



**NORTH SYDNEY COUNCIL**

Council Chambers  
30 August 2023

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 6 September 2023.

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.

**THERESE MANNS**  
**GENERAL MANAGER**

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**BUSINESS****LPP01: 30 Myrtle Street, North Sydney – DA 279/21/2**

Applicant: M Halmons

Report of Miguel Rivera, A/Team Leader (Assessments)

This application under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* seeks to modify development consent (DA279/21) for alterations and additions to an existing semi-detached dwelling at No. 30 Myrtle Street, North Sydney.

The application is reported to the North Sydney Local Planning Panel (NSLPP) because the proposed modification involves making changes to a conditional requirement imposed by the Panel in accordance with the directions of the NSW Minister for Planning. Council's notification of the proposal has attracted a single submission during the notification period. This submission raised privacy concerns associated with the first floor balcony.

The proposed modification to delete Condition C14(c), amend Condition C14(d), facilitate the extension of the approved sliding doors and provision of two (2) new skylights on the ground floor, has been assessed against Council's planning requirements. The proposed modification will result in development that is substantially and materially the same as approved by DA279/21 and is considered to demonstrate sufficient planning and design merit when assessed against relevant provisions and controls under environmental planning instruments (including the North Sydney Local Environmental Plan 2013).

Of particular note are the specific changes to Condition C14, which relate to removing the requirement to have highlight windows along the eastern elevation of the first floor bedroom (as recommended by Council and endorsed by the NSLPP) and removing the requirement to limit the width of the balcony of the first floor bedroom (as created and imposed by the NSLPP). Both requirements intend on minimising privacy impacts and overlooking from the first floor bedroom and balcony. Council is satisfied that following a detailed review of potential impacts on surrounding and neighbouring properties, the proposed changes to Condition C14 are considered satisfactory and would result in an acceptable level of residential amenity and shared privacy that would be reasonably anticipated for in a highly urbanised residential area in which semi-detached and attached terrace housing and residential flat buildings commonly occur.

The proposed alterations to extend the glass sliding doors in the living space and the addition of two (2) new skylights in bedroom 3 in the ground floor will have negligible impacts on the streetscape character and quality of the conservation area and immediate locality as the subject site is situated well away from public domain including Myrtle Street. Consequently, these elements would not be highly visible.

Given the above considerations, Council is of the view that the proposed modification is acceptable and supportable, and accordingly, the application is recommended for approval.

**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 approve the modification of development consent DA279/21 dated 2 February 2023 in respect of a proposal for alterations and additions to an existing semi-detached dwelling at No. 30 Myrtle Street, North Sydney, under the provisions of Section 4.55 of the *Environmental Planning and Assessment Act 1979* only insofar as will provide for the following:

**1. To amend condition A1 of the consent so as to read as follows:**

**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 of this consent.

Plan No.	Issue	Title	Drawn by	Received
S4.55-01	A	Site Plan	M Halmos – Architect	4 Aug 2023
S4.55-05	A	Ground Floor Plan	M Halmos – Architect	17 May 2023
S4.55-06	B	First Floor Plan	M Halmos – Architect	17 May 2023
S4.55-07	A	Roof Plan	M Halmos – Architect	17 May 2023
S4.55-08	A	Sections S-01 and S-03	M Halmos – Architect	17 May 2023
S4.55-09	A	Section S-02	M Halmos – Architect	17 May 2023
S4.55-10	A	North and West Elevations	M Halmos – Architect	17 May 2023
S4.55-11	B	South and East Elevations	M Halmos – Architect	4 Aug 2023

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

**2. To amend condition C14 of the consent so as to read as follows:**

**Privacy Measures and Design Changes**

C14. The following privacy devices are to be provided:

- a) Obscure glazing should be used and maintained for the stairwell to reduce the extent of clear glazing on this elevation.
- b) Obscure glazing should be used and maintained for the north-facing windows of the first floor.
- c) ~~Change the windows~~ **Windows** in the main bedroom **along the east facing elevation are to feature translucent glazing to a 1.6m height (measured above the finished floor level) and all openable window panels (on the eastern side) must be awning-style, with a restricted opening of 125mm.** ~~a highlight~~

~~window with a minimum sill height of 1.6m above finished floor level.~~

- d) ~~Modify the first floor bedroom balcony to have a depth of 600mm and balustrades~~ **balustrade** with a solid form that is designed to reasonably maintain amenity for adjoining properties.
- e) To delete window W09 and replace with a window on the western elevation of the first floor bathroom and obscure glazing.
- f) **Install screen planting capable of attaining a minimum height of 3 metres, adjacent to the common boundary with No. 32 Myrtle Street. The screen planting shall be located immediately adjacent to the southern boundary of the site, north of No. 32 Myrtle Street and directly in front of the boundary fencing - as shown on the approved plans.**

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)

### **3. To amend Condition C18 of the consent so as to read as follows:**

#### **BASIX Certificate**

C18. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. **A397548\_03** (~~A397548~~) 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)

### **LPP02: Unit 6/19 Belmont Avenue, Wollstonecraft – DA 112/23**

Applicant: Performance Building Consultants

Report of Miguel Rivera, A/Team Leader (Assessments)

The Applicant seeks development consent from the North Sydney Local Planning Panel (NSLPP) for alterations and additions to Unit 6 within an existing residential flat building including garage conversion and additions to roof terrace on land identified as No. 19 Belmont Avenue, Wollstonecraft.

The application is required to be reported to the NSLPP for determination, as directed by the Minister of Planning, as the development is considered sensitive development, to which State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) applies.

Council's notifications of the proposed development has attracted a total of two (2) submissions raising concerns and issues associated with building height, bulk and scale, parking, setbacks, view loss and outlook impacts, visual privacy and amenity impacts and property values.

The development application has been assessed against the relevant provisions and requirements under SEPP 65, the North Sydney Environmental Plan 2013 and the North Sydney Development Control Plan 2013 and is generally found to be satisfactory. In light of the considerations, reasons and merits mentioned through this report, the proposed development enables an appropriate, acceptable and reasonable design and planning outcome for the subject site that demonstrates appropriate consistency and adequate compatibility with the streetscape and character of the immediate locality. The proposed changes to the unit layout and external ancillary structures provide improved amenity, functionality and facilities for future occupants whilst not compromising the amenity of adjacent units and neighbouring properties. Further, the proposal will not result in an inability for the adjoining unit (Unit 7) to be redeveloped with a replicated form and design.

The application involves a non-compliance to the maximum height of buildings development standard (12m) under Clause 4.3 of NSLEP 2013 as the proposal features a building height of 12.55m above existing ground level that pertains to a small portion of the enclosed structure in the roof terrace. This represents a departure of 0.55m or 4.58% from the development standard. The Applicant submitted a written request pursuant to Clause 4.6 of the NSLEP 2013. The request is supported given that sufficient planning grounds were provided and the included information has demonstrated 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 approval given the merits demonstrated by proposal against critical objectives, provisions and controls under the SEPP 65 and Council policies.

**Recommending:**

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

**THAT** North Sydney Local Planning Panel, assume the concurrence of the Secretary of the Department of Planning, Industry and Environment, and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 – Maximum Height of Buildings and grant consent to Development Application No. DA112/23 for alterations and additions to a strata unit including garage and terrace on land at No. 19 Belmont Avenue, Wollstonecraft (SP 87918) subject to the following site specific and attached standard conditions:

**Design Changes – New Parking Space, Multi-media Room and Privacy Treatments to Enclosed Space**

C1. The final construction plans must be amended to incorporate the following design changes:

- Safety barrier: A barrier must be provided along the western edge/perimeter of the new parking space for Unit 6. This barrier must be designed:
  - To contain a small vehicle on the car space on any portion that is raised and has a fall of more than 600mm.
  - To comply with the relevant BCA/NCC requirements.
  - Structurally, in accordance with the loading requirements of AS/NZS 1170.1.
  - To not be made from brickwork, unreinforced concrete, or other materials likely to shatter on impact.
  - Minimal in design and presentation from the street and comprising of materials, finishes and colouration that are complementary to the existing building. An example of a barrier design is a single metal rail with a height of 900mm above the existing levels of the car space.
- Separate access via multi-media room: Any separate access from the front setback/Belmont Avenue into the Unit 6 must be deleted completely. This includes the access/external doors into the multi-media room. Any openings facing Belmont Avenue must be modified to windows with a minimum sill height of 1.2m. Alternatively, a small access door can be provided on the eastern side of the northern wall (façade) of the multi-media room. As much as practicable, this door must be situated away from the parking space to minimise potential safety issues and the door must only comprise of a maximum 40% of the width of the northern wall (façade) width in the multi-media room.
- Garden bed: The landscaping and plantings within the garden bed immediately in front of the bathroom and east of the new car space must be improved with the establishment of additional groundcovers and shrubs/screening plants to facilitate an appropriate outlook and balanced presentation and to offset the car space.
- Privacy treatments to enclosed space (office/sun room): The western window (W05) of the enclosed space (office/sun room) on the terrace, must have a minimum sill height of 1.6m (measured from the floor level) and feature internal blinds/sheer curtains or internal or external adjustable louvres and/or tinting/frosted glazing to provide some privacy to this space and to adjoining properties.

Plans and specifications which comply with the above requirements must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To resolve any safety issues associated with the new car space and to provide an improved landscaped presentation for the premises)

#### **By-Laws**

G1. Prior to the release of any Occupation Certificate, the current By-Laws for the Strata Plan must be amended to capture the following:

- The restricted use of the new car space of Unit 6 as a space to be used for a small car only with accompanying signage. No part of a parked vehicle in this space, is to overhang Council's road reserve/footpath zone. The car space will form part of Lot 6 (Unit 6) and the ongoing maintenance of this car space will solely be the responsibility of the owner/s of Lot 6 (Unit 6).
- The exclusive use of the terrace by Unit 6 (Lot 6), which would reasonably anticipate the use of this space and any cooking, odour and noise generated from the terrace use, are appropriately referenced in terms of the By-Laws and updated Strata Plans. The owner/s of Lot 6 (Unit 6) must ensure cooking smoke, air, odour and noise emissions from the use of the terrace are minimised.

The updated By-Laws must be provided to the Certifying Authority and must be provided to Council in-conjunction with the Final Occupation Certificate.

(Reason: To ensure By-Laws reflect the approved development)

#### **Strata Plan to be updated**

G2. The Strata Plan is to be updated to reflect the approved development, prior to the issue of the final Occupation Certificate.

(Reason: To ensure the use of communal space and unit entitlement are clarified)

#### **Registered Plans (Strata)**

K1. The current Strata Plans must be updated, registered and provided to Council to reflect the approved development including the new car space and enclosed/roof structures on the terrace. The new and registered Strata Plans must indicate the restricted use of the new car space of Unit 6 as a space to be used for a small car only with accompanying signage. The car space will form part of Lot 6 (Unit 6) and the ongoing maintenance of this car space will solely be the responsibility of the owner/s of Lot 6 (Unit 6). No part of a parked vehicle in this space, is to overhang Council's road reserve/footpath zone.

The applicant must submit to Council's documentary evidence that the Strata Plan has been registered and the lot(s) exists. The use of the premise must not commence until the documentary evidence has been submitted to and approved by Council.

(Reason: To ensure that the allotments of land are created prior to the commencement of the approved use.)

**LPP03: 5 Little Wonga Road, Cremorne – DA 51/23**

Applicant: Jan Taljaard

Report of Josie Maejiirs

This development application seeks consent from NSLPP for alterations and additions to the existing attached dual occupancy dwelling which includes excavation for a rumpus room and garage, a new lift, a new balcony on level two, and a new balcony on level three.

The application is reported to NSLPP because the proposed works at upper third and fourth storey levels is above the permissible height limit of 8.5m pursuant to clause 4.3(2) in NSLEP 2013. The non-compliance with the permitted height limit is greater than 10% requiring determination by NSLPP as directed by the Minister for Planning.

The building is an existing approved dual occupancy and alterations are proposed only within the physical limits of the existing approved structure. Due to the sloping nature of the site, the rear elevation has a height of 6.89m while the front elevation has a height of 13.86m. There is no new works proposed above the approved roof height of the existing building.

Notification of the proposal has attracted one submission raising particular concerns about 'structural integrity of the partition wall to be maintained throughout construction'. The assessment has considered this concern as well as the performance of the application against Council's planning requirements. This development application has been assessed against the North Sydney Local Environmental Plan 2013, the North Sydney Development Control Plan 2013 and the relevant State Planning Policies and found to be satisfactory in the site circumstances.

Consideration has been given to the Clause 4.6 request for a variation to the LEP's building height development standard as submitted by the applicant. The variation to the building height development standard is justifiable, and the proposed works above 8.5 metres will not materially alter the form of the building, the roof is to remain unchanged, and this part of the development would not impact on the residential amenity of surrounding properties or the streetscape.

Following this assessment, the development application is considered to be reasonable in the circumstances and 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, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 Height of Building and grant consent to Development Application No. # 51/2023 for alterations and additions to the existing dwelling for a new garage, lift, rumpus room, and balconies on land at 5 Little Wonga Road, Cremorne.



**LPP04: 27 Elamang Avenue, Kirribilli – DA 186/23**

Applicant: John White C/- Corben Architects

Report of Andrew Beveridge, Assessment Officer

This development application seeks NSLPP approval for alterations and additions to an existing dwelling house, including a first floor bedroom addition and extension of a deck.

This application is reported to North Sydney Local Planning Panel for determination because the proposed works breach the building height limit by greater than 10%, and the proposal effectively seeks a revision of a previous panel decision (01/02/2023).

As the proposal involves the construction of alterations and additions to an existing single dwelling with a maximum height of 10.2m that is in exceedance of the maximum permitted height limit by 1.7m (20.2%), the applicant has submitted a written request seeking a variation to the building height development standard in accordance with Clause 4.6 of NSLEP 2013. The applicant's submission has been considered with reference to the Land and Environment Court's decision in *Wehbe v Pittwater Council [2007] NSWLEC 827* in order to justify the proposed variation. The applicant's Clause 4.6 is considered to be satisfactory given the site circumstances and on the basis that it will not have a significant impact upon the views or general amenity of adjoining properties.

Notification of the proposal has attracted three (3) unique submissions and the assessment has considered these as well as the performance of the application against Council's planning requirements. The amenity impacts upon adjoining properties in regard to views, solar access, and privacy, have been assessed and are considered to be relatively minor and acceptable within the site circumstances. The works will also maintain a sympathetic scale that is consistent with the existing dwelling, with no additional excavation and will not result in any adverse impacts upon Sydney Harbour.

Subject to the satisfaction of conditions, it is considered that the proposal is acceptable as it will not result in any significant adverse impacts upon the locality or adjoining properties, and the streetscape character will be maintained. The proposal will also not result in any unreasonable impacts on the amenity of adjoining properties such as impacts to views, overshadowing or loss of privacy.

While there will be some minor non-compliances with the side setbacks, and involves a large non-compliance with the maximum height requirement that creates some minor view loss, this is considered to be acceptable on merit on the basis that the proposal would not have significant overall amenity impacts upon adjoining properties and the development has been designed in a manner that is sympathetic to the built form of the neighbourhood and the sloping topography of the site towards Sydney Harbour.

Having regard for the potential impacts upon the amenity of adjoining properties and the surrounding neighbourhood, subject to conditions, the development application is considered to be satisfactory and is recommended for **approval**.

**Recommending**

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

**THAT** the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 and **grant consent** to Development Application No. 186/23 for alterations and additions to an existing single dwelling, on land at 27 Elamang Avenue, Cremorne, subject to the following site specific and standard conditions:-

**Inconsistency with Development Consent DA288/21**

B1. Pursuant to s4.17(1)(b) and s4.17(5) of the *Environmental Planning and Assessment Act 1979*, consent no DA 288/22 for alterations and additions, shall be modified in accordance with Clause 67 of the *Environmental Planning and Assessment Regulation 2021* prior to the issue of a construction certificate for this consent by adding a new condition D3 as follows:

“Development consent DA186/23, authorises additions and alterations to a detached dwelling at 27 Elamang Avenue, Cremorne. Where there is an inconsistency between this consent and consent no DA288/22, then consent no. DA186/23, shall prevail to the extent of the inconsistency.”

(Reason: To provide clarity as to the works approved under both development applications)

**Amendments to the Landscape Plan**

C14. The landscape plan must be amended as follows to provide an appropriate landscaped setting:

- 1) The landscape plan numbered LP03 (Revision F), prepared by Studio U.C, dated 6 June 2023, received by Council on 15 June 2023, must be amended and updated to reflect the amendments made in the architectural plans (Numbered DA02, DA04-08, Revision C) prepared by Corben Architects, dated 2 August 2023, and received by Council on 2 August 2023.
- 2) Details must be provided on the plans for the ongoing maintenance of the planters located along the western side of Bedroom 1 on Level 3, as well as the choice of species (including number and pot size).
- 3) The 4 x *Rhaphiolepis indica* proposed for planting in the western side planter of Deck 2 shall be replaced with another species that can reach a mature height no greater than 600mm. *Aloe* ‘Bush Baby Yellow’ and *Kalanchoe tomentosa* are appropriate suggested species.

Amended plans 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 plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure an appropriate landscaped context and maintain a consistency of plans)

**LPP05: 20-22 Waruda Street, Kirribilli – 358/22**

Applicant: The Trustee for the Stable Innovations Sydney Harbour Unit Trust  
Report of Jim Davies, Executive Assessment Planner

This development application seeks approval for alterations and additions to a strata-subdivided residential flat building. The application proposes to create 7 x 3-bedroom dwellings with parking for 11 cars and bicycle storage for residents and visitors. The existing, 60's vintage residential building accommodates 27 units and several parking spaces in 2 levels. Vehicle access is from Waruda Street and Beulah Street, for the existing building and the proposed scheme.

Determination of the application by the North Sydney Local Planning Panel is required due to the application being subject to the provisions of SEPP 65 – Design Quality of Residential Apartment Development, the proposed development exceeding the height of buildings development standard.

Notification of the proposal attracted 17 submissions. 9 objected, raising key these issues:

- Non-compliance with the building height development standard,
- Likely impacts on views, of the Sydney Opera House, Circular Quay, the Sydney Harbour Bridge and the Royal Botanic Garden, from residences north of the building proposed to be renovated.
- The refurbished building will be out of character with the 'village' character of Kirribilli and incompatible with nearby heritage-listed buildings and the Conservation Area in which the site is situated.

A comprehensive summary of issues raised by submitters is included in this report.

The development entails a substantial reworking of the building, including removal of the building's façades and inner walls with only structural columns and the floor slabs remaining. Legal opinion was provided with the application, submitting the application is for alterations and additions to an existing building as a matter of fact, and is not development for the purpose of constructing a new building.

This was a key concern at Pre-DA stage when a meeting was held and advice provided to the applicant, and when the application was first lodged. As a matter of principle, more stringent application of planning controls is applied to a new building and for alterations and additions, a more flexible approach is typically taken.

Based the legal opinion provided, the applicant seeks no "concessions", in that the application should be assessed on merit, in accordance with applicable controls of State and local planning frameworks.

Structural engineering advice has been provided, indicating the partial demolition and redevelopment of the building may be safely completed. A sustainability assessment submitted with the application concluded that the proposal more sustainable, mainly in terms of saving of embodied energy in the remaining structure and transport emissions and energy, compared with completely demolishing the building and erecting a new one.

Key planning matters addressed in this report include:

- Consideration of the height exceedance and the applicant's request to vary the height development standard,
- The replacement of 27 dwellings with 7 dwellings, and the economic analysis submitted in support of the proposal,
- Impacts of the proposed development being in a sensitive harbourside location and its impacts on the scenic qualities of Sydney Harbour and the surrounding cityscape,
- Impacts on neighbours' views, and other amenities,
- Setbacks, site coverage, landscaped area and unbuilt upon area, and landscaping,
- Heritage, streetscape and local character compatibility, and
- Vehicular and pedestrian access to the building.

**Recommending:**

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

**THAT** the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning and Environment and invoke the provisions of Clause 4.6, North Sydney Local Environmental Plan 2013 with regard to the non-compliance with Clause 4.3 and delegate authority to Council's Development services manager to grant consent to Development Application No. 358/22 for alterations and additions to a residential flat building to convert 27 strata titled flats into 7 large apartments, landscaping and associated works, on land at 20-22 Waruda Street Kirribilli, subject to:

- a) the conditions appended to this report, and
- b) the applicant submitting plans, within 30 days of the date of this resolution, to satisfactorily address the following matters:
  - i. Removing the carport and driveway from the setback area between the Beulah Street site boundary and the building, towards the site's northwestern corner.
  - ii. Replacing the existing vehicle crossing adjacent to this driveway with kerb and gutter to match existing and making good the footpath to match levels of the existing footpath's surface and gradient.
  - iii. Landscaping the area where the carport and driveway are to be removed, including a pedestrian path to the building and a shady, vegetation-screened seating area for use of building occupants and visitors. Alternatively, the area could be landscaped and included in the passive landscaping between the building and its street frontages.
  - iv. Relocating the parking space to be removed from the Beulah Street frontage to the ground level parking area and to make it another parking space suitable for access by people with disability, in accordance with AS4299-1995, including a minimum floor to ceiling clearance of 2.5m, for the parking space and the adjacent shared space, to maintain a total 11 parking spaces. Alternatively, convert for accessible use 2 of the 10 car parking spaces on the ground and upper ground levels, in accordance with the cited Australian Standard.

**LPP06: 24 East Crescent Street, McMahons Point – DA 5/22**

Applicant: Lighthouse Project Management Pty Ltd  
Report of Jim Davies Executive Planner

This development application seeks approval for demolition of a 3 storey, 13 unit residential flat building and replacing it with a 5-storey residential building with an apartment on each level, above a single-level basement for parking and other facilities, and strata subdivision of the development.

The application is reported to the North Sydney Local Planning Panel for determination as the proposal is the subject of more than 10 submissions, a request to exceed the building height development standard by more than 10% and because SEPP 65 – Design Quality of Residential Apartment Development applies to the development.

Notification of the proposal has attracted 67 submissions from 37 correspondents raising particular concerns about:

- the height breach proposed,
- inadequate front, side and rear setbacks,
- impacts on privacy, views and solar access,
- vehicular access, traffic impacts and parking,
- impact on trees overhanging the site from adjacent land, and
- the proposal being out of character with local development and having adverse effects on local heritage.

This assessment has considered these concerns and the performance of the application against Council's planning requirements.

Since being lodged in January 2022, the application has undergone considerable public scrutiny. The application was notified on four separate occasions due to the proposed development undergoing design refinement following the North Sydney Design Excellence Panel's review and subsequent fine tuning of the design, in response to issues raised by public submissions and feedback from Council's assessment team.

Several site meetings involving Council staff and the applicant were held with the aim of resolving specific matters during the assessment process. The assessing planner also visited neighbouring properties either side of the site to assist in the assessment of the proposal's potential impacts.

Resulting from this process, this report concludes the proposed residential flat building is acceptable and its potential impacts reasonable. In these circumstances, the 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, assume the concurrence of the Secretary of The Department of Planning and Environment and invoke the provisions of Clause 4.6, North Sydney Local Environmental Plan 2013 with regard to the non-compliance with Clause 4.3 and grant consent to Development Application No. 5/22 for demolition of the existing building and associated works and construction of a 5 storey residential flat building of 5 dwellings with basement parking for 7

vehicles, landscaping and associated works, and strata subdivision of the completed development, on land at 24 East Crescent Street McMahons Point, subject to the conditions appended to this report.



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**NORTH SYDNEY LOCAL PLANNING PANEL**

**DETERMINATIONS OF THE NORTH SYDNEY LOCAL PLANNING PANEL MEETING  
HELD IN THE COUNCIL CHAMBERS, NORTH SYDNEY,  
AT 2PM WEDNESDAY 2 AUGUST 2023**

**PRESENT**

**Chair:**

Jan Murrell in the Chair.

**Panel Members:**

David Logan (Panel Member)  
Ian Pickles (Panel Member)  
Karla Castellanos (Community Representative)

**Staff:**

Stephen Beattie, Manager Development Services  
Jim Davies, Executive Planner  
David Hoy, Team Leader  
Michael Stephens A/Team Leader Assessments  
Miguel Rivera, Senior Assessment Officer  
Ruth Bennett, Senior Assessment Officer  
Thomas Holman, Assessment Officer

**Administrative Support:**

Peita Rose, Governance Officer (Minutes)

This meeting was conducted by remote (Zoom) means.

The Chair acknowledged the Cammeraygal people being the traditional custodians of the land on which this meeting is held.

**Apologies:**

Nil

**1. Declarations of Interest**

David Logan declared a conflict of interest for Item No. 5. No other conflicts received.

## 2. 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.*

*Following the public meeting the Panel considered the following Business Items and resolves to determine each matter as described within these minutes.*

### ITEM 1

<b>DA No:</b>	235/22
<b>ADDRESS:</b>	4 Warung Street, McMahons Point
<b>PROPOSAL:</b>	Alterations and additions to an existing dwelling house, including internal reconfigurations, a rear addition on the first and second floor levels, and associated works.
<b>REPORT BY NAME:</b>	Ruth Bennett, Senior Assessment Officer
<b>APPLICANT:</b>	Neda Khorsandian, SN Architects

### No Written Submissions

### Registered to Speak:

Submitter	Applicant/Representative
	Eli Gescheit - Navon Planning
	Neda Khorsandian - Applicant - SN Architects
	Brindavan Padley - Owner

### Panel Determination

The Panel members undertook a group site inspection prior to the meeting and have considered all written and oral submissions.

Pursuant to the provisions of Clause 4.6 of the North Sydney Local Environmental Plan 2013 (“the LEP”), the Panel is satisfied that the written request to the contravention of the Height of Buildings development standard in Clause 4.3 of the LEP, adequately addresses the required matters in Clause 4.6 of the LEP. In the opinion of the Panel the written request demonstrates that compliance with the development standard is unnecessary in the circumstances of the case and the written request identified sufficient environmental planning grounds to justify the contravention. Further, the Panel considers that the development is in the public interest because it is generally consistent with the objectives of the standard and the zone objectives.

The Council Officer’s Report, Recommendation and Conditions are endorsed by the Panel and the application is approved.



**Panel Reason:**

The Panel is satisfied the development will not adversely impact the conservation area and is generally consistent with the planning controls and guidelines. Furthermore, the Panel is of the view that privacy and amenity for adjoining residents is reasonably maintained.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Karla Castellanos	Y	
David Logan	Y				
Ian Pickles	Y				

**ITEM 2**

<b>DA No:</b>	357/22
<b>ADDRESS:</b>	63 Victoria Street, McMahons Point
<b>PROPOSAL:</b>	Alterations and additions to an existing semi-detached dwelling
<b>REPORT BY NAME:</b>	Miguel Rivera, Senior Assessment Officer
<b>APPLICANT:</b>	A Machkevitch – Corona Projects Pty Ltd

**One Written Submission****Registered to Speak:**

Submitter	Applicant/Representative
Helen McGrath - Resident	Stephen Barr - Representing Owner
Claire Fremder - Resident	Leanne Misenet - Owner
David Cartwright - Resident	
Brian Larkin - Resident	

The Panel members undertook a group site inspection prior to the public meeting, and this included visiting neighbouring properties as well as the subject property. The Panel has also considered all written and oral submissions prior to making its determination.

The Panel notes apparent errors on page 57 of the report and for consistency with the rest of the report these should be as follows: under the heading 'Public Interest' the report should read "***not*** considered..." ; and under the heading 'Suitability of the Site' the report should read "***not*** suitable for the site.." before the word considered.

## 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 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 does not demonstrate that compliance with the development standard is unnecessary in the circumstances of the case and the written request does not provide sufficient environmental planning grounds to justify the contravention. Further, the Panel considers that the development is not in the public interest because of inconsistencies with the objectives of the standard.

The Council Officer’s Report and Recommendation for refusal are endorsed by the Panel for the following reasons:

- 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 Panel 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 have been identified 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 E3 - Productivity Support zone under NSLEP 2013.

- B. the North Sydney Local Planning Panel, resolves on a merits assessment to refuse development consent to Development Application No. 357/22 for development involving alterations and additions to an existing semi-detached dwelling on land at No. 63 Victoria Street, McMahons Point (Lot 1 in DP 202869), as shown on Architectural Plans, prepared by Archispectrum and dated 16/06/23, for the following reasons:

1. Under Part 3, Section 24 (1)(b) of the EP&A Regulation, the development application fails to contain all the information and documents required by the approved form and as per the Act or Regulation in that the proposal indicated works within No. 65 Victoria Street, McMahons Point and owner’s consent from this property was not obtained and provided to Council. As such, the consent authority is unable to grant consent for the respective works.
2. 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. North Sydney Local Environmental Plan 2013 – Aims of the Plan – unable to satisfy the key aims (2)(a), (2)(b)(i) and (2)(c)li).

- i. The proposal fails to promote development that is appropriate to its context and enhances the amenity of the North Sydney Community and environment. It involves introducing a built form that is not contextually appropriate, is excessive and disproportionate to the respective undersized allotment, and features a substantial height breach that will generate view loss and privacy impacts.
    - ii. The proposal fails to provide a compatible built form that is acceptable in terms of streetscape response, bulk, scale and appearance. The provision of a roof terrace is a key concern as it promotes a height breach that will result in view loss and amenity impacts.
    - iii. The proposal is unable to maintain and protect residential amenity due to the roof terrace generating view loss and privacy impacts.
    - iv. The proposal fails to not adversely affect residential amenity in terms of visual and acoustic privacy and view sharing.
  - b. North Sydney Local Environmental Plan 2013 – objectives of E3 zone relating to permitting development that is compatible with the scale, intensity and character of the surrounding residential area.
  - c. North Sydney Local Environmental Plan 2013 – objectives of Clause 4.3 – unable to satisfy the objectives (1)(b), (1)(d), (1)(e) and (1)(f).
  - d. North Sydney Local Environmental Plan 2013 – Clause 4.6 – the consent authority is not satisfied as per provisions (3) and (4).
  - e. North Sydney Development Control Plan 2013, Part B, Section 1 – Environmental Criteria (Section 1.3.6 and Section 1.3.10) – failure to meet objectives and controls with respect to Views and Visual Privacy.
  - f. North Sydney Development Control Plan 2013, Part B, Section 1 – Quality Built Form (Section 1.4) – failure to meet objectives and controls with respect to Form, Massing and Scale; Built Form Character; Roofs and Materials.
  - g. North Sydney Development Control Plan 2013, Part C, Section 9 – McMahons Point Business Precinct (Section 9.2) – failure to meet objectives and controls.
3. 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: view loss, privacy and amenity.
4. 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 height and adverse impacts on neighbouring properties.

5. 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 and planning response to the re-development of a substantially undersized and built-up allotment and endorsement of an unacceptable non-compliance to the maximum building height provision under Clause 4.3 and non-compliances with provisions and controls under Council policy.

**Panel Reason:**

The Panel is not persuaded, based on the plans and information submitted, that the proposal on a merits assessment warrants approval. The Panel is of the opinion that a form which retains the existing parapet, removes the first floor balcony on the street frontage and sets back a first floor addition behind the existing parapet, would be more consistent with the DCP provisions, in particular Part B 1.4.8 and Part C 9.2.3.

The Panel considers that a roof top terrace situated above the height plane would be inappropriate and have unreasonable amenity impacts.

The Panel suggests that the applicant discuss a revised application with Council staff.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Karla Castellanos	Y	
David Logan	Y				
Ian Pickles	Y				

**ITEM 3**

<b>DA No:</b>	432/21/5
<b>ADDRESS:</b>	2 Sutherland Street, Cremorne
<b>PROPOSAL:</b>	Section 4.55(2) modification relating to the demolition of an existing residential flat building and construction of a part 4, part 5 storey residential flat building containing 11 apartments with basement parking for 18 vehicles, and landscaping and associated works.
<b>REPORT BY NAME:</b>	Michael Stephens, A/Team Leader Assessments
<b>APPLICANT:</b>	AP Development No 1 Pty Ltd

**No Written Submissions**

**Registered to Speak**

Submitter	Applicant/Representative
	Jess Wong - Applicant - Platform Project Services

**Panel Determination**

The Council Officer's Report, Recommendation and Conditions are endorsed by the Panel and the modification application is approved.

The Panel is satisfied the modification application is substantially the same as that originally approved and is satisfied that the original reason for the imposition of the condition has been addressed in the modification plans as reasonable amenity for the second bedroom is now achieved.

**Panel Reason:**

The Panel considers there are no adverse impacts created by the modification and the amenity of the second bedroom is reasonable.

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		Karla Castellanos	Y	
David Logan	Y				
Ian Pickles	Y				

**ITEM 4**

<b>DA No:</b>	9/23
<b>ADDRESS:</b>	U4, 35 Murdoch Street, Cremorne
<b>PROPOSAL:</b>	Alterations and additions to an existing apartment including construction of a new dormer.
<b>REPORT BY NAME:</b>	Thomas Holman, Assessment Officer
<b>APPLICANT:</b>	Slade Hugall

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

<b>Submitter</b>	<b>Applicant/Representative</b>
Christopher Puplick - Chair, Owners' Corporation (SP10924) 35 Murdoch Street - Resident	Slade Hugall - Applicant
	Scott Pearse - Building Designer

The Panel members undertook a group site inspection prior to the meeting and have considered all written submissions.

**Panel Determination**

Pursuant to the provisions of Clause 4.6 of the North Sydney Local Environmental Plan 2013 (“the LEP”), the Panel is satisfied that the written request to the contravention of the Height of Buildings development standard in Clause 4.3 of the LEP, adequately addresses the required matters in Clause 4.6 of the LEP. In the opinion of the Panel the written request demonstrates that compliance with the development standard is unnecessary in the circumstances of the case and the written request identified sufficient environmental planning grounds to justify the contravention. Further, the Panel considers that the development is in the public interest because it is generally consistent with the objectives of the standard and the zone objectives.

The Council Officer’s Report, Recommendation and Conditions are endorsed by the Panel and the application is approved.

**Panel Reason:**

The Panel is satisfied the heritage conservation area will not be impacted and the proposed development is consistent with the character of the existing building, subject to the conditions as recommended.

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		Karla Castellanos	Y	
David Logan	Y				
Ian Pickles	Y				

**ITEM 5**

<b>DA No:</b>	115/23
<b>ADDRESS:</b>	115, 117, 119 Holt Avenue, Cremorne
<b>PROPOSAL:</b>	Demolition of 3 Dwelling Houses and associated works, and construction of a 3 storey residential flat building containing 16 dwellings, basement parking and associated works.
<b>REPORT BY NAME:</b>	Jim Davies, Executive Assessment Planner
<b>APPLICANT:</b>	Mersonn Pty Ltd

David Logan declared an actual conflict of interest in Item No. 5 and did not participate in any of the discussions or determination on the application.

**Two Written Submissions**

**Registered to Speak**

Submitter	Applicant/Representative
	Michael Wang - Managing Director - MMK Developments (later advised unable to connect to meeting)
	Anne McCusker - Garden Homes and DA Angels

The Panel members undertook a group site inspection prior to the meeting and considered written submissions. No oral submissions made with the applicant's representative observing proceedings only.

**Panel Determination**

The Council Officer's Report and Recommendation are noted by the Panel and the following determination is made:

In accordance with section 4.47 (4) Environmental Planning & Assessment Act, 1979 (EP&A) the North Sydney Local Planning Panel, exercising the functions of Council as the consent authority, refuses to grant development consent to Development Application No. 115/23 for demolition of 3 dwelling houses and associated works, and construction of a 3-storey residential flat building of 16 dwellings on land at 115, 117, 119 Holt Avenue Cremorne.

The relevant provision of the EP&A Act section 4.47 is:

*(4) If the approval body informs the consent authority that it will not grant an approval that is required in order for the development to be lawfully carried out, the consent authority must refuse consent to the application.*

The Council having been notified by the approval body, the Heritage Council of NSW, that approval will not be granted to the application, in accordance with section 63(2) Heritage Act 1977, which states:

*(2) Where -*

*(a) an application for approval is made to demolish the whole of a building or work, or*

*(b) an application for approval is made which would, if it were approved, necessitate the demolition of the whole of a building or work,*

*the approval body shall determine that application by refusing approval.*

**Panel Reason:**

The above legislative requirements direct that the application be refused.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Karla Castellanos	Y	
David Logan	Absent				
Ian Pickles	Y				

The meeting concluded at 3:00pm.

The Panel Determination session commenced at 3:05pm.

The Panel Determination session concluded at 4.10pm.

Endorsed by Jan Murrell

North Sydney Local Planning Panel

**2 August 2023**