



## NORTH SYDNEY COUNCIL

Council Chambers  
29 July 2021

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, 4 August 2021 when your attendance is requested.

Your attention is directed to the accompanying statement of the business proposed to be transacted at such meeting.

**KEN GOULDTHORP**  
**GENERAL MANAGER**

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### BUSINESS

**1. Minutes**

Confirmation of Minutes of the previous Meeting held on Wednesday, 7 July 2021.  
(Circulated)

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**2. LPP01: 229 and 231 Miller Street, North Sydney- Section 8.2 Review of Determination No. 5/21 (DA5/21)**

Applicant: Platino Properties

Report of Robin Tse, Senior Assessment Officer

On 3 March 2021, the North Sydney Local Planning Panel (NSLPP) granted consent for D5/21 for the installation of two (2) business identification signs on the ground/street level of a mixed use building at No.229 Miller Street for a business using the ground floor non-residential area within this building as a co-working office space. Condition C1 of Development Consent (D5/21) requires the deletion of a non-illuminated business identification sign (Sign 1) for the co-working office business that is proposed to be located on the northern elevation on Level 18 of an adjoining mixed use building at No. 231 Miller Street. The applicant seeks a review of determination for the imposition of Condition C1 under s.8.2 of the *Environmental Planning & Assessment Act, 1979* (EPA Act). In accordance with the provisions of Section 8.3(5) of the Environmental Planning & Assessment Act, 1979 (EP&A Act) the review of a determination made by a local planning panel must also be referred back to the Panel for determination. In addition, the notification of the application has attracted more than ten (10) submissions and the application is required to be reported to the NSLPP for determination, as directed by the Minister for Planning, Industry and Environment.

Council's notification of the review attracted eleven (11) submissions by way of objection that raised a number of issues including the uncharacteristic nature of the proposed signage and its inappropriateness due to the predominantly residential nature of the building at No.231 Miller Street.

The subject S8.2 application satisfies the relevant provisions as contained under Division 8.2 and Sections 8.2 to 8.5 of the Environmental Planning and Assessment Act 1979. The application has been assessed against the North Sydney LEP 2013 and North Sydney DCP 2013 and SEPP 64 – (Advertising and Signage) and was found to be unsatisfactory.

The proposal for a large wall sign near the top of a mixed use building advertising a business does not operate within the same building is inconsistent with the desirable character for small scale business identification signage. Whilst there are existing high level signs on buildings at several mixed use areas within the North Sydney LGA, these signs are historic and would not be supported under current controls. Therefore, the proposal would also result in an undesirable precedence for new large scale wall advertisement on buildings located within B4 (Mixed use) zone.

The proposal is inconsistent with the objectives of SEPP 64 because it is incompatible with the desired amenity and visual character of development within B4 (Mixed use) zone.

The proposal also fails to justify a variation to the maximum building height limit because it is an uncharacteristic type of advertising for development within B4 (Mixed use) zone.

The proposal does not comply with Section 9 in Part B of North Sydney DCP 2013 because the proposed wall sign would advertise a business that does not occupy the subject building and is likely to encourage the proliferation of signs of business/activities that do not relate to the use of the land on which they are located.

In summary, the proposal was found to be unacceptable in the site circumstances and is recommended that the Panel to reaffirm its refusal of the proposed

elevated wall sign (Sign 1) on the northern elevation of No.231 Miller Street, North Sydney.

**Recommending:**

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

**THAT** the North Sydney Local Planning Panel, exercising the functions of Council as the consent authority, resolve to reaffirm the **refusal** of the proposed wall sign (Sign 1) on the northern elevation of No.231 Miller Street, North Sydney and the retention of Condition C1 (Delete Sign 1) in Development Application No. 5/21 for the following reasons:-

**1. The written request pursuant to clause 4.6 of NSLEP is not supported**

The written request pursuant to clause 4.6 of NSLEP seeking a variation to the height of building development standard in clause 4.3 of NSLEP is not considered to be well founded.

**Particulars:**

- (i) The proposed wall sign breaches the RL130 maximum height of building development standard specified in clause 4.3(2) in NSLEP 2013.
- (ii) The written request submitted with the application seeking a variation to the maximum height of building development standard has inadequately addressed the matters required to be addressed in subclause (3) in clause 4.6 in NSLEP 2013.
- (iii) The written request has failed to adequately demonstrate that compliance is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the height of building development standard.
- (iv) The proposed development is not considered to be in the public interest as the development is not consistent with the objectives of the height of building standard in clause 4.3(1) in NSLEP 2013 and the objectives of the B4 (Mixed use) zone (dot point 3) under NSLEP 2013.

**2. The proposed wall sign is not appropriate and incompatible within B4 (Mixed Use) zone and its adverse impacts on the visual character of the area**

The proposed wall sign is not appropriate to its context and is incompatible with the visual character of signage within B4 (Mixed Use) zone.

**Particulars:**

- (i) The proposed wall sign, that is elevated near the top of a mixed use building, is an incompatible development on land zoned B4 (Mixed Use) because the desired character for signage within the zone is for small scale signage on the lower levels of buildings as stipulated in the Advertising Design Analysis in Section 9.2.2(d) in Part 2 of North Sydney DCP 2013.
- (ii) The proposed wall sign is inconsistent with the objectives of the B4 (Mixed use) zone (dot point 3) under NSLEP 2013.
- (iii) The incompatibility of the proposed wall sign is also contrary to the objectives in Clause 3(1) of SEPP64 – (Advertising and Signage).
- (iv) The uncharacteristic nature of the proposed wall sign is contrary to the assessment criteria (Character of Area) as contained in Schedule 1 of SEPP 64 – (Advertising and Signage).

**3. The proposed wall sign is unacceptable because it will promote visual**

**clutter through proliferation of new advertising signs on land zoned B4 (Mixed Use).**

The proposed wall sign will set an unacceptable precedence for new advertisement on mixed use buildings for a business not related to the host building and will have adverse impacts on the character of B4 (Mixed Use) zone because of proliferation of new large signage and visual clutter.

**Particulars:**

- (i) The proposed wall sign is contrary to Objectives O1 and O4 in Section 9.1.1 in Part B of NSDCP 2013 because of its inappropriate size and position that cause visual clutter and proliferation of signs on land within B4 (Mixed Use) zone.
- (ii) The proposed wall sign is contrary to Objective O1 in Section 9.6 in Part B of NSDCP 2013 because it will result in visual clutter and promotes the proliferation of large elevated signs within B4 (Mixed Use) zone.
- (iii) The proposed wall sign is contrary to O2 and P3 in Section 9.6 in Part B of NSDCP 2013 because it advertises a business unrelated to the use on land which the sign is located.
- (iv) The proposed wall sign is contrary to Objective O3 in Section 9.6 in Part B of NSDCP 2013 because it will erode the character of B4 (Mixed Use) zone with the introduction of large elevated advertisements on mixed use building within the zone.

**4. Public Interest****Particulars:**

- (i) The approval of the proposed wall sign is not in the public interest because of the adverse impacts on the character within B4 (Mixed Use) zone.

**3. LPP02: 51 Blues Point Road, McMahons Point - DA 328/20**

Applicant: Jacqueline Mcallister

Report of Kim Rothe, Senior Assessment Officer

This application is an amended development application which seeks development consent for subdivision of one (1) lot into two (2) lots and construction of a three-storey dwelling over lower ground level/basement parking on the new lot on land identified as 51 Blues Point Road, McMahons Point.

The application is required to be reported to the NSLPP for determination, as directed by the Minister of Planning, given that the development contains a variation request to a prescribed development standard (Clause 4.3 Building Height) in North Sydney Local Environmental Plan 2013 of more than 10%. Additionally, over the course of the two notifications of the development, more than 10 submissions have been received.

Council's notification of the original and amended plans has attracted a total of *twelve (12) unique* submissions over two notification periods raising concerns about the bulk, scale and density of the development, uncharacteristic built form, loss of trees, setbacks controls, significant excavation, view, privacy, traffic and solar access impacts.

The development application has been assessed against the North Sydney Local Environmental Plan 2013, North Sydney Development Control Plan 2013 and the relevant State Planning Policies and generally found to be satisfactory in the site circumstances.

The proposed dwelling as amended will exceed the 8.5 m maximum height limit applicable to the site as set out under Clause 4.3 Building Height of NSLEP 2013. Generally, however, the perceived bulk and scale of the additions will be commensurate with the adjoining buildings to the immediate north and south of the subject site. The proposed height, bulk and scale of the additions is considered to be sufficiently in keeping with the established character of the *McMahons Point South Conservation Area* of the immediate locality along Blues Point Road.

The assessment of the proposal has considered the concerns raised in the submissions as well as the performance of the application against Council's planning requirements.

Having regard to the provisions of Section 4.15 of the Environmental Planning & Assessment Act 1979 (as amended), the amended application is recommended for **approval** given the consistency to the objectives and controls within the North Sydney Local Environmental Plan and Development Control Plan 2013, and lack of material adverse impacts from the development of the adjoining properties.

**Recommending:**

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

**THAT** the North Sydney Independent Planning Panel, assume the concurrence of the Director General of the Department of Planning and invoke the provisions of Clause 4.6 with regard to the exception to the development standard for Building Height, **grant consent** to Development Application No. 328/21 for Subdivision of one (1) lot into two (2) lots and construction of a three-storey dwelling over lower ground level/basement parking with associated landscaping and removal of trees on land at 51 Blues Point Road, McMahons Point, subject to the attached recommended conditions.

**4. LPP03: 13 Shellcove Road, Kurraba Point – DA 33/21**

Applicant: MaryAnn Beregi

Report of Annelize Kaalsen of AK Planning

This development application seeks approval from the North Sydney Local Planning Panel (NSLPP) for alterations and additions to the heritage listed dwelling house including excavation, a two level addition below the existing dwelling, a 25m pool, internal and external alterations and associated landscaping works, at No. 13 Shellcove Road, Kurraba Point.

The application is referred to the North Sydney Local Planning Panel for determination because the owner of the site is a Councillor and because the application received more than ten submissions by way of objection.

The subject site is constrained by a number of factors including its heritage listing, being located within the Kurraba Point Conservation Area; adjoining a heritage item; topography falling towards Shell Cove and its visibility from Cremorne Point coastal walkway as well as the Harbour (Shellcove). Accordingly, any development on the site would need to have a sensitive design approach having regard for all of these constraints.

The proposal is not supported by the independent heritage assessment undertaken by Kemp and Johnson Heritage Consultants, since the works detract from the significance of the subject heritage listed building, the context of the adjacent heritage item, and the Kurraba Point Conservation Area.

The heritage consultant notes that the proposal allows for unsympathetic changes which are not reversible such as the introduction of ensuites to the existing rear ground floor verandah, extensive changes to the interior which interfere with original ceilings, layout and doorways, inclusion of large new aluminium framed windows and openings to the eastern and northern elevations, as well as the unsympathetic altering of the porch / street entry to the house.

Moreover, the alterations and additions are considered to overwhelm the existing heritage dwelling and are not sympathetic or in keeping with the character of the Arts and Craft style of the heritage item.

The first notification period attracted a total of eight (8) submissions objecting to the proposal. The amended application attracted a further five (5) submission. In summary the submissions raised particular concerns with the non-compliances with site cover; impact on the heritage item; the extent of the proposed excavation; overshadowing; acoustic and visual privacy; traffic and parking during construction; as well as structural damage to properties. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

In this regard, the application does not comply with the objectives of the site coverage or side setback provisions of the North Sydney DCP. The cumulative impact of these non-compliances is considered unacceptable having regard to the heritage context and is not supported.

As such, following this assessment, and having regard to the provisions of S4.15(1) of the Environmental Planning & Assessment Act 1979, it is recommended that the development application be **refused** 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. 33/2021 for alterations and additions to an existing dwelling house including excavation, two level addition below the existing dwelling, 25m pool, internal and external alterations to existing dwelling, landscaping works, for the following reasons:-

1. The application results in adverse impacts on the heritage significance of the dwelling and the Kurraba Point 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:*

- a) Clause 1.2(2) Aims in Part 1 of NSLEP 2013, specifically aim (f) to protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance;
- b) Clause 5.10(1) in Part 5 of the NSLEP 2013, specifically objective (a) and (b) to conserve the heritage significance of heritage items and

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- heritage 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 heritage significance of the item and the Kurraba Point Conservation area;
  - d) Objective 4 in Section 13.1.2 *General Objectives* in NSDCP 2013;
  - e) The proposed development is not consistent with the objectives or the provisions of Section 13.5.1 “*Protecting heritage significance*” of the NSDCP 2013, particularly:-
    - i. Objective O1, O2, O3, O5; O8 and Provisions P1, P2, P4 and P5 in Section 13.5.1 “*Protecting heritage significance*” in NSDCP 2013;
    - ii. Objective O1 and Provision P1, P2, P3, P5, P6, P7 and P8 in Part B, Section 13.5.5 ‘*Interior layouts*’ in NSDCP 2013;
    - iii. Objective O1 in Part B, Section 13.6.1 ‘*General objectives*’ – *Heritage Conservation Areas* in NSDCP 2013;
    - iv. Provisions P9 in Part B, Section 13.6.2 ‘*Form, massing, scale*’ in NSDCP 2013;
    - v. Objective 1 and Provisions P1 and P2 in Part B Section 13.6.5 *Internal layouts* in NSDCP 2013;
    - vi. Objectives O1, O2 and Provisions P1, P2, P3, P4 and P6 in Part B Section 13.9.3 *Verandahs and balconies – Controls for Specific Building Elements* in NSDCP 2013;
    - vii. Objective 1 and Provisions P1 and P3 in Part B Section 13.9.4 *Materials, colours and finishes* in NSDCP 2013; and
    - viii. Objective O1 in Part B, Section 13.10.4 ‘*Two storey detached and attached dwellings*’ in NSDCP 2013.
2. The proposed excavation is considered excessive for a low density area resulting in a detrimental impact on neighbouring uses, heritage item and features of the surrounding land, pursuant to Clause 6.10(1) of the North Sydney Local Environmental Plan 2013 as well as the requirements of Section 1.3.1 the North Sydney Development Control Plan 2013.
- Particulars:*
- a) The proposed excavation is inconsistent with O4 of Section 1.3.1 of NSDCP 2013, as the proposal will result in major site disturbance due to the amount of excavation proposed not just the depth but also beyond the existing building footprint;
  - b) The extent of the excavation would result in the removal of sandstone retaining wall and the sandstone base of the heritage listed dwelling contrary to P2 of Section 1.3.1 of NSDCP 2013;
  - c) New finished floor levels will be greater than 500mm below existing ground level contrary to P3 Section 1.3.1 of NSDCP 2013;
  - d) New habitable rooms will be located more than 1m below existing ground level for more than 50% of the rooms floor area contrary to P4 of Section 1.3.1 of NSDCP 2013; and
  - e) Proposed excavation along the southern boundary occurs 900mm from the common boundary contrary to P5 of Section 1.3.1 of NSDCP 2013.
3. Uncharacteristic built form of development
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The application results in a built form that is not subservient to the heritage item. The proposed development affected the characteristics of the heritage item whilst the resulting massing is considered to overwhelm the heritage item.

*Particulars:*

- a) Objectives of the R2 Low Density zone, specifically dot point 3;
  - b) The proposal fails to retain the visual character of the dwelling, contrary to O1 in Part B, Section 1.3.5 *Visual Impact* in NSDCP 2013;
  - c) The proposed bulk and scale within the side setbacks results in a massing which dominates the heritage item contrary to Objective O2, in Part B, Section 1.4.6 *Setbacks* in NSDCP 2013;
  - d) Objective O1 in Part B, Section 1.4.7 in NSDCP 2013 (*Form, massing & scale*); and
  - e) Objective O1 in Part B, Section 1.4.8 in NSDCP 2013 (*Built form character*).
  - f) Objective 1 in Part B Section 1.5.2 in NSDCP 2013 (*Lightwells and Ventilation*);
  - g) The proposal provides excessive site coverage across the site contrary to O1 and O2 in Part B, Section 1.5.5 *Site Coverage* in NSDCP 2013;
  - h) Objectives 1 and 2 in Part B Section 1.5.8 in NSDCP (*Front Gardens*).
4. 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 not only the heritage item but also the Kurraba Point 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) A total of five (5) public submissions were received against the amended application raising particular concerns about significant impact on the heritage item and conservation area; extent of excavation; non-compliances with site cover as well as structural damage to properties. 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).
5. The application does not meet Objective (f) in Section 1.3 of the Environmental Planning and Assessment Act 1979 (as amended) because it would not result in the orderly and sustainable management of land due to the adverse impacts on the significance of the heritage item and the Kurraba Point Heritage Conservation area.

**5. LPP04: 425-429 Pacific Highway, Crows Nest - Section 4.55 No. 198/20/3**

Applicant: Legge & Legge Architects Pty Ltd,

Report of Luke Donovan, Senior Assessment Officer

This application under Section 4.55 of the Environmental Planning and Assessment Act 1979 (as amended) seeks to modify consent for alterations and



additions to levels 4 and 5 of a heritage listed commercial and retail building, changes to roof and changes to signage including the demolition of existing AGC sign, demolition of the existing advertising billboard structure and construction of new LED advertising sign on land at 425-429 Pacific Highway, Crows Nest.

The previous section 4.55 application (No. 198/20/2) proposing to modify DA198/20 in respect of changes to Conditions G2 Time period for advertising' and I1 'Dwell Time and Curfew on Advertising' was approved by the Panel on 3 March 2021, as recommended. In respect of Condition G2, the Panel agreed with the recommendation to retain the originally approved 5-year time period for the display of advertising.

The proposed modification specifically relates to changes to Condition G2 'Time period for advertising' in association with the approved LED advertising sign. Condition G2 currently restricts the time period for advertising to 5 years which was modified by the Panel in the granting of consent to DA198/20. The applicant seeks to increase the time period for advertising to 15 years.

The application is reported to the NSLPP for determination as the application is a Section 4.55 (2) and seeks to change a condition (Condition G2) which was modified by the Panel.

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

In support of the applicant's position to increase the time period of advertising to 15 years are two pieces of advice prepared by Mr Malcom Craig QC. These pieces of advice were provided to Council after the NSLPP determined the previous section 4.55 application (No. 198/20/2). These documents support this request by the applicant for a further review of the time limited nature of the consent.

On the 31 August 2020, SEPP Amendment (Crows Nest Metro Station) 2020 was introduced which had the effect of amending the maximum building heights for the Crows Nest Station sites in NSLEP 2013. This change in building heights indicates that this area of Crows Nest, along Pacific Highway, is undergoing some change. With the increase in building heights the character within this part of Crows Nest will likely change from commercial to shop top housing noting its location within a B4 Mixed Use zone. Large LED advertising at the top of the residential components of these buildings is unlikely to form part of that character and further would be considered detrimental by many of the future residents.

It is however unlikely that this character will significantly change in the next 5 years. It is more likely that this character will change in the next 5 to 10 years with the foreseeable completion of developments which are foreshadowed by the new controls. It is therefore considered reasonable that the time period for advertising associated with this LED sign be increased to 10 years. A time period of 15 years is considered too long with the change in character likely to occur well before this period of time has elapsed. However, it remains open to the panel to set any time frame up to 15 years,

Whilst the time period for the display of advertising is not what is proposed by the applicant it is a 5-year increase on the original approval. The recommendation to the Panel is therefore an approval subject to a modification to Condition G2 to increase the display period for advertising associated with the LED sign from 5 years to 10 years.

**Recommending:**

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

**THAT** the North Sydney Local Planning Panel exercising the functions of Council grant **approval** to Section 4.55 No. 198/20/3 to modify DA198/20 in respect of changes to Condition G2 ‘Time period for advertising’ on land at 425-429 Pacific Highway, Crows Nest only insofar as the following:

**1. To modify Condition G2 of DA198/20 as follows:**

**Time Period for Advertising**

G2. The LED advertising sign (southern elevation of level 5) is limited to a maximum of ten (10) years from the date of the occupation certificate for the sign. At the expiration of the ten (10) year period the sign must be switched off. Any extension beyond ten (10) years will be the subject of a separate application to Council.

(Reason: The time period for advertising is limited to 10 years pursuant to Clause 14(2)(b) in SEPP 64. An LED advertising sign on this site for a time period longer than 10 years would be inconsistent with the change in character (in terms of building height and land use) within this area of Crows Nest.)

**6. LPP05: 1 Balls Head Drive, Waverton - DA 118/21**

Applicant: Property & Development New South Wales

Report of C.F. Blyth, planning consultant Plansight Pty Ltd

This development application seeks approval for remediation of the subject contaminated site and is reported by an independent consultant planner to North Sydney Local Planning Panel for determination due to the fact that after remediation the property will be acquired by North Sydney Council for potential future use as public recreation and community space.

The site is the former Quarantine Depot located at No.1 Balls Head Drive Waverton. Environmental investigations of the site have reported elevated concentrations of polycyclic aromatic hydrocarbons (PAHs). The proposal is to undertake remediation activities on site, including excavation of contaminated soils and back filling with clean material.

Notification of the proposal has attracted one (1) submission raising particular concerns about loss of mature trees.

The assessment has considered these concerns as well as the performance of the application against Council’s planning requirements.

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

**Recommending:**

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

**THAT** the North Sydney Local Planning Panel exercising the functions of Council as the consent authority grant consent to Development Application No. 118/21 for remediation to land at No1 Balls Head Drive Waverton, Lot 105 DP 1162898 subject to the attached conditions.

**7. LPP06: 1/457 Miller Street, Cammeray - DA 313/20**

Applicant: David Scobie Architects Pty Ltd

Report of Lara Huckstepp, Executive Planner

This development application seeks approval to modify hours of operation, increase maximum capacity and minor additions to an existing restaurant. The matter is reported to North Sydney Local Planning Panel for determination as the outdoor seating is located on Council land.

Notification of the original proposal attracted 3 submissions raising particular concerns about the number of outdoor seats, current operation of the restaurant, concerns about notification of the application and impacts to bicycle parking. Amended updated information was received and renotified to surrounding properties. A total of 2 additional submissions were received raising particular concerns about noise, precedent, inaccuracy of submitted information, current operation of the restaurant and various other issues. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

The existing restaurant opens at 7am daily and this development application seeks to open from 6am Monday to Saturday (inclusive); 7am Sundays, including indoor and outdoor trading, with set up of outdoor chairs and tables from 30 minutes prior to opening. Council's standard DCP trading hours outline trade should start at 7am.

The submitted Acoustic Report confirmed that the use of the site can comply with relevant acoustic requirements, however the use of the outdoor area should be limited to no more than 15 people between 6.00 – 7.00am. It is recommended that the hours sought be supported, with a limit of 15 people prior to 7am, subject to a trial period of 12 months. However, set up should not occur prior to 6.00am on Monday-Saturday and prior to 6.30am Sunday. It is recommended also that following the cessation of the 12 month period, any further extensions should be granted only in 24 month increments (maximum), to enable the evolving character of the locality to be considered, whereby adjoining buildings may be redeveloped with additional residential in close proximity at a time in the future.

The applicant also seeks to increase the number of outdoor seats from 26 (previously approved) to provide 51 seats. This is reduced from the originally proposed 60 seats. It is noted that a previous modification application that was subsequently withdrawn sought an increase to 67 seats. The proposed 51 seats are considered to be able to be appropriately accommodated within the already approved outdoor seating permit area.

A number of operational conditions are recommended to further ensure the impacts on the surrounding locality is reasonable.

The proposed alterations and additions will include first floor WC's that will be available to occupants, in addition to the ground level WC's. The additional WC's are proposed due to the increase in patron numbers. The first floor level is a separate tenancy however is currently occupied by the same restaurant as ancillary/office space. A condition is recommended to ensure this development consent relates to both properties, and that if either use ceases then a new development application is required to be lodged.

Following this assessment the development application is recommended for approval subject to conditions.

**Recommending:**

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

**THAT** the North Sydney Local Planning Panel exercising the functions of Council as the consent authority grant consent to Development Application No.

313/2020 for minor alterations and additions, increase occupancy and modify operating hours to an existing restaurant on land at No.1/457 Miller Street, Cammeray subject to the following site specific and standard conditions:-

**Operation of this development consent**

A4. This development consent allows the use of both tenancies being 1 and 2, 457 Miller Street, Cammeray and does not authorise either tenancy to operate independently. The first floor office space located in No.2, 457 Miller Street shall only be used for ancillary uses in conjunction with the restaurant approved at 1,457 Miller Street, Cammeray.

Following commencement of this development consent, should the approved use cease to operate across both lots, being 1 and 2, 457 Miller Street, Cammeray, the use of both tenancies must cease immediately. Separate development applications must be submitted for the use of each individual tenancy, including details as to how each tenancy will comply with BCA provisions.

(Reason: To comply with the terms of the consent and BCA compliance including fire separation and access)

**Hours of Operation**

I1. The hours of operation are restricted to:

Indoor trading

Monday to Wednesday 7.00am to 4.00pm

Thursday to Saturday 7.00am to 8.00pm

Sunday 7.00am to 3.00pm

Outdoor trading

Monday to Wednesday 7.00am to 4.00pm

Thursday to Saturday 7.00am to 8.00pm

Sunday 7.00am to 3.00pm

Set up and pack up of chairs and tables may occur 30 minutes before and after the above trading hours.

Upon expiry of the permitted hours:

(a) all restaurant service (and entertainment) 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)

**Hours of Operation – trial period**

I2. Notwithstanding Condition I1 above the approved use may operate for a trial period, between:

Indoor trading

Monday to Wednesday 6.00am to 4.00pm

Thursday to Saturday 6.00am to 8.00pm

Sunday 7.00am to 3.00pm

Outdoor trading

Monday to Wednesday 6.00am to 4.00pm

Thursday to Saturday 6.00am to 8.00pm

Sunday 7.00am to 3.00pm

**No set up of chairs and tables shall occur prior to 6am Monday – Saturday, or prior to 6.30am on Sunday.**

The packing up of chairs and tables may occur 30 minutes after the above trading hours at the cessation of trade each day.

Upon expiry of the permitted hours:

- (a) all restaurant service (and entertainment) 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.

The above trading hours shall be permitted for a trial period of 12 months from the date of issue of the first Occupation Certificate, being interim or otherwise. Council must be informed in writing of the date of commencing the trial period.

In order for the above trial hours of operation to be extended, a modification application must be lodged with Council prior to the expiration of the trial period. The assessment of the application to continue the use in accordance with the trial, will consider amongst other things, the impact of the use on surrounding areas the performance of the operation in relation to compliance with development consent conditions.

**Any further extensions sought for trading hours as set out within this condition, following the initial 12 month trial period, if supported, shall each be limited to a maximum 24 month extension at any one time.**

In the event that no modification application is lodged, or an application is not approved, then the hours of operation for the premises must revert to the standard hours of operation identified by this consent.

**Note:** Any person acting on this consent is advised that any modification application to the trial hours of operation period should be submitted to Council a minimum of thirty (30) days prior to the expiration of the trial period otherwise the trial period must lapse.

(Reason: To ensure safety and security and protect the amenity of surrounding areas, and to enable proper consideration of any changing character of the locality)

**Outdoor seating operation between 6am – 7am (Monday-Saturday)**

13. The outdoor seating approved as a trial period to operate between 6am - 7am Monday to Saturday shall comply with the following:

- The maximum number of patrons allowed by this consent to occupy the outdoor seating area is 15 persons.
- The maximum of 15 people shall be seated within the eastern portion of the outdoor seating.
- The external doors shall remain closed until 7am each day, other than to provide reasonable access for patrons.
- No set up of tables or chairs shall occur prior to 6am.
- Set up of tables and chairs shall be undertaken in a quiet and prompt manner.

(Reason: To protect the amenity of surrounding residents)

**Plan of Management**

14. The *Maggio Plan of Management* submitted with the Development Application shall be adhered to at all times and forms part of this development consent. The Plan of Management shall be updated to incorporate all relevant conditions of consent including the recommendations contained within the Acoustic Report.

The Plan of Management shall be provided to Council for the purposes of Council records prior to the issue of an Occupation Certificate. The Plan of Management shall be kept updated at all times.

(Reason: To ensure the appropriate management of the premises and to confirm the management arrangements proposed as part of this development consent)

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## **NORTH SYDNEY LOCAL PLANNING PANEL**

### **DETERMINATIONS OF THE NORTH SYDNEY LOCAL PLANNING PANEL MEETING HELD IN THE SUPPER ROOM, NORTH SYDNEY, ON 7 JULY 2021, AT 2.00PM.**

#### **PRESENT**

##### **Chair:**

Jan Murrell in the Chair.

##### **Panel Members:**

Helen Lochhead, Panel Member  
Gary Shiels, Panel Member  
Virginia Waller, Community Representative

##### **Staff:**

Stephen Beattie, Manager Development Services  
Robyn Pearson, Team Leader Assessments  
Lara Huckstepp, Executive Planner  
Luke Donovan, Senior Assessment Officer  
Michael Stephens, Senior Assessment Officer  
Peita Rose, Governance Officer (Minutes)

Note: All participants attended the meeting by electronic means having regard to the Covid 19 Public Health Order in force in NSW at the time.

**Apologies:** Nil.

#### **1. Minutes of Previous Meeting**

The Minutes of the NSLPP Meeting of 2 June 2021 were confirmed following that meeting.

#### **2. Declarations of Interest**

Jan Murrell declared a perceived conflict of interest on Item 5 as she was on the Panel that determined the original development application by refusal. She took no part in the discussions and deliberations in the matter.

There were no other declarations.

### 3. Business Items

*The North Sydney Local Planning Panel is an 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

<b>DA No:</b>	43/21
<b>ADDRESS:</b>	68 Alfred Street, Milsons Point
<b>PROPOSAL:</b>	Alterations and additions to commercial building
<b>REPORT BY NAME:</b>	George Youhanna, Executive Planner
<b>APPLICANT:</b>	APlus Design Group

#### Public Submissions

#### 4 Written Submissions post agenda.

Submitter	Applicant/Representative
Pierre Le Bas - Representing 37 Glen Street and 70 Alfred Street	Tony Leung - Applicant/Architect
Ian Sinclair -Resident	
Chris Scott - Resident	

#### Panel Determination

The Panel members have undertaken independent site inspections prior to the meeting. The Panel has carefully considered all submissions in its 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 standards are unnecessary in the circumstances of the case. Further, the Panel considers that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the zone objectives.

The Council Officer’s Report, Addendum Report, and Recommendations are endorsed by the Panel, subject to the imposition of a Deferred Commencement Condition to require amended plans to delete the extension of the podium as identified in the Officer’s recommended Condition A5. These plans must be submitted within 6 months to the Manager Development Services for approval prior to the consent becoming operational; and the following changes are made to the operational conditions: -

A5 deleted (now the subject of a Deferred Commencement condition.

A1 Table amended to refer to Plan No. 102\_1 Issue I Landscape Plan Level 1 (correction from Issue H).



C13 First sentence only amended to read “The bicycle storage area must accommodate a minimum of 24 bicycles and a visitor parking rail shall be provided for 8 bicycles.”

C16 First sentence only amended to read “Any new works to the existing basement layout must comply with all requirements of Australian Standard As2890.1”.

C17 is deleted

I7 Amend to read “All loading and unloading operations must be carried out wholly within the confines of the site at all times and must not obstruct other properties or the public way.

I8 is deleted

The Panel delegates to the Manager of Development Services the necessary changes required to the recommended set of conditions to give effect to the above.

Panel Reason:

The Panel concurs with the officer’s assessment and recommendation that the podium additions at levels 2 and 3 do not warrant approval. This addition is not consistent with the existing streetscape, and furthermore impacts on iconic views. On an environmental planning merits assessment the site must be considered in its context, and this addition to the building bulk is inappropriate in its context.

The Panel notes that the height exceedance is generally in respect of plant and equipment and will not create adverse impacts.

The Panel also generally accepts the changes to conditions sought by the applicant as detailed above. The Panel recognises the basement is not capable of complying with the Australian Standard in the refurbishment of this building. However, at the same time, given the building works will extend the life of the building, it is reasonable to require the bicycle storage and parking to be provided to reflect a more sustainable future. The Panel has determined on balance that bicycle spaces be increased to 24 with 8 visitor bicycle spaces.

The Panel is not persuaded that it is the responsibility of the applicant to address the BCA/fire issues raised in submissions, and this would not warrant refusal of this application.

Voting was as follows:

<b>Panel Member</b>	<b>Yes</b>	<b>No</b>	<b>Community Representative</b>	<b>Yes</b>	<b>No</b>
Jan Murrell	Y		Virginia Waller	Y	
Helen Lochhead	Y				
Gary Shiels	Y				

**ITEM 2**

<b>DA No:</b>	335/20
<b>ADDRESS:</b>	287 Miller Street, Cammeray
<b>PROPOSAL:</b>	Demolition of existing building containing 5 boarding rooms and tree removal and erection of a four (4) level boarding house containing 12 rooms.
<b>REPORT BY NAME:</b>	Chris Blyth, Planning Consultant PlanSight Pty Ltd
<b>APPLICANT:</b>	Link Wentworth (formally Link Housing)

**Public Submissions****3 Written Submissions post agenda.**

Submitter	Applicant/Representative
Megan Connors - Resident	Paul Hunt - Applicant

**Panel Determination**

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

The Council Officer's Report and Recommendation are endorsed by the Panel.

Panel Reason:

The Panel is satisfied the development warrants approval and that the design has had regard to the interface with adjoining buildings in terms of privacy and overlooking. The Panel also notes that the proposal exhibits appropriate built form and scale in context with the local area and recent development.

The Panel notes the detailed Plan of Management and the conditions for the operation of the premises as a boarding house this includes the requirement for a contact name and number on the outside of the premises to allow adjoining residents to contact management if necessary, concerning issues that may arise. It is also noted a complaints register must also be maintained. The Panel is satisfied the residential amenity of the area can be maintained with management and these measures in place.

The Panel considers the site is well located and connected to public transport, and therefore the need for onsite parking is not considered necessary in these circumstances.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Virginia Waller	Y	
Helen Lochhead	Y				
Gary Shiels	Y				

**ITEM 3**

<b>DA No:</b>	45/21
<b>ADDRESS:</b>	27 Bogota Avenue, Cremorne Point
<b>PROPOSAL:</b>	Alterations and additions to an existing dwelling house and construction of a detached garage and associated landscaping.
<b>REPORT BY NAME:</b>	Michael Stephens, Senior Assessment Officer
<b>APPLICANT:</b>	Michael and Tessa Wise, C/- Corben Architects

**No Public Submissions post agenda.**

Submitter	Applicant/Representative
	Andrew Vingillis - Applicant

**Panel Determination**

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

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. Further, the Panel considers that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the zone objectives.

The Council Officer’s Report and Recommendation is endorsed by the Panel.

**Panel Reason:**

The Panel notes the site is within a Heritage Conservation Area being a neutral item and considers the alterations and additions will not adversely impact on the conservation area.

The Panel considered the request regarding the contribution; however, it is noted that it is Councils practice that the operational date was the 1 March 2021 and is not a matter that the panel can properly consider, and as such condition C19 is retained.

Voting was as follows:

<b>Panel Member</b>	<b>Yes</b>	<b>No</b>	<b>Community Representative</b>	<b>Yes</b>	<b>No</b>
Jan Murrell	<b>Y</b>		Virginia Waller	<b>Y</b>	
Helen Lochhead	<b>Y</b>				
Gary Shiels	<b>Y</b>				

**ITEM 4**

<b>DA No:</b>	77/21
<b>ADDRESS:</b>	16 Davidson Parade, Cremorne
<b>PROPOSAL:</b>	Alterations and first floor addition to an existing dwelling house
<b>REPORT BY NAME:</b>	Michael Stephens, Senior Assessment Officer
<b>APPLICANT:</b>	Add-style Home Additions

**1 Written Submission post agenda.**

<b>Submitter</b>	<b>Applicant/Representative</b>
	Cameron White - Applicant

**Panel Determination**

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

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 standards is unnecessary in the circumstances of the case. Further, the Panel considers that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the zone objectives.

The Council Officer’s Report and Recommendation is endorsed by the Panel.

Panel Reason:

The Panel considers the proposal is satisfactory and will not have unreasonable adverse impacts on adjoining properties.

The Panel notes the height exceedance is acceptable given the topography of the area and maintains acceptable solar access. It is also noted that the dwellings in this part of the street all have the benefit of the rear of the properties having a northerly aspect and the topography allows for good solar access.

Voting was as follows:

<b>Panel Member</b>	<b>Yes</b>	<b>No</b>	<b>Community Representative</b>	<b>Yes</b>	<b>No</b>
Jan Murrell	<b>Y</b>		Virginia Waller	<b>Y</b>	
Helen Lochhead	<b>Y</b>				
Gary Shiels	<b>Y</b>				

**ITEM 5**

<b>DA No:</b>	Section 8.2 Review of Determination 3/21 (232/20)
<b>ADDRESS:</b>	1-11 Rodborough Avenue, Crows Nest
<b>PROPOSAL:</b>	Review of determination of application to demolish existing buildings and construct a 4 storey residential flat building with basement parking including strata subdivision.
<b>REPORT BY NAME:</b>	Luke Donovan, Senior Assessment Officer
<b>APPLICANT:</b>	Platform Project Services Pty Ltd

Jan Murrell declared a perceived conflict of interest on this item and therefore left the meeting. Gary Shiels assumed the chair.

**Public Submissions**

**2 Written Submissions post agenda.**

<b>Submitter</b>	<b>Applicant/Representative</b>
	Matthew Billing - Applicant

**Panel Determination**

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

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 requests 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. Further, the Panel considers that the proposed development will be in the public interest because it is consistent with the objective of the standard and the zone objectives.

The Council Officer’s Report and Recommendation is endorsed by the Panel.

Panel Reason:

The Panel considers that the 8.2 is justified in light of the improvements to the design, reduction in number of dwellings, car parking spaces, general improvement in the internal and external amenity, and streetscape, and is accepted as an amended proposal to that originally refused by the panel.

The Panel has considered in detail submissions made in regard to construction noise but notes that is not a sustainable reason for refusal of the application. However, in considering this issue the panel has amended Condition E26 Community information as follows:-

**Community Information**

E26. The residents of all properties within the Rodborough Avenue cull de sac and adjoining properties fronting Miller and Falcon Streets must be kept regularly informed regarding the progress and likely timeframes for all stages of demolition, excavation and construction. Prior to the commencement of any noisy building works, as defined by the EPA including demolition and excavation, a minimum of 48 hours notice must be given to the residents of properties identified in this condition. The project manager for the development must keep the residents informed by way of either public meetings, letters or site notices. The name of the project manager including a contact number to be answered at all times when site activities are occurring must be provided to all residents identified by this condition. Any justifiable complaints made by any resident must be immediately addressed by the Project Manager to minimise impacts on the surrounding residents.

(Reason: To ensure that all surrounding residents are kept regularly informed of activities that may affect their amenity)

Voting was as follows:

<b>Panel Member</b>	<b>Yes</b>	<b>No</b>	<b>Community Representative</b>	<b>Yes</b>	<b>No</b>
Helen Lochhead	Y		Virginia Waller	Y	
Gary Shiels	Y				

The public meeting concluded at 3.10 pm.

The Panel Determination session commenced at 3.10 pm.

The Panel Determination session concluded at 4.30 pm.

Endorsed by Jan Murrell  
North Sydney Local Planning Panel

**7 July 2021**