



NORTH SYDNEY COUNCIL

Council Chambers
26 May 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 1 June 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
ACTING GENERAL MANAGER

BUSINESS

Minutes

Confirmation of Minutes of the previous Meeting held on Wednesday 4 May 2022.
(Circulated)

LPP01: 199 Miller Street, North Sydney - DA 398/21

Report of Annelize Kaalsen of AK Planning

This development application seeks approval for alterations and additions to an existing hotel including the addition of a rooftop terrace, function space, lift and associated internal works. A total proposed patron capacity of 600 (increase of 150 patrons), with new trading hours for the rooftop terrace of 10am to 2am, Monday to Saturday and 10am to 10pm on Sundays.

The application is reported to North Sydney Local Planning Panel (NSLPP) for determination as more than 10 submissions objecting to the proposal were received by Council. This application is required to be determined by a public meeting of the Panel in accordance with the Directions from the Minister for Planning dated 10 August 2020 as there are more than 10 unique submissions.

The original notification of the application attracted a **total of twenty-one (21) submissions** including one in support. The additional information including an amended acoustic report and Plan of Management were re-notified and attracted **two (2) submissions**. In summary the submissions raised particular concerns with respect to compromised heritage significance, noise intrusion, trading hours, increase in number of patrons, overshadowing and adequacy of the Plan of Management. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

The subject site is listed as a heritage item under Schedule 5 of the NSLEP 2013 and is located in the vicinity of a number of heritage items within the North Sydney Commercial Core. An independent heritage assessment by Kemp and Johnson Heritage Consultants supports the proposal noting that the DA is considered to be acceptable in relation to the relevant objectives and controls of Clause 5.10 of the North Sydney LEP 2013, as the proposed works will not reduce the heritage significance of the heritage item or adversely impact on the significance of heritage items in the vicinity. The roof top terrace addition is setback 3.3m from the existing Miller Street façade and 2.6m from the Berry Street façade, and it complies with the maximum building height of RL80.00 pursuant to Clause 4.3 of the NSLEP 2013. The proposed built form is not readily visible behind the existing parapet and considered subservient to the original heritage fabric in addition landscape planting behind the parapet further softens the massing and visual impact.

The application was referred to the NSW Police who advised that the proposed use was considered low risk and recommended conditions of consent.

The proposed hours of operation are not consistent with the late night trading hours in North Sydney Development Control Plan 2013. Moreover, the application failed to demonstrate the ability to accommodate the intensification of the use through proposed trading hours beyond the Commercial Core hours and the increase in patron numbers. A condition of consent in this regard is recommended.

It is considered that insufficient physical acoustic measures have been introduced to ameliorate 150 people speaking loudly in a semi-enclosed environment. It is therefore recommended to restrict the use of the rooftop area with no amplified sound, music or entertainment of any form and restrict the patron capacity to 110, to ensure that the rooftop terrace does not result in unacceptable amenity impacts on the surrounding residential premises.

Following this assessment and having regard to the provisions of S4.15(1) of the Environmental Planning & Assessment Act 1979, the development application is considered to be reasonable in the circumstances and is recommended for **approval** subject to 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, assume the concurrence of the Secretary of Planning, Industry and Environment, and **approve** Development Application No. 398/21 for the alterations and additions to the existing hotel including the addition of a rooftop terrace, function space, lift and associated works, subject to following site specific conditions and attached standard conditions of consent:-

Restrictions on Use of the Roof Terrace

12. No amplified sound or entertainment and the like shall be provided on the roof top terrace area.

(Reason: To ensure that the use of the roof terrace area does not result in unacceptable amenity impact on neighbours and the area, and the use is consistent with the maximum LAB noise criteria)

Hours of Operation - Roof top terrace only

14. The hours of operation are restricted to 10.00am and 11.00pm Monday to Sunday.

Upon expiry of the permitted hours:

- a) all restaurant and bar service must immediately cease;
- b) no person shall be permitted entry; and
- c) all customers on the premises must be required to leave within the following half hour.

(Reason: to ensure that amenity of the surrounding locality is maintained and hours of operation are consistent with those in surrounding locality)

Trial Period – Roof Top Terrace Hours of Operation

15. Notwithstanding Condition 14, the roof top terrace may operate between 10:00am and 12 midnight on Fridays and Saturdays for a trial period of 12 months from the date of issue of the Occupation Certificate. Should the applicant wish to continue to trade outside those hours referred to in Condition 14 following the end of the trial period, a Section 4.55 application must be lodged within 6 months of end of the trial period for Council's consideration.

Note: Consideration of the continuation of extended trading hours will be based on, among other things, the performance of the operator in relation to compliance with development consent conditions and any substantiated complaints received.

(Reason: Information to ensure that amenity of the surrounding locality is maintained and hours of operation are consistent with those in the surrounding locality)

Maximum Capacity – Premises

16. The maximum number of patrons within the level 2 roof top terrace allowed by this consent is 110 persons.

A notice must be displayed at all times in the front window of the premises (or any other clearly visible place) identifying the maximum capacity described in (a) and (b) above.

(Reason: Protection of residential amenity, provision of public information, and to assist in assessing ongoing compliance)

LPP02: 1 Warung Street, McMahons Point - DA 379/21

Report of Miguel Rivera, Senior Assessment Officer

The Applicant seeks development consent from the North Sydney Local Planning Panel (NSLPP) for partial demolition of existing residential flat building, excavation and construction of basement, new basement entry from Henry Lawson Avenue and construction of a new apartment additions above, and substantial alterations of remaining apartments on land identified as No 1 Warung 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 has attracted 10 or more unique submissions by way of objection; involves a departure from a development standard that is greater than 10%; and is considered sensitive development which State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) applies.

Council's notification of the original plans has attracted a total of eleven (11) submissions from eight (8) individual addresses and the Lavender Bay Precinct Committee and Union Precinct Committee, raising concerns regarding impacts on the sandstone cutting to Henry Lawson Avenue, breach to maximum building height, bulk and scale, impacts associated with traffic, safety, amenity, view loss, privacy and solar access, loss of landscaped areas, excavation, uncharacteristic built form, and impacts on the heritage conservation area. Amended plans illustrating a revised scheme were re-notified in April 2022, which attracted a further eight (8) submissions from four (4) individual addresses and the Lavender Bay Precinct Committee.

The development application was assessed against relevant State Planning Policies such as SEPP 65, as well as Council policies including the North Sydney Local Environmental Plan 2013 (NSLEP 2013) and North Sydney Development Control Plan 2013 (NSDCP 2013). Having regard for the context of the site and the applicable environmental planning controls the proposed development will result in an undesirable and unacceptable design and planning outcome that fails to appropriately respond to the site's unique constraints, context and setting. The proposed development is regarded as in-fill development that would not contribute positively to the streetscape, conservation area, foreshore zone and public domain and is a clear reflection that the site is not suitable for the development as proposed. This is further demonstrated by the excess bulk and scale, poor aesthetic and architectural expression, significant adverse impacts on heritage and streetscape and the lack of residential amenity attributed to the scheme.

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 11.7m above natural ground level. This represents a departure of 3.2m or 38% from the development standard. The Applicant submitted a written request pursuant to Clause 4.6 of the NSLEP 2013. The request is not supported as insufficient planning grounds were provided and the included information failed to demonstrate that compliance with this development standard is unreasonable or unnecessary.

The assessment of the proposed development considered the concerns raised in the submissions and its performance against Council's planning requirements. Following this assessment and 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 the SEPP 65 and 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 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 R3 – Medium Density Residential 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. 379/21 for development involving partial demolition of existing residential flat building, construction of below ground basement with reconstructed and new apartment addition above and configuration of remaining apartments, on land at No. 1 Warung Street (legally described as SP 1927), as shown on Architectural Plans, prepared by Squillace and dated 28/03/22, for the following reasons:

1. 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) State Environmental Planning Policy (Biodiversity and Conservation) 2021 – impacts on stability and integrity of rock wall and unable to satisfy relevant provisions under Chapter 10.
- b) State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development – unable to achieve design quality principles (Principles 1, 2, 3, 4, 6, 7 and 9) under Schedule 1 and key guidance/criteria under the Apartment Design Guide.
- c) North Sydney Local Environmental Plan 2013 – Aims of the Plan – unable to satisfy the key aims (2)(a), (2)(b), (2)(c) and (2)(e).
- d) North Sydney Local Environmental Plan 2013 – objectives of R3 zone relating to not compromising amenity of surrounding area and natural and cultural heritage of the area, providing a suitable visual transition between high density and low density residential areas and ensuring a high level of residential amenity is achieved and maintained.
- e) North Sydney Local Environmental Plan 2013 – objectives of Clause 4.3 – unable to satisfy the objectives (1)(a), (1)(b), (1)(c), (1)(e), (1)(f) and (1)(g).
- f) North Sydney Local Environmental Plan 2013 – Clause 4.6 – the consent authority is not satisfied as per provisions (3) and (4).

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- g) North Sydney Local Environmental Plan 2013 – Clause 5.10 – unable to satisfy the provisions under this clause.
 - h) North Sydney Local Environmental Plan 2013 – Clause 6.10 – unable to satisfy the provisions under this clause.
 - i) North Sydney Development Control Plan 2013, Part B, Section 1 – Environmental Criteria (Section 1.3) – failure to meet objectives and controls.
 - j) North Sydney Development Control Plan 2013, Part B, Section 1 – Quality Built Form (Section 1.4) – failure to meet objectives and controls.
 - k) North Sydney Development Control Plan 2013, Part B, Section 1 – Quality Urban Environment (Section 1.5) – failure to meet objectives and controls.
 - l) North Sydney Development Control Plan 2013, Part B, Section 13 – Heritage and Conservation – failure to meet objectives and controls.
 - m) North Sydney Development Control Plan 2013, Part C, Section 9 – McMahons Point South Conservation Area (Section 9.8) – failure to meet objectives and controls.
2. 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: heritage, streetscape, view loss, privacy, amenity, overshadowing (solar access), structural stability and integrity of adjoining land.
 3. 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 bulk, scale and density, topography response, context and setting response – not sympathetic to heritage conservation area and foreshore area, adverse impacts and lack of residential amenity for future occupants.
 4. 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 response to conservation and foreshore areas, endorsement of an unacceptable non-compliance to the maximum building height provision under Clause 4.3 and non-compliances with criteria under SEPP 65 and design guidance under the ADG.

LPP03: 107 High Street, North Sydney - DA 218/21

Report of Annelize Kaalsen of AK Planning

This development application seeks consent for the demolition all the existing structures on site and construction of a four storey residential flat building comprising ten (10) units, including two basement levels accommodating 18 car spaces (including 3 visitors spaces) and associated landscape works at No. 107 High Street, North Sydney.

The application is reported to the North Sydney Local Planning Panel for determination as the application is a sensitive development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment*

Development applies, and the application attracted more than 10 unique submissions. The application is to be determined by way of a public meeting.

The site zoned R4 High Density Residential and is located within the Careering Cove Conservation Area under the North Sydney LEP 2013, it is also nominated as a neutral item under Section 13 of the North Sydney DCP 2013.

Notification of the proposal attracted **nineteen (19)** unique submissions (including one from the Milsons Precinct). The submissions received raised particular concerns regarding demolition of a neutral item; heritage impacts, view loss, amenity impacts including overshadowing and overlooking, bulk and scale; inconsistency with the streetscape; uncharacteristic built form; uncharacteristic curved roof form; excessive excavation; tree removal, traffic congestion and insufficient on-site parking; construction concerns including geo-technical stability; drainage; dust noise and truck movements.

The Design Excellence Panel did not support the demolition of the neutral item because the replacement building fails to contribute to the improvement and enhancement of the character of the conservation area. Overall, the proposal is not satisfactory having regard to the design criteria specified in the Apartment Design Guide and does not demonstrate design excellence, failing to satisfy the 10 Design Principles of SEPP 65. The inconsistencies with the ADG are considered sufficient grounds for refusal having regard for the cumulative adverse impact on the overall amenity.

The proposal does not satisfy the population mix; views; solar access; context; form massing scale; built form character; roofs; high quality residential accommodation; landscape area; front gardens and heritage conservation controls within the NSDCP 2013.

An independent heritage assessment by Kemp and Johnson Heritage Consultants in principle supports the demolition of the existing building. However, Kemp and Johnson emphasise that demolition **is only** supportable in the circumstances when the *“replacement development achieves a built outcome which is compatible with the Careering Cove Conservation Area.”*

The proposed replacement building results in a four storey built form creating massing which is considered out of scale with the predominantly two storey inter-war residential flat buildings within the immediate area. Moreover, the proposed four storey apartment building with curved elevations and roof form, is inconsistent with the predominant built form character of the immediate streetscape as well as the characteristic built elements of the Careering Cove Conservation Area. As such the demolition is not warranted in the circumstances where the replacement building fails to enhance the character of the conservation area.

Following this assessment and having regard to the provisions of s4.15(1) of the Environmental Planning & Assessment Act 1979, the application is recommended for **refusal** for the reasons as set out in this report.

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, and **refuse** Development Application No. 281/21 for the demolition of the existing residential flat building and the construction of a new four storey residential flat building, parking, landscaping and associated works, for the following reasons:-

- 1. The proposed development fails to satisfy Clause 1.2(2) Aims in Part 1 of the NSLEP 2013**

Particulars

- a) The application fails to allow for a bulk and scale which is compatible with the existing and desired future character of the area inconsistent with aim 2(b)(i);
- b) The application fails to ensure that new development does not adversely affect residential amenity in terms of solar access and view sharing, inconsistent with aim 2(c)(i); and
- c) The application fails to protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance, inconsistent with aim 2(f).

2. The proposed development does achieve the objectives of the R4 High Density Residential zone**Particulars**

- a) The proposed development fails to provide for a variety of housing types within the high density residential environment – dot point 2
- b) The proposed built form is inconsistent with the established and desired character of the Careering Cove Conservation Area – dot point 4.
- c) The proposed development would not achieve a reasonably high level of residential amenity given that there are an insufficient proportion of apartments that received adequate solar access to their primary living spaces and outdoor spaces– dot point 5.
- d) The proposed development would not maintain a reasonably high level of residential amenity for surrounding properties given the unreasonable overshadowing and view loss – dot point 5.

3. The application results in adverse impacts on the significance of the Careering Cove Conservation Area due to its failure to satisfy the heritage requirements of Clause 1.2 and Clause 5.10 of the North Sydney Local Environmental Plan 2013 as well as the heritage requirements of Section 13 the North Sydney Development Control Plan 2013.**Particulars:****North Sydney LEP 2013**

- a) Clause 5.10(1) in Part 5 of the NSLEP 2013, specifically objective (a) to conserve the environmental heritage of North Sydney;
- b) Clause 5.10(1) in Part 5 of the NSLEP 2013, specifically objective (b) to conserve the heritage significance of the conservation areas, including associated fabric, settings and views;
- c) Clause 5.10(4) in Part 5 of the NSLEP 2013, specifically the adverse effect of the proposed development on the significance of the Careering Cove Conservation area;

North Sydney DCP 2013

- d) The proposed development is inconsistent with the objectives or the provisions of Section 13 Heritage and Conservation of the NSDCP 2013, particularly:-
 - i. Section 13.6.2 Form massing and scale, as the proposal does not compliment the character and significance of the Careering Cove Conservation Area. The four storey scale and curved roof form is unsympathetic to the character and significance of the area inconsistent with O1; O2; P1; P2 and P9;
 - ii. Section 13.6.3 Roofs, as the proposed curved roof form is uncharacteristic and inconsistent the predominant roof forms within the CA, inconsistent with O1 and P1.

- iii. Section 13.6.6 Infill Development within Conservation areas, as the proposal fails to respond to the setting and character of significant buildings within the immediate vicinity and the CA, inconsistent with O1 and P1;
 - iv. Section 13.8 Demolition, as the application fails to retain buildings which reflect the significance of the character of the CA, failing to satisfy O1; P6(b). In particular, the proposed replacement building is not compatible with the characteristics of the immediate vicinity within the conservation area, which is a distinctive area of two storey, pitched roof inter-war residential flat buildings.
- 4. The proposed development does not comply with the design principles of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development and amenity controls outlined in the Apartment Design Guide.**

Particulars

- a) Failing to satisfy Principles 1 and 2 Context and Build Form and Scale:-
 - i. The proposal is inconsistent with the predominant two storey built form character of the immediate streetscape as well as the Careering Cove Conservation Area, failing to satisfy Section 1B Context.
 - ii. The proposed scale does not support the existing and desired future character, failing to allow for an appropriate massing and spaces between buildings in accordance with Section 2F building separation.
 - b) Failing to satisfy Principle 6 Amenity:-
 - i. Three (3) of the ten apartments (30%) do not receive sufficient solar access which fails to comply with the design requirement in 4-A of the Apartment Design Guide.
 - ii. The proposal fails to allow for sufficient solar access to the private open spaces of apartment as required in Section 4E of the Apartment Design Guide.
 - iii. Bedrooms fronting High Street on the ground floor is partially below existing ground level with compromised amenity and the sunken courtyards receive limited solar access, inconsistent with Section 4L of the Apartment Design Guide.
 - c) Failing to satisfy Principle 8 Housing diversity and social interaction:-
 - i. Failing to provide for an apartment mix which caters for different household types inconsistent with Section 4K of the Apartment Design Guide.
- 5. Uncharacteristic form of development**

The proposed four storey replacement residential flat building with curved roof form fails to allow for a complementary and respectful building form and scale. It is considered to overwhelm the surrounding context and is not considered characteristic or in keeping with the established character of the Careering Cove Conservation Area. The proposed development is contrary to the following provisions:

Particulars:

The proposed development is contrary to the following:-

- a) Aims of NSLEP 2013, specifically (2)(b)(i);
- b) Clause 5.10(4) Heritage Conservation of NSLEP 2013;

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- c) Objective O1 and Provisions P1 in Part B, Section 1.4.1 Context in NSDCP 2013;
 - d) Objective O1 in Part B, Section 1.4.7 Form, massing & scale in NSDCP 2013;
 - e) Objective O1 and Provision P1 in Part B, Section 1.4.8 Built form character in NSDCP 2013;
 - f) Objective O1 and Provisions P1 in Part B, Section 1.4.10 Roofs in NSDCP 2013; and
 - g) Inconsistent with Section 8.3.6 Characteristic built elements in Part C of the NSDCP 2013.
6. **The proposed development does not comply with the following provisions pursuant to the North Sydney DCP 2013.**

Particulars:

The proposed development is contrary to the following:-

- a) Objective O1 and Provisions P1 in Part B, Section 1.2.1 Population Mix in NSDCP 2013;
 - b) Objective O2 and Provisions P2 and P4 in Part B, Section 1.3.6 Views in NSDCP 2013;
 - c) Objective O1 and Provisions P1 and P3 in Part B, Section 1.3.7 Solar access in NSDCP 2013;
 - d) Objective O1 in Part B, Section 1.5.1 High Quality of Residential Accommodation in NSDCP 2013;
 - e) Objective O1 and Provisions P1 in Part B, Section 1.5.6 Landscape Area in NSDCP 2013;
 - f) Objective O2 and P6 in Part B, Section 1.5.8 Front Gardens in NSDCP 2013;
7. **Not considered to be in the public interest or suitable for the subject site.**

The proposed development is not considered suitable for the subject site nor in the public interest.

Particulars:

- a) The proposed development would set an undesirable precedent for the Careering Cove Conservation Area and is considered to be unsuitable for the subject site contrary to Section 4.15(c) of the Environmental Planning and Assessment Act 1979 (as amended)
 - b) The application raising particular concern about heritage impacts, view sharing, amenity impacts including overshadowing and overlooking, bulk and scale; inconsistent with streetscape / built form character; roof form; excessive excavation; tree removal, traffic congestion and insufficient on-site parking; construction concerns including geo-technical stability; drainage; dust noise and truck movements.
 - c) The proposal is not considered to be in the public interest contrary to Section 4.15(e) of the Environmental Planning and Assessment Act 1979 (as amended).
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LPP04: 34 Phillips Street, Neutral Bay - DA 141/21/3

Report of Thomas Holman, Assessment Officer

This application made under section 4.55(2) of the Environmental Planning and Assessment Act 1979 seeks to modify development consent (DA 141/21) for the demolition of an existing dwelling house and garage and construction of a new two storey dwelling house and associated landscaping.

The modification application is reported to the North Sydney Local Planning Panel for determination because the proposed amendments involve a condition of consent that was amended by the Panel (C22b *Privacy* of DA Consent No. 141/21). Subsection b of Condition C22 required a fixed aluminium privacy screen for both window FW03 and FW04 on the western elevation, however, the modification application seeks to install a privacy screen to FW04 only and instead construct a wider planter bed (1.3m) with screen planting adjacent to window FW03 to maintain the original intent of the condition as amended by the Panel.

The modification application also seeks to enlarge the basement to provide additional storage, a cellar/gym and plant room, and is accessed by an internal lift and stairs. The size of the basement which has been reduced from that originally proposed is acceptable, proposing only non-habitable uses pursuant to the requirements of Provision P4, s1.3.1 of NSDCP 2013 and provides appropriate setbacks to side boundaries. The proposed basement minimises any detrimental impact on neighbouring amenity, soil stability and natural features including vegetation on the site and surrounds subject to existing conditions of consent.

The modification application seeks to address privacy requirements outlined in conditions of consent (C22 *Privacy* and C23 *First Floor Design Modification*) such as reducing the size of windows, applying additional privacy measures such as privacy screens and increasing the depth of planter beds on the western side of the first floor terrace to ensure a reasonable level of visual privacy is provided for the residents of the adjoining properties.

Amendments are proposed to the landscaping with two additional trees (*Tristaniopsis laurina*) proposed within the rear garden. The modified Landscape Plan provides appropriate planting for the level 1 western terrace planter bed and replaces a gravel sculpture garden with a garden comprising groundcovers and grasses as required by Condition C28 *Amendments to the Landscape Plan*.

Minor additional building works are also proposed including internal alterations, with the general bulk and scale of the dwelling and height remaining as stipulated by the requirements of the deferred commencement condition AA1 *Height of Building* in Development Consent.

The application was notified in accordance with Council's Community Engagement Protocol. One submission was received and is addressed in this report.

Following this assessment, this application to modify the development consent is considered to be reasonable in the circumstances and is recommended for **approval**

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, under section 4.55 of the Act grant consent to modify development consent DA No. 141/21 originally granted 14 December 2021 in relation to the proposed extension to the size of the basement, and alterations to the elevations and roof top at 34 Phillips Street, Neutral Bay only insofar as will provide for the following:

A. Impose Condition A4 as follows:**Development in accordance with Plans (s4.55 Amendments)**

A4. The development being carried out in accordance with plans identified in Condition A1 of the consent and A4 of the modification to consent endorsed with Council's approval stamp, except as modified by the modifications shown on:

Plan Nos.	Revision No	Description of works	Prepared by	Dated
455.01	B	Site Plan	David Selden Design	10/02/2022
455.02	B	Roof Plan		10/02/2022
455.03	B	First Floor Plan		10/02/2022
455.04	C	Ground Floor Plan		10/05/2022
455.05	C	Basement Plan		10/05/2022
455.06	B	Street/Southern Elevation		10/02/2022
455.07	B	Western Elevation		10/02/2022
455.08	B	Northern Elevation		10/02/2022
455.09	B	Eastern Elevation		10/02/2022
455.10	B	Section AA		10/05/2022
455.11	B	Section BB		10/02/2022
EF.01	A	External Finishes	Spirit Level Designs Pty Ltd	10/05/2022
L102		Landscape DA Plan		10/05/2022

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

B. Impose Condition C30 and C31 as follows:**Soil Depth**

C30. The following soil depths are required to be achieved, as stipulated by Spirit Level Designs Pty Ltd in the Landscape Statement dated 04 May 2022 and received by Council on 10 May 2022.

Boundary	Location	Soil Depth (mm)
Eastern Boundary	Within landscaped eastern setback of the site.	900mm depth from slab to FGL.
Western Boundary	Within lower level of landscaped side setback of the site.	400mm depth from slab to FGL.
Western Boundary	Within upper level planter of western side setback of the site.	600mm depth from slab to FL.

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 that soil depths are retained to achieve long term healthy growth of planting within the side setbacks of the site)

Works to be Completed within the Subject Site

C31. The approved works must be wholly contained within the site of No. 34 Phillips Street, Neutral Bay, and must not result in any encroachment into neighbouring lots or Council's road reserve. Under no circumstances shall the boundary retaining walls extend into adjoining lots without the prior written consent of the adjoining owner(s).

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of

any Construction Certificate.

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

(Reason: To ensure the protection and structural integrity of adjoining properties, and that common law property rights are recognised)

C. Delete Conditions C22 and C23 as follows:

D. Modify Conditions A3, C26, C28, G10, G11 and I2 as follows:

External Finishes & Materials

A3. External finishes and materials must be in accordance with the submitted schedule dated 26 April 2022, prepared by David Selden Design and received by Council on 10 May 2022. Where there are matters not covered by the finishes schedule other finishes must be in accordance with Council's condition (C7 External Colours and Finishes).

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

BASIX Certificate

C26. Under clause 75 of the Environmental Planning & Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A1198659S_02 dated 25 January 2022 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)

Amendments to the Landscape Plan

C28. The landscape plan (L102 Rev I) must be amended as follows to provide an appropriate landscape setting:

- The front south western garden is to have a maximum RL of 55.40 as stipulated in the Ground Floor Plan (455.04 Rev B). No modification or alteration to existing soil levels within the Tree Protection Zone of the Jacaranda mimosifolia shall occur.
- The existing front boundary stone wall subject to an increase in height shall be extended without excavation and/or earthworks within the TPZ of the Jacaranda mimosifolia. If excavation or earthworks are required within the TPZ of the Jacaranda mimosifolia sensitive construction techniques including hand excavation is required under supervision of a project arborist and no roots greater than 40mm shall be cut.

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)

Landscaping

G10. The landscaping shown in the approved landscape plan numbered L102 I (as amended by Condition C28) prepared by Spirit Level dated 06/05/22 and received by Council on 10/05/22 must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

Compliance with Certain conditions

G11. Prior to the issue of any Occupation Certificate, Conditions C6 and C28 must be certified as having been implemented on site and complied with.

(Reason: To ensure the development is completed in accordance with the requirements of this consent)

Maintenance of Approved landscaping

I2. The owner of the premises at 34 Phillips Street, Neutral Bay is to maintain the landscaping approved by this consent and as modified under Condition C28 *Amendments to the Landscape Plan* generally in accordance with drawing number L102 I dated 06/05/2022.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved. Should it be desired to substitute plants which are not of the same mature height, canopy density and nature (particularly flowering for non flowering, native for exotic, deciduous for non deciduous or the reverse of any these) a modification to this consent will be required.

(Reason: To ensure maintenance of the amenity, solar access and views of adjoining properties)

LPP05: 30-34 Grosvenor Street, Neutral Bay - DA 237/20/3

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 (D237/20) for redevelopment of the subject properties to construct a new four (4) storey residential flat building including internal layout changes, building height increases, level 3 extension and a reduced communal terrace.

The application is reported to NSLPP for determination because the proposed modifications involve a further departure from the maximum height of buildings development standard in Clause 4.3 in NSLEP 2012 in accordance with the Local Planning Panels Direction made by the Minister for Planning on 30 Jun 2020.

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

The application has been assessed against the North Sydney LEP 2013 and North Sydney DCP 2013 and SEPP 65 – Design Quality of Residential Flat Building and generally found to be satisfactory.

The proposed modifications, as amend by conditions of consent, would result in a development which is substantially the same development as originally approved as the proposal would not materially change the building height, setbacks, and the

visual mass of the development as approved under the original development consent.

The proposed modifications to the building elements above the LEP maximum building height limit would have no material impacts on the built form of the approved apartment building, its visual mass and the overall character of the locality but add yield above the 12m building height limit which previously provided a planning benefit in communal space. The recommended design amendments requiring the deletion of the proposed level 3 extension and the retention of the communal terrace as originally approved is in line with the reasoning behind the granting of the height variation in the original DA approval. The required design amendments would also maintain the approved four (4) storey stepped built form.

The proposed modifications, as amended by conditions of consent, would not cause any material amenity impacts for the adjoining properties in terms of view loss, overshadowing and loss of privacy. The amenity for the future residents of the development would be maintained with the retention of the communal facilities as originally approved.

The proposal was found to be acceptable in the site circumstances and is recommended that the subject section 4.55(2) application be **approved** with modifications to existing conditions of consent and the addition of new conditions.

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 **D273/20** dated 3 March 2021 in respect of a proposal to redevelopment the site for a four storey residential flat building with basement parking at Nos 30-34 Grosvenor Street, Neutral Bay under the provisions of section 4.55 of the Environmental Planning and Assessment Act only insofar as will provide for the following:

- To modify the conditions of (D237/20) in particular conditions A1, C40 and G21 to read as follows:***

Development in Accordance with Plans (S4.55 Amendments)

The development being carried out in accordance with the following drawings:

Drawing No.	Date	Drawn by	Received
A0011 Rev B	11/12/2020	Koichi Takada Architects	14 January 2021
A0098 Rev B	11/12/2020	Koichi Takada Architects	14 January 2021
A0099 Rev B	11/12/2020	Koichi Takada Architects	14 January 2021
A0100 Rev B	11/12/2020	Koichi Takada Architects	14 January 2021
A0101 Rev B	11/12/2020	Koichi Takada Architects	14 January 2021
A0102 Rev B	11/12/2020	Koichi Takada Architects	14 January 2021
A0103 Rev B	11/12/2020	Koichi Takada Architects	14 January 2021
A0104 Rev B	11/12/2020	Koichi Takada Architects	14 January 2021
A0200 Rev B	11/12/2020	Koichi Takada Architects	14 January 2021
A0201 Rev B	11/12/2020	Koichi Takada Architects	14 January 2021
A0300 Rev B	11/12/2020	Koichi Takada Architects	14 January 2021

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D237/20/2:

Plan Nos.	Description of works	Prepared by	Dated
A0097 Rev B	Basement 02 Floor Plan	Team 2 Architects	29 November 2021
A0098 Rev D	Basement 01 Floor Plan	Team 2 Architects	3 September 2021
A0099 Rev D	Lower Ground Floor Plan	Team 2 Architects	3 September 2021
A0100 Rev D	Ground Floor Plan	Team 2 Architects	3 September 2021

A0101 Rev D	Level 01 Floor Plan	Team 2 Architects	3 September 2021
A0102 Rev D	Level 02 Floor Plan	Team 2 Architects	3 September 2021
A0103 Rev D	Level 03 Floor Plan	Team 2 Architects	3 September 2021
A0104 Rev D	Level 04 Ground floor Plan	Team 2 Architects	3 September 2021
A0105 Rev D	Roof Plan	Team 2 Architects	3 September 2021
A0200 Rev D	Elevations 01	Team 2 Architects	3 September 2021
A0201 Rev D	Elevations 02	Team 2 Architects	3 September 2021
A0300 Rev D	Section 01	Team 2 Architects	3 September 2021

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D237/20/3:

Plan Nos.	Description of works	Prepared by	Dated
A0097 Rev C	Basement 02 Floor Plan	Team 2 Architects	13 December 2021
A0098 Rev E	Basement 01 Floor Plan	Team 2 Architects	13 December 2021
A0099 Rev E	Lower Ground Floor Plan	Team 2 Architects	13 December 2021
A0100 Rev E	Ground Floor Plan	Team 2 Architects	13 December 2021
A0101 Rev E	Level 01 Floor Plan	Team 2 Architects	13 December 2021
A0102 Rev E	Level 02 Floor Plan	Team 2 Architects	13 December 2021
A0103 Rev E	Level 03 Floor Plan	Team 2 Architects	13 December 2021
A0104 Rev E	Roof Plan	Team 2 Architects	13 December 2021
A0200 Rev D	Elevations 01	Team 2 Architects	13 December 2021
A0201 Rev D	Elevations 02	Team 2 Architects	13 December 2021
A0300 Rev D	Section 01	Team 2 Architects	13 December 2021

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

BASIX Certificate

C40. 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. 1136420M_06 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)

Compliance with Certain conditions

G21. Prior to the issue of any Occupation Certificate, Conditions A8, A9, A10, C1, C2, C3, must be certified as having been implemented on site and complied with.

(Reason: To ensure the development is completed in accordance with the requirements of this consent)

2. To insert new conditions A8, A9, A10 and C45 to read as follows:

Terms of Consent (D273/20/3)

A8. Approval is granted for the following modifications only:

(a) Basement Levels 1 & 2:

- Modifications to the northern basement piling walls to allow a fire egress door on the lower ground level;

(b) Lower Ground Floor:

- Modifications to the design of the fire booster assembly and the temporary bin storage area along the Young Street

- (eastern) property boundary;
- Construction of a new retaining wall along the northern property to the north of the basement car park entry;
- (c) Ground Floor:
 - Modifications to the main (Grosvenor Street) pedestrian entry with the addition of an awning and the deletion of the entry staircase with the retention of an accessible ramp;
 - Addition of air intake grill adjacent above a plant room adjacent to the basement garage entry;
- (d) Roof Level:
 - An increase in the maximum height of the lift overrun from RL92.85 to RL93.00;
 - Installation of solar panels on the roof as per BASIX requirements;
 - Addition of a plant enclosure for hot water plant and carpark exhaust adjacent to the lift overrun;
- (e) External Works:
 - Modifications to the locations of the external screens on all levels to suit the internal layout changes including the provision of sliding screens to the northern living room windows of apartment Nos 002 and 301 as per Condition A10;
 - Modifications to the design of the balustrades to steel flat bar;
- (f) Modifications to the floor levels on Levels 3, Roof and the level at the top of the lift overrun :

Level	Approved	Proposed
Basement 02	RL69.65	RL69.65
Basement 01	RL72.50	RL72.50
Lower Ground	RL75.65	RL75.65
Ground	RL78.85	RL78.85
Level 01	RL82.00	RL82.00
Level 02	RL85.15	RL85.15
Level 03	RL88.30	RL88.45
Roof	RL91.40	RL91.55
Top of Lift overrun	RL92.85	RL93.00

- (g) Various internal layout adjustments to apartments (Proposed unit areas as shown in the table below):

Level/ Nos. of Units & Type	Approved	Proposed
Lower Ground: 1 x 2B + Study	110sqm	110sqm
Ground: 1 x 1B 2 x 3B	66sqm 131sqm & 140sqm	66sqm 130sqm & 139sqm
Level 01: 2 x 3B	119sqm & 158sqm	119sqm & 158sqm
Level 02: 2 x 3B	146sqm & 158sqm	146sqm & 158sqm
Level 03: 1 x 4B	159sqm (3B)	159sqm (3B)
Level 03: Communal Terrace	208sqm	74sqm

No approval is given or implied in this consent for any other works, both internal and external, including the proposed level 3 extension and associated changes to apartment No. 301 and the communal terrace, within the subject property.

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

No approval for works on Level 3

A9. The following proposed works to modify level 3 of the subject building, and as marked in red on the stamped plans, are not approved and form no part of this consent:

- Partial conversion of the approved communal area to facilitate an extension of Apartment No. 301 to provide an extended living area and a private outdoor terrace;
- Re-configuration of the internal layout of apartment No.301 to increase the number of bedrooms from three (3) to four (4);
- Enclosure of the lift lobby and a new glazed doorway to the modified communal roof terrace;
- Increase the area of apartment No. 301 from 159sqm to 188sqm; and
- Reduction in the area of the communal area on this level from 208sqm to 74sqm
- Extension of the roof by 5m over the modified communal terrace and Apartment No.301.

The layout for level 3 as shown on drawing numbered A0103 Rev D, prepared by Team 2 Architects and dated 3 September 2021 shall be retained.

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 retain the approved layout for level 03 and to ensure compliance)

External Sliding Screens for Apartments 002 and 301

A10. External sliding screens shall be provided for the northern living room windows for Apartment No. 002 on the ground floor and Apartment 301 on level 3 to provide screening for unprotected glazing on the northern elevation of the subject building.

The design and locations of the sliding screens shall match those on same windows on the northern elevation of levels 1 and 2.

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 provide sliding screens on north facing unprotected glazing on the Ground Level and Level 3.)

Solar Panels

C45. The solar panels must be mounted flat on the roof plane to minimise the visual bulk and impacts for the adjoining properties. 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 minimise visual impacts.)

LPP06: 352 Miller Street, Cammeray - DA 220/21

Report of Robin Tse, Senior Assessment Officer

This development application seeks approval from the North Sydney Local Planning Panel for redevelopment of the subject site to provide a new four (4) storey residential flat building containing six (6) apartments, basement parking and associated landscaping.

The proposal is subject to SEPP 65 that requires determination of the application by the Panel in accordance with the Local Planning Panels direction made by the Minister for Planning on 30 June 2020.

Council's notification of the original proposal attracted a total of four (4) submissions in two rounds of notifications raising particular concerns about the inadequate setbacks, building height, bulk and scale, adverse impacts on landscaping, adverse impacts on views, shadowing and privacy, impacts associated with construction and excavation works. The notification of the amended proposal has attracted an additional three (3) submissions raising similar concerns.

The proposal has been assessed against the North Sydney LEP 2013 and North Sydney DCP 2013 and SEPP 65 – Design Quality of Residential Flat Building and generally found to be satisfactory.

The proposal complies with the LEP maximum building height limit and DCP's site coverage requirements. The proposed four storey apartment building, featuring a mansard style roof, is considered to be appropriate in terms of height and the desired built form on land zoned R4 (High Density Residential). Furthermore, the proposal would not result in any unacceptable impacts on the amenity of the adjoining properties, subject to the imposition of appropriate conditions.

It is recommended that a deferred commencement condition be imposed requiring an additional set back of the basement wall from the structural root zone of an established brush box tree located on the adjoining property to ensure the protection of the established tree.

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

The proposal, as amended by conditions, is considered to be reasonable in the circumstances and is recommended for **approval** subject to deferred commencement 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. 220/21 for the demolition of the existing dwelling and the construction of a residential flat building containing six apartments with basement parking and associated landscaping on land at No. 352 Miller Street, Cammeray, subject to the attached conditions:-

AA. Deferred Commencement Condition

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 to the Basement

AA1. The location of a section of the northern wall of the proposed basement, measuring 7.5m in length, to the south of the structural root zone of the Tree T4 (*Lophostemon confertus*) Brush Box (as indicated on the TPZ and SRZ plan, submitted with the arborist report, prepared by Complete Arborcare and dated 13 June 2021), be modified to provide a minimum 2m setback from the northern property boundary. The area shall be configured as soft landscaping.

The applicant must submit architectural plans complying with the requirements of this condition, including the necessary adjustments in parking spaces within the basement, for the written approval of the Manager Development Services.

(Reasons: To ensure protection of established vegetation and to maintain landscape quality of the locality.)

This consent shall not operate until such time as the written approval stating that the requirements of this condition 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:

Privacy Protection

C1. Obscure glazing must be installed to the Level 1 and Level 2 balcony windows on the northern elevation to ensure visual privacy protection for the adjoining property to the north at No. 360 Miller Street.

The Certifying Authority must also 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 visual privacy protection for the adjoining property to the north)

Geotechnical Report

C2. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared, with reference to the Geotechnical Assessment, dated 27 May 2021 and prepared by Ascent Geotechnical Consulting, 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. 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 during the excavation process)

Vehicle access to No.350 Miller Street

- C3. A right of way shall be created over the driveway and within the basement carpark and side setback area to provide vehicle access to any potential future basement carpark at No.350 Miller Street. The right of way is to be in the form of a s88B instrument as part of the Strata plan for the subject site.

The potential future access to the adjoining site to the south shall be taken into account in the structural design and fire safety design of the building to allow the access to be opened when required. Details shall be submitted with the Construction Certificate.

The Certifying Authority must also 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 future access to isolated site)

Revised Landscape Plan

- C4. The landscape plan, drawing numbered LP01 Issue 04, dated 01.03.22, drawn by Black Beetle, be amended as follows:

- (a) The inclusion of a feature tree with a mature height of 12m within the front garden of the subject site to soften the proposed apartment building and to enhance the streetscape; and
- (b) The replacement of syzigium 'Cascade' with a more upright species of syzigium to provide better screening/privacy protection outcomes.

The revised landscape plan must be submitted for the written approval of Council's Team Leader Assessment.

The Certifying Authority must also 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 landscaping quality of the subject site and the locality)

Consolidation of Lots

- G1. Prior to the issue of the Occupation Certificate, the lots within the subject site (Lots 8 & 9 DP 58893) shall be consolidated into one lot. Documentary evidence of consolidation shall be provided to the Principal Certifier
(Reason: To promote orderly development of land)

LPP07: 182 Kurraba Road, Kurraba Point - DA 333/19/4

Report of Stephen J Beattie, Manager Development Services

This application under section 4.55 of the *Environmental Planning and Assessment Act 1979* (EPA Act) seeks to further modify Council's consent No. DA 333/19 for alterations and additions to convert a duplex into a residential flat building with strata subdivision and is reported to the North Sydney Local Planning Panel (NSLPP) for determination as the application involves the modification of a condition imposed by the NSLPP.

On 15 April 2020, the NSLPP approved the initial development application subject to a number of conditions. A subsequent application under section 4.55 of the EPA Act was approved by the NSLPP on 2 June 2021. The consent and s.4.55 modification have been activated and construction has commenced on the site.

The current s.4.55 modification seeks a number of internal and external modifications to the approved development including:

- enclosure of a deck on the lower level of the building and conversion into a study;
- an extension on the northern side for a laundry, changes to fenestration on the northern elevation of the building including the modification to Condition C18 of the modified consent relating to privacy measures;
- extension of the roof overhang to Unit 201 on Level 1;
- various internal floor plan changes to the units; and
- a new ladder access and access hatch to the car stacker pit in order to meet Fire and Rescue NSW emergency access requirements.

This application was considered by the NSLPP on 2 March 2022. The Panel resolved;

"The Consultant Planner's Report, Recommendations and Supplementary Report are generally supported subject to amended plans for the approval of the Manager of Development Services to show design changes to delete the laundry extension and reduce the awning as follows:

- *The proposed 1.6 m awning extension at RL30.640 is to be reduced to extend a maximum depth of 450 mm on the eastern face.
(Reason: To mitigate visual impact on neighbouring properties and reflect the awnings below on the eastern facade. On balance this will allow weather protection while minimizing visual impacts)*
- *The laundry extension at the lower ground level is not approved and is to be deleted and is to be replaced with soft landscaping with a garden bed level of approximately RL18.470.*

(Reason: To increase landscaping)

Revised landscape and architectural plans addressing the above shall be submitted by the Applicant to Council within 30 days.

The Manager Development Services is granted delegation to determine the application based on the above required amendments following the submission of amended plans, including consideration of whether renotification is required.

If amended plans and information are not received within 30 days, or if the Manager forms the view that they cannot support the approval if the amended application, the application is to be returned to the Panel for determination.

Panel Reason:

The Panel has had regard to the concerns of submitters, the nature of the approved development and the consultant planners report. The approved development represents a significant re-development of the site and any increase to its bulk, scale and footprint should be minimised. The Panel notes that the proposal seeks to extend the level 2 floor to the east to provide greater protection to the unit below and this is considered unnecessary and adds further bulk to an already height non-compliant development. It is also noted that the laundry extension to the lower ground unit removes approved deep soil landscaping, and this is considered inappropriate and is not supported.

Finally, the Panel notes that as this is a modification application the matters for its determination are limited and the Panel has no power to revisit the previous consents issued for the subject site. Compliance issues are not within the remit of the Panel.

Amended plans have been submitted which comply with the general terms of the Panel's decision. However, this results in the garden bed at RL18.470 being under the garden bed directly above at RL 21.4. Given the precise wording of the Panel's determination, the matter is reported back for the Panel's reconsideration of further amended plans and ultimate determination.

Recommending:

PURSUANT TO SECTION 4.55 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT the North Sydney Planning Panel exercising the functions of Council approve the modification of development consent DA 333/19 dated 24 April 2020 (as amended 2 June 2021) in respect of a proposal for alterations and additions to convert a duplex into a residential flat building with strata subdivision at No. 182 Kurraba Road, Kurraba Point under the provisions of section 4.55 of the *Environmental Planning and Assessment Act 1979* only insofar as it will provide for the following:

To delete Condition A1 and C18 of the consent and insert in lieu thereof the following new conditions, namely:

Development in Accordance with Plans/Documentation

A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions and this consent.

Plan No.	Rev No.	Description	Prepared by	Dated
DA_100_00	08	Proposed lower ground floor plan (lower)	Daniel Younan & Assoc	23/05/22
DA_100_10	08	Proposed lower ground floor plan (upper)	Daniel Younan & Assoc	23/05/22
DA_100_20	06	Proposed ground floor plan	Daniel Younan & Assoc	24/09/21
DA_100_30	06	Proposed level 1 floor plan	Daniel Younan & Assoc	24/09/21
DA_100_40	07	Proposed level 2 floor plan	Daniel Younan & Assoc	15/03/22
DA_100_50	07	Proposed roof plan	Daniel Younan & Assoc.	15/03/22
DA_200_00	07	Proposed south elevation	Daniel Younan & Assoc	15/03/22

DA_200_01	07	Proposed north elevation	Daniel Younan & Assoc	15/03/22
DA_200_02	06	Proposed east elevation	Daniel Younan & Assoc	24/09/21
DA_200_03	06	Proposed west elevation	Daniel Younan & Assoc	24/09/21
DA_300_00	07	Section A-A	Daniel Younan & Assoc	15/03/22
DA_300_01	07	Section B-B	Daniel Younan & Assoc	15/03/22
DA_400_00	05	Finishes and materials	Daniel Younan & Assoc	13/04/21
L-01/2	B	Landscape Plan	Ray Fuggle & Associates	31/01/20
L-02/2	B	Landscape Plan	Ray Fuggle & Associates	31/01/20
DA_800_00	04	Draft Strata Sheet 1	Daniel Younan & Assoc	02/02/20
DA_800_01	04	Draft Strata Sheet 2	Daniel Younan & Assoc	02/02/20
DA_800_02	04	Draft Strata Sheet 3	Daniel Younan & Assoc	02/02/20

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

Privacy

C18. The following privacy devices are to be provided:

Privacy Measures	Windows/location details
Ensuite Windows - Obscure or frosted glazing to whole window. Doors/Full Height Windows - Obscure or frosted glazing to lower part to a minimum height of 1500 mm above the finished floor level.	W39 W16; W26; W37; W41
Windows - Bottom half of window to be obscure or frosted glazing or external fixed louvres directed to block overlooking of neighbour's windows.	W17; W18; W27; W28; W40
Privacy Screens - Balconies Solid balustrades and obscure or frosted glass screens to a height of 1.6 m above finished floor level are to be provided to the northern edges of balconies at the nominated locations.	Balcony on the northeast corner on: Level 2

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 an adequate level of privacy is provided to adjoining properties located at Nos. 176 and 178 Kurraba Road)

Work near property boundaries

E23. No approval is given or implied to any works which encroach upon adjoining properties. Any works which impact on structures on adjoining properties shall only be carried out in consultation with the owners of those properties. Where those works are not determined to be "consistent" with this consent further modification to this consent is to be sought before those works are carried out.

(Reason: Statutory compliance)



NORTH SYDNEY LOCAL PLANNING PANEL

**DETERMINATIONS OF THE NORTH SYDNEY LOCAL PLANNING PANEL MEETING HELD IN THE
COUNCIL CHAMBERS, NORTH SYDNEY, ON WEDNESDAY 4 MAY 2022, AT 2.00PM.**

PRESENT

Chair:

Gary Shiels in the Chair.

Panel Members:

Jan Murrell (Panel Member)
Garth Paterson (Panel Member)
Jane van Hagen (Community Representative)

Staff:

Robin Tse, Senior Assessment Officer
Miguel Rivera, Senior Assessment Officer
Michael Stephens, Senior Assessment Officer
Thomas Holman, Assessment Officer

Administrative Support:

David Hoy, Team Leader Assessments
Robyn Pearson, Team Leader Assessments
Peita Rose, Governance Officer (Minutes)

This meeting was conducted by remote (Zoom) means.

Apologies:

Nil

1. Minutes of Previous Meeting

The Minutes of the NSLPP Meeting of Wednesday, 6 April 2022 were confirmed following that meeting.

2. Declarations of Interest

Jane van Hagen declared a non-significant/non-pecuniary interest in item No. 3.

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.

ITEM 1

DA No:	101/21/2
ADDRESS:	206 Blues Point Road, McMahons Point
PROPOSAL:	Modification of DA 101/21 to amend Condition I4 to retain existing hours of operation for the approved covered terrace to trade between 10am and 12 midnight Monday to Thursday, 10am and 1am the following day Friday to Saturday, and between 10am and 10pm Sunday.
REPORT BY NAME:	David Hoy, Team Leader Assessments
APPLICANT:	D Rippingill Design Collaborative

Public Submissions

3 Written Submissions

Submitter	Applicant/Representative
Ian Curdie - Resident	David Rippingill - Design Collective
Janine Lee - Resident	
Victoria Walker - Resident	
John Terrey - Resident	
Bernard Smith - Resident (observing only)	

Panel Determination

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

The Council Officers Report, Recommendation and Conditions are endorsed by the Panel subject to the following additional conditions being imposed.

Complaint and Incident Register to be maintained

I.11A On commencement of use approved by this consent, a Complaint and Incident Register is to be maintained which records the date, time and nature of any complaint received by the manager or licensee of the premises. The Register is required to include details of actions taken by the manager or licensee of the premises to address any complaints. The Register is to be maintained at all times during operation of the premises and is to be made available to Council on request.

(Reason: To ensure the complaint procedures referenced in the Plan of Management are reflected in the terms of this consent).

Television screens and audio equipment not permitted under this consent

I#. No consent is granted or may be inferred under this consent for the installation of any television or audio equipment within the outdoor terrace area of the hotel.

(Reason: To clarify the terms of this consent)

Panel Reason:

The Panel imposed a 12-month trial period which will allow a review of the operating conditions of premises and enforcement of the Plan of Management.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Gary Shields	Y		Jane van Hagen	Y	
Jan Murrell	Y				
Garth Paterson	Y				

ITEM 2

DA No:	436/21
ADDRESS:	46 Crows Nest Road, Waverton
PROPOSAL:	Alterations to an existing dwelling house, including a swimming pool, new fence and associated works.
REPORT BY NAME:	Miguel Rivera, Senior Assessment Officer
APPLICANT:	R. Tawadros Arquero Architects Pty Ltd

Public Submissions**5 Written Submissions**

Submitter	Applicant/Representative
Ms Rodrigo - Resident	Ramy Tawadros - Architect @ Arquero
C Fitzgerald - Resident	
Steve Walz - Resident (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 in relation 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 will be 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 oral.

The Council Officers Report, Recommendation and Conditions are endorsed by the Panel with the additional conditions to be imposed to give affect to the following:

- a. The maximum height of the front fence is to be 1m consistent with the DCP;
- b. The glazing of the stairwell windows is to be shown on the plans to retain the existing yellow coloured glass; and
- c. The proposed eaves line of the rear extension is to be amended to be set below the eave line of the existing building.

Panel Reason:

The Panel has imposed additional conditions to ensure the contributory item and the conservation area is maintained. Accordingly, the height of the proposed front fence has been reduced and the yellow glazing retained together with a reduction in the height of the rear extension eave. The Panel notes a condition is imposed to ensure the garage roof top is non trafficable and only allows for landscape maintenance, and the landscape plans are updated to remove the proposed spa due to proximity to significant existing tree.

With the recommended conditions and the additional conditions, the Panel is satisfied the development warrants approval in a conservation area.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Gary Shiels	Y		Jane van Hagen	Y	
Jan Murrell	Y				
Garth Paterson	Y				

ITEM 3

Jane van Hagen declared a non-significant/non-pecuniary interest in this item and left the meeting for the deliberations.

DA No:	382/21
ADDRESS:	108 Hayberry Street, Crows Nest
PROPOSAL:	Alterations and additions to existing semi-detached dwelling
REPORT BY NAME:	Miguel Rivera, Senior Assessment Officer
APPLICANT:	W Farmilo Wurley Group Pty Ltd

Public Submissions**1 Written Submission**

Submitter	Applicant/Representative
John Newman - representing John Fitzgerald and Naomi Fiegel - Residents	Wayne Farmilo – Willoughby Architects
John Fitzgerald - Resident (Observing Only)	

Panel Determination

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

The Council Officers Report, Recommendation and Conditions are endorsed by the Panel subject to the following changes:

Condition C1 is to include a requirement that a copy of the final Engineering Report is be provided to the adjoining property owner at No. 106 Hayberry Street, Crows Nest prior to the commencement of work.

Condition C3 is to be amended to remove reference to require qualified person to agreed by the adjoining property owner.

Condition C17 is to be amended to refer to the Murrayas located within No. 106 Hayberry Street, Crows Nest.

Panel Reason:

The Panel endorses the recommendation and conditions with the addition of the requirement with the engineering report to the neighbour. The additional conditions with the retaining landscaping, and a suitably qualified person carrying out the inspection. The Panel noted that the balcony referred to by the objector was limited in size and with access only off the bedroom.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Gary Shields	Y		Jane van Hagen	Absent	
Jan Murrell	Y				
Garth Paterson	Y				

ITEM 4

DA No:	353/21
ADDRESS:	11 Bennett Street, Cremorne
PROPOSAL:	Demolition of existing structures and erection of an attached dual occupancy and associated works on each lot in an approved subdivision of the subject land into 2 lots (Consent DA 237/2018)
REPORT BY NAME:	Robin Tse, Senior Assessment Officer
APPLICANT:	CMBR Marine Pty Ltd

Public Submissions

Dustin Cappelletto - Resident

No Written Submissions

Submitter	Applicant/Representative
L. Wilkinson - Resident	
Althea and Lucian Frederick Petersen - Residents	
Gillian Cappelletto - Resident	
Bianca Woodhouse - Resident (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 not satisfied that the written request in relation to the contravention of the Height of Buildings development standard in clause 4.3 of the LEP adequately addresses the required matters. In the opinion of the Panel the written request does not demonstrate that compliance with the development standard is unnecessary in the circumstances of the case and the written request does not identify sufficient environmental planning grounds to justify the contravention. Further, the Panel considers that the development will be inappropriate and will not be in 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 oral.

The Council Officers Report and Recommendation for refusal is endorsed by the Panel.

Panel Reason:

The Panel does not consider the proposal is acceptable in the heritage conservation area for the reasons articulated in the report, and the exceedance in height is not acceptable because of the impacts on the streetscape and neighbouring properties. Furthermore, the Panel considers the proposal does not constitute a dual occupancy development with the podium, common basement and driveway as this is a different class of building and the presentation is that of a residential flat building.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Gary Shields	Y		Jane van Hagen	Y	
Jan Murrell	Y				
Garth Paterson	Y				

ITEM 5

DA No:	371/21
ADDRESS:	102 Carabella Street, Kirribilli
PROPOSAL:	Alterations and additions to an attached dwelling including a ground floor rear addition, internal alterations, conversion of the attic into habitable space with a dormer and skylight addition to the rear.
REPORT BY NAME:	Thomas Holman, Assessment Officer
APPLICANT:	Hassan Sleiman

Public Submissions

1 Written Submissions

Submitter	Applicant/Representative
	Hassan Sleiman - Designer

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 in relation to the contravention of the Height of Buildings development standard in clause 4.3 of the LEP 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 will be 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 oral.

The Council Officers Report, Recommendation and Conditions are endorsed by the Panel subject to an additional condition requiring the materials and finishes of the dormer to be consistent to the rear dormer of No. 100 Carabella Street. Kirribilli. Condition E14 is to be amended to include notification to 100 Carabella Street of works to the subject site.

Panel Reason:

The Panel is of the opinion that the proposal would provide improved amenity for the residents of the subject site without causing any unreasonable impacts to adjoining properties and/or the Conservation Area.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Gary Shields	Y		Jane van Hagen	Y	
Jan Murrell	Y				
Garth Paterson	Y				

ITEM 6

DA No:	427/21
ADDRESS:	4 East Avenue, Cammeray
PROPOSAL:	Alterations and additions to an existing residential flat building containing two units including a balcony enclosure to the rear of Unit 1.
REPORT BY NAME:	Michael Stephens, Senior Assessment Officer
APPLICANT:	Michael Brown Planning Strategies Pty Ltd

Public Submissions

No Written Submissions

Submitter	Applicant/Representative
	Michael Banak - Architect

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 in relation to the contravention of the Height of Buildings development standard in clause 4.3 of the LEP 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 will be 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 oral.

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

Panel Reason:

The Panel considers the Clause 4.6 to be well founded, and it is satisfied that the proposal has good planning grounds to justify the contravention. The Panel also considers that the proposal is acceptable subject to the conditions included in the recommendation.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Gary Shiels	Y		Jane van Hagen	Y	
Jan Murrell	Y				
Garth Paterson	Y				

The public meeting concluded at 3.20pm.

The Panel Determination session commenced at 3.30pm.

The Panel Determination session concluded at 4.50pm.

Endorsed by Gary Shiels
North Sydney Local Planning Panel
4 May 2022