



**SUPPLEMENTARY REPORT OF JIM DAVIES, EXECUTIVE PLANNER
DATED 12 MAY 2023**

SUBJECT: LPP01 – 37 BAY VIEW STREET, LAVENDER BAY

APPLICATION NO. 418/21

PROPOSAL: CONSTRUCTION OF A DWELLING HOUSE AND ASSOCIATED WORKS

OWNER: P. DUGAL

APPLICANT: P. DUGAL C/- ARCHITECTURE SAVILLE ISAACS

AUTHOR: JIM DAVIES, EXECUTIVE PLANNER

DATE: 12 MAY 2023

Attachments:

1. Conditions of Consent
2. Panel Decision and Officer's Report – LPP01 – 5 April 2023
3. Revised Architectural Plans
4. Materials Board
5. Revised Arborist's Report

REASON FOR SUPPLEMENTARY REPORT

This supplementary report responds to amended plans and a revised arborist's report received from the applicant on 24 April 2023, within the 21-day timeframe set by the Panel.

This information was required by the decision of the Panel on 5 April 2023 which recommended deferral of the determination as follows:

Panel Determination

The Panel members have undertaken independent site inspections prior to the meeting and have considered all written submissions. The Panel has deferred this matter for an electronic determination following receipt of an amended set of plans and a supplementary report by Council Officers addressing the required design amendments and additional supporting information as necessary prepared by the applicant.

Design amendments

- AA1.** *Within 21 days of receipt of this notice, the applicant must submit amended plans to Council for assessment. As soon as practicable following this assessment Council is to submit an addendum report to the Panel for electronic determination.*

1. *The amended plans must address the following:*
 - a) *Increase the southern side boundary setback of the garage to a minimum of 900mm and increase the southern side setback of the 1st floor bedroom suite to 1.542m, to match the setback of the remainder of the house. The amended design must also address any other adjustments to the building, driveway or landscape design, to achieve the increased setbacks.*
 - b) *Before submitting the amended design required by condition (a), the design must be assessed by a suitably qualified and experienced arborist (AQ5) and their assessment report submitted, to demonstrate the amendment does not negatively impact any of the three crepe myrtles on the footpath adjacent to and near the site. The report may include recommendations to effectively reduce, mitigate or avoid any potential impacts on those trees.*
 - c) *Landscape the setback area between the garage and the southern boundary, to soften the appearance of the garage and maintain a view to the harbour between the proposed dwelling and the neighbouring dwelling at No 35 Bay View Street.*
 - d) *The roof garden is to be made accessible for maintenance and repairs only and the roof garden is to be marked as “non-trafficable” on the architectural plans.*
 - e) *The floor to ceiling height windows and sliding doors to the eastern elevation of the 1st floor bedroom are to be replaced with a solid wall and/or window seat to a maximum height of 800mm, with windows from the top of the window seat to the ceiling. At least one of these windows must be openable to allow access to the roof and garden for maintenance and repairs.*
 - f) *Reduce the depth of the awning over the ground floor balcony to a maximum of 1.0m. Install louvres, or similar, to both sides of the ground floor level balcony to the same depth as the awning. The louvres or similar are to be angled to reasonably maintain privacy for occupants of the proposed building and dwellings at 35 and 39 Bay View Street Lavender Bay.*
 - g) *The solid to void ratio in the eastern harbour facing elevation shall be revised to reduce the amount of glazed area and increase the solid portions of the elevation, to comply with clause 1.4.12 Colours and Materials, Provision 4, of Part B, Residential, North Sydney Development Control Plan 2013.*
 - h) *The lower levels of the eastern harbour facing elements are to be made visually recessive to reduce the visual impact of four levels by the use of recessive finishes and colours and the use of appropriate landscaping in the foreground.*

- i) *Replace the glass in the balustrades on the eastern elevation with “BL-3 Weathered Balustrade Brass Rods” as noted on drawing DA203, Revision D.*
 - j) *Install gates on each side of the house for the safety and security of companion animals and people.*
 - k) *Amend the plans to show that the solar panels will be installed to an angle of not more than 5 degrees of the horizontal (the roof surface).*
2. *Council is to address Chapter 10 of SEPP (Biodiversity and Conservation) 2021, as required by clause 6.65 Savings and transitional provisions of the SEPP.*

The Panel requests the applicant prepare amended plans, and necessary information to be submitted to council within 21 days from the date of this meeting. If no response is received to this request within the required time period, then the matter is to be determined by the Panel by electronic means.

EVALUATION

1. Design amendments required by the Panel’s Determination of 5 April 2023

Set out in the following table is an appraisal of the applicant’s revised plans attached to this report, which demonstrates that the plans fulfil the Panel’s required amendments to the proposal.

Appraisal of design amendment shown on plans submitted 24 April 2023.

Required design amendment	Satisfied	Comment
a) Increase the southern side boundary setback of the garage to a minimum of 900mm and increase the southern side setback of the 1st floor bedroom suite to 1.542m, to match the setback of the remainder of the house. The amended design must also address any other adjustments to the building, driveway or landscape design, to achieve the increased setbacks.	Yes.	Refer to drawing No. DA 105.
b) Before submitting the amended design required by condition (a), the design must be assessed by a suitably qualified and experienced arborist (AQ5) and their assessment report submitted, to demonstrate the amendment does not negatively impact any of the three crepe myrtles on the footpath adjacent to and near the site. The report may include recommendations to effectively reduce, mitigate or avoid any potential impacts on those trees.	Yes.	An updated arborist report has been submitted (Attachment 5), recommending tree protection measures to prevent damage to trees on the footpath adjacent to the site and properties either side of the site. A condition is recommended, regarding T1, located adjacent the site, limiting pruning to a maximum of 10% of the tree’s crown, and to ensure supervision of pruning by a suitably qualified arborist or tree surgeon.

Required design amendment	Satisfied	Comment
c) Landscape the setback area between the garage and the southern boundary, to soften the appearance of the garage and maintain a view to the harbour between the proposed dwelling and the neighbouring dwelling at No 35 Bay View Street.	Yes.	Refer to drawing No. DA 104.
d) The roof garden is to be made accessible for maintenance and repairs only and the roof garden is to be marked as “non-trafficable” on the architectural plans.	Yes.	Refer to drawing No. DA 106.
e) The floor to ceiling height windows and sliding doors to the eastern elevation of the 1st floor bedroom are to be replaced with a solid wall and/or window seat to a maximum height of 800mm, with windows from the top of the window seat to the ceiling. At least one of these windows must be openable to allow access to the roof and garden for maintenance and repairs.	Yes.	Refer to drawing No. DA 203.
f) Reduce the depth of the awning over the ground floor balcony to a maximum of 1.0m. Install louvres, or similar, to both sides of the ground floor level balcony to the same depth as the awning. The louvres or similar are to be angled to reasonably maintain privacy for occupants of the proposed building and dwellings at 35 and 39 Bay View Street Lavender Bay.	Yes	Refer to drawings No. DA 202 & 204.
g) The solid to void ratio in the eastern harbour facing elevation shall be revised to reduce the amount of glazed area and increase the solid portions of the elevation, to comply with clause 1.4.12 Colours and Materials, Provision 4, of Part B, Residential, North Sydney Development Control Plan 2013.	Yes.	The revised eastern elevation satisfies the DCP. Full length sliding glass doors are provided to the main balcony from the ground floor living and dining rooms, which is acceptable. Refer to drawing No. DA 203.
h) The lower levels of the eastern harbour facing elements are to be made visually recessive to reduce the visual impact of four levels by the use of recessive finishes and colours and the use of appropriate landscaping in the foreground.	Yes.	Recessive finishes and tones are used and modulation of the lower 2 levels effectively reduce their visual impact. Refer to drawing No. DA 203.
i) Replace the glass in the balustrades on the eastern elevation with “BL-3 Weathered Balustrade Brass Rods” as noted on drawing DA203, Revision D.	Yes.	Refer to drawing No. DA 203.
j) Install gates on each side of the house for the safety and security of companion animals and people.	Yes.	Refer to drawing No. 104.
k) Amend the plans to show that the solar panels will be installed to an angle of not more than 5 degrees of the horizontal (the roof surface).	Yes.	Refer to drawing No. DA 203.

Referrals

The required amendments only potentially effect the tree on the footpath adjacent to the site, hence the amended plans and arborist report were only referred to the Landscape Development Officer.

An additional condition has been recommended, as described in the table.

2. Clause 6.65 SEPP (Biodiversity and Conservation) 2021

An assessment considering Chapter 10 of the policy is required, as clause 6.65 of the current SEPP states that former provisions apply to development applications lodged and not determined before 21 October 2021, when the policy was last amended. Chapter 10 – Sydney Harbour Catchment of the policy, preceded Chapter 6 – Catchments. The report to the Panel (LPP01, 5 April 2023) assessed the application under the latter chapter.

Accordingly, the proposal is now considered having regard to Chapter 10 of the previous edition of the SEPP.

Chapter 10 Sydney Harbour Catchment, Part 10.3 Foreshores and Waterways Area

Division 2 Matters for consideration must be considered before consent is granted under Part 4 of the EP&A Act (cl. 10.18).

As the site is in the Foreshores and Waterways Area, certain clauses of this division require matters to be considered as recorded in the following table:

Consideration of matters as required by Part 10.3, Division 2, cl. 10.19 – 10.27

Clause	Matter	Consideration
10.19	Biodiversity ecology and environment protection	Sediment and erosion control measures proposed will adequately protect biodiversity and ecology of the harbour, by eliminating or minimising pollutants entering the waterway.
10.20	Public access to and use of foreshores and waterways	N/A. No access to the waterway is provided or can be provided, the site not being on the waterfront.
10.21	Maintenance of a working harbour	The proposal will not impact enterprises based on the harbour. Numerous dwellings already occupy the western side of Lavender Bay and the new dwelling will negligibly impact the compatibility of activities at the land – water interface.
10.22	Interrelationship of waterway and foreshore use	N/A, as the site is not on the foreshore.
10.23	Foreshore and waterways scenic quality	With the amendments made to the eastern façade, the proposal will now have a satisfactory impact on the scenic qualities of Lavender Bay. The amended design also promotes both the heritage and character desired for the locality, in contrast with dwellings on the site's flanks, which have been the subject of alterations and additions. The subject proposed residence and that recently approved west of the site at 21 King George Street, set the tone for future renewal of housing stock in the locality.
10.24	Maintenance, protection and enhancement of views	As implied in the previous comment, views from the harbour and the surrounding areas of the site and locality will be reasonably affected, and view sharing is achieved by the amended design.

Clause	Matter	Consideration
10.25	Boat storage facilities	None is proposed.
10.26	Floating boat platforms	None is proposed.
10.27	Mooring pens	None is proposed.

Division 3 Foreshores and Waterways Planning and Development Advisory Committee

In the current edition of the SEPP, the committee is no longer constituted and cannot be consulted. The Department was consulted, and it was confirmed that provisions requiring consultation with the Committee were removed from the SEPP, when amended on 26 November 2021, with no savings or transitional arrangements made. Until 21 November 2022, provisions that constituted the Committee were retained in the previous version of the policy.

Sydney Harbour Foreshores and Waterways DCP 2005

Although Chapter 10 of the previous version of the SEPP did not mention the DCP, as does the current version, the DCP must be considered under section 4.15 (1) Environmental Planning and Assessment Act, 1979, as it applies to development in the Foreshores and Waterways Area.

For convenience, the assessment made in the Panel report (LPP01) is reproduced here.

Being in Sydney Harbour's Foreshores and Waterways Area, the site is subject to relevant provisions of the DCP of the same name, published in 2005. Of relevance to the site is the need to conduct assessments of the proposal's potential to impact the conservation value of certain 'terrestrial and aquatic ecological communities' and the 'landscape character type' a site is located in.

The subject land is in the "Urban Development (with scattered trees)" terrestrial ecological community, to which the DCP attributes a "low conservation status". Nevertheless, an assessment against performance criteria is required:

Terrestrial ecological community assessment

<i>Criteria</i>	<i>Performance</i>
<i>Mature trees containing hollows are preserved where feasible.</i>	The site contains no hollow bearing trees.
<i>Natural watercourses and any special natural features such as cliff faces and rock outcrops are protected.</i>	The site has no such features.
<i>The incremental and cumulative effects of development are considered having regard to the above performance criteria.</i>	N/A
<i>Fencing to contain domestic pets is provided.</i>	Fencing is proposed to side and rear boundaries. Gates at the side of the house as included in amended plans will prevent companion animals reaching the street.
<i>Measures to minimise soil erosion and siltation during construction and following completion of development are implemented.</i>	Suitable measures are proposed and conditioned.
<i>Controls are implemented to prevent pollutants from entering the waterway.</i>	Suitable measures are proposed and conditioned.

<i>Any pollutants and any increase in suspended solids is temporary and does not exceed the current pollution and range of turbidity.</i>	This criterion is aimed at water-land interface or water-based development, that would disturb the bed of a natural watercourse or body.
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The subject land is situated in a 'landscape character type 8'. IN accordance with the DCP, the performance criteria for 'type 8' are considered in the following table:

Landscape character assessment

<i>Criteria</i>	<i>Performance</i>
<i>Vegetation is integrated with land-based development to minimise the contrast between natural and built elements;</i>	There is no contrast between natural and land based (waterfront) development as the site is well-elevated above the waterfront. Even so, vegetation via landscaping will integrate with other vegetation in the locality. Small trees and shrubs are proposed, which will complement local landscape character.
<i>Design and mitigation measures are provided to minimise noise and amenity impacts between incompatible land uses;</i>	There is arguably no land use incompatibility in the site's vicinity.
<i>The maritime uses on the Harbour are preserved. Pressure for these uses to relocate is minimised. New developments adjoining maritime uses are designed and sited to maintain compatibility with existing maritime uses; and</i>	No pressure is expected to be applied on nearby maritime uses by the proposal. Marine activity at the boatshed below the site would unlikely be obliged to move to another site because of the proposed development.
<i>Remaining natural features that are significant along the foreshore are preserved and views of these features are maintained.</i>	The proposal does not affect natural foreshore features or unreasonably effect views of them.

CONCLUSION

The proposal as amended is now capable of being approved. As demonstrated, the amended plans satisfy all requirements of the Panel's decision of 5 April 2023.

Approval is recommended for the following reasons, noting the amended plans have adequately responded to the design amendments required, as the proposal is now:

1. consistent with the streetscape and character of the locality,
2. reasonably protects the high-quality amenity of neighbours and provides amenity of a similar quality for occupants of the proposed development, and
3. is consistent with applicable provisions of the North Sydney Local Environmental Plan 2013, North Sydney Development Control Plan 2013, other relevant planning instruments and policies.

RECOMMENDATION

THAT the North Sydney Local Planning Panel, as the consent authority, grant its consent Development Application 418/21 to construct a dwelling house and associated works at 37 Bay View Street Lavender Bay, subject to the conditions in Attachment 1.

Jim Davies
EXECUTIVE PLANNER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES
