; length of the extension; overshadowing; and side boundary setback.

The built form in this immediate area is characterised by varied setbacks including setbacks of 100mm to 200mm to the side boundaries and reflect the period of the construction of the dwellings, many being heritage listed. The additions are considered to be modest and significantly below the height control of 8.5m. This proposal being a maximum of 4.302.

The Panel is of the opinion that reducing the wall height would impact on the internal amenity in terms of a consistent floor level and ceiling height to match the existing heritage item. Furthermore, given the north-south subdivision pattern, a reduction of the wall or overall height of the roof would not materially benefit the adjoining property, and given the controls the impacts are not unreasonable and would not justify a change to the proposal.

The Panel concurs with the recommended conditions, including that the building be reduced in length at the rear to comply with Council's 50% site coverage control.

With respect to overshadowing the Panel notes that the rear yards face north and this provides the opportunity for good solar access to the rear private open space.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Meredith Trevallyn-Jones	Y	
John McInerney	Y				
Gerard Turrisi	Y				

The public meeting concluded at 3:35pm.

The Panel Determination session commenced at 3:35pm.

The Panel Determination session concluded at 5:38pm.

Endorsed by Jan Murrell  
North Sydney Local Planning Panel  
**7 September 2022**