



**NORTH SYDNEY COUNCIL**

Council Chambers  
27 November 2024

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 December 2024.

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 COLE**  
**CHIEF EXECUTIVE OFFICER**

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## BUSINESS

### LPP01: 58 Cowdroy Avenue Cammeray – DA 60/22/2

Applicant: P & R Etherington C/- COSO Architecture

Report of Isobella Lucic A/ Service Unit Manager Development Services

This application under Section 4.55 (2) of the *Environmental Planning and Assessment Act 1979* seeks to modify Council's consent to demolish an existing house and to construct and new dwelling and associated works, including a swimming pool.

The application is reported to the North Sydney Local Planning Panel as it involves amendment of the design which is affects conditions imposed by the Panel when the application was originally determined.

The application was notified between 12 and 27 July 2024, and 6 objections were received, in relation to:

- Impacts on local amenity, specifically increased site coverage causing excessive bulk and scale, increased impacts on views, loss of views and reduced access to sunlight, and
- Insufficient information to allow a proper assessment.

Minor amendments to the design and a view sharing analysis were submitted 11 October 2024. These were distributed to the objectors, who were provided another 14 days, between 23 October and 7 November 2024, to make further submissions, two were received raising these concerns.

- The amended design is less compatible with the area and reduces foreshore amenity.
- There is no setback to the carport, proposed to be enclosed as a garage.
- Discrepancy in plans regarding a proposed awning's depth over the balcony on the Mid-level floor plan.

An assessment of the amended application concludes that the proposed modification of the consent is satisfactory and partial approval is accordingly recommended, subject to conditions.

### RECOMMENDATION

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

**THAT** the North Sydney Planning Panel exercising the functions of Council approve the modification of development consent DA 60/22 for demolition of existing dwelling and ancillary structures and construction of a dwelling house and associated works including a swimming pool at 58 Cowdroy Avenue under the provisions of Section 4.55 of the Environmental Planning and Assessment Act as detailed below:

### Development in accordance with Plans

a. **Replace the table to Condition A1 with the following table:**

Plan Nos.	Revision No	Description of works	Prepared by	Dated
4.55 101	B	Site Plan	Coso Architecture	04 10 2024
4.55 102		Lower Level Floor Plan		
4.55 103		Mid Level Floor Plan		
4.55 104		Upper Level Floor Plan		

4.55 104A		Upper Level Floor Plan + 3m		
4.55 105		Entry Level Floor Plan		
4.55 106		Roof Level Floor Plan		
4.55 107		Section AA		
4.55 110		Section DD		
4.55 111		West Elevation		
4.55 112		North Elevation		
4.55 113		South Elevation		
4.55 114		East Elevation		

**2. The proposed pergola to the northern elevation of the Upper Floor Level and the proposed enclosure of the garage is not supported on the basis that:**

- a. **Pergola:** The proposed pergola breached the maximum height of building standard, projects well beyond the prevailing rear building line and would result in unreasonable view impacts and unreasonable bulk and scale impacts
- b. **Garage:** The proposed garage would reduce the visual permeability of the carport structure, would prevent views through the structure towards prominent local vegetation and would result in excessive and unreasonable impacts on bulk, form and character of the structure to this part of Cowdroy Avenue.

**3. Amend condition C1 as follows:**

**Design Changes**

- C1. The following design changes are to be included in plans approved with the Construction Certificate to the satisfaction of the Principal Certifier:
  - a) ~~A Louvred/slatted privacy screens~~ a minimum 1.6m high from finished floor level shall be affixed to the eastern ~~and western~~ edges of the balcony to the Upper Level (Level 03) adjacent to the open plan living room to obscure direct lines of sight between the balcony and the neighbouring properties **east of the site, and the balustrade on northern and western sides of the balcony being finished in clear, unframed glass;**
  - b) A fixed privacy screen shall be affixed to the eastern side of the outdoor kitchen space at the Lower Level (Level 01) to obscure direct lines of sight between the outdoor kitchen space and the neighbouring property at No.2 Folly Point;
  - c) The schedule of external materials, colours and finishes shall be amended to replace the zinc roof with a roofing material that is non-reflective and is a colour and tone which matches or complements the natural features of the environment to ensure that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development;
  - d) The schedule of external materials, colours and finishes shall be amended to change the colour of the render from off-white to a colour and tone which is non-reflective and which matches or complement the tones of the natural environment to ensure a high quality finish to the development in a visually prominent location;

- e) The balustrade to the northern edge of the steps and retaining walls below the foreshore building line shall be open in form to reduce the visual impact of built structures in the foreshore area;
- f) The landscaping area immediately north of the swimming pool and patio area at approximately RL 9.8 is to include planting of cascading plants along the northern edge to screen the outer face (waterway side) of the retaining wall and reduce the visual impact of built structures in the foreshore area;
- g) All retaining walls including ancillary drainage management and footings are to be contained entirely within the site boundaries to protect the integrity of adjoining sites;
- h) One (1) additional canopy tree suitable to reach a mature height of 4 to 5m is to be planted within the foreshore area level (RL4.2 to RL4.8) to improve the quality and diversity of vegetation within the foreshore area and to visually offset the bulk and scale of built structures as viewed from the waterway. The location and species are to be nominated in the amended Landscape Plan to the satisfaction of the PCA prior to the issue of the Construction Certificate;
- i) The understorey to the 3 x *Corymbia maculata* (100l) shall be densely planted with suitable species of low maintenance native shrubs in addition to the 3 x *Cyathea australis* to optimize the variety of planting in the deep soil area to compensate for the removal of the variety of existing vegetation. Additional plantings shall be included in the amended Landscape Plan to the satisfaction of the PCA prior to the issue of a Construction Certificate;
- j) The pathway from the front boundary with Cowdroy Avenue to the front entry door within the tree root zone of the new *Angophora costata* is to be decking or pervious paving to optimize soil depth and infiltration for future growth of the tree. Details of the pathway construction are to be specified in the construction and landscape plans submitted with the Construction Certificate;
- k) *The green wall (hanging garden) along the western side of the pool being raised in height by 1.0m, and any safety fencing or balustrading being adjusted accordingly; and***
- l) *The awning proposed over the lower level deck shall be no deeper than 900mm measured outwards from the floor slab to which it will be affixed, as shown on drawing 4.55 107, Revision B, 24 10 2024.***
- m) *the open parking area must remain as approved, the garage as shown in submitted plans, referred to in the amended condition A1, is not approved.***

No approval is given or implied in this consent for the works proposed to the carport and pergola over the upper level terrace.

**LPP02 182-188 Falcon Street North Sydney - DA 39/24**

Applicant: Mr R Gill, Balance Planning  
Report of Jim Davies, Executive Planner

This development application seeks approval for alterations of and additions to an existing, privately operated boarding house at 182-188 Falcon Street North Sydney, known as Falcon Lodge.

The applicant submits that the site is the subject of existing use rights, established in accordance with Division 4.11 *Environmental Planning and Assessment Act 1979* (the Act).

As addressed in the body of this report, the applicant supports this claim on the basis the privately owned and operated boarding house may continue, despite no longer being consistent with the current definition of a boarding house, introduced in November 2021. This definition states that use of a building can only be defined as a boarding house if carried out by the NSW Land and Housing Corporation or a registered community housing provider.

Being privately operated and having been lawfully established before the new definition was introduced, the applicant submits continuation of this use is permitted by existing use rights provisions of the Act.

Consent may be granted to this application by virtue of these provisions, as they permit alteration of and addition to an activity or development commenced lawfully before planning controls were introduced to prohibit or prevent the continuation of that activity or development, provided it had not ceased for a period of more than 12 months. It understood that use of the subject premises had not ceased before the application was lodged.

The *Environmental Planning & Assessment Act 1979*'s definition of "existing use" also requires a use to have commenced in accordance with a development consent granted before the use was prohibited and that the approved use had not lapsed, as a result of the consent not being acted upon within 12 months of the use or development becoming prohibited.

Determination by the North Sydney Local Planning Panel is required, as the application involves partial demolition of four buildings which are heritage items, integral to the proposed alterations and additions.

The application was notified publicly and to nearby property owners. No submissions were received.

Regarding assessment of the application, the applicant submitted legal opinion that State *Environmental Planning Policy (Housing) 2021* does not apply. Applying 'an abundance of caution', lest this opinion be incorrect, may leave an approval if granted open to challenge. The application's assessment has consequently had regard to applicable provisions of the SEPP for boarding houses and affordable rental housing.

In conclusion, as examined in this report, the applicant's claim to existing use rights is considered valid and an assessment against relevant planning controls finds the proposed development is satisfactory.

Approval is accordingly recommended.

**RECOMMENDATION**

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

**THAT** the North Sydney Local Planning Panel exercising the functions of Council as the consent authority grant deferred commencement consent to DA 39/24 for alterations and additions to a boarding house at 182-188 Falcon Street North Sydney subject to the attached conditions.

**AA. Deferred Commencement Condition**

This consent shall not operate until the following deferred commencement conditions have been satisfied.

**The applicant must submit information to satisfy Council as to the matters specified in the deferred commencement conditions within 6 months of the date of the grant of this consent.**

**If the applicant fails to submit information to satisfy Council as to the matters specified in the deferred commencement conditions within 6 months of the date of the grant of this consent this consent will lapse in accordance with Section 4.16(3) of the Environmental Planning and Assessment Act 1979.**

NOTE: Consideration should be given to providing the evidence to Council to allow sufficient time to consider the same and form a view as to whether the deferred commencement conditions are satisfied or not. You are also advised of your appeal rights under clause 76 of the *Environmental Planning and Assessment Regulation 2021*, which provides that: *If the consent authority has not notified the applicant within the period of 28 days after the applicant's evidence is produced to it, the consent authority is, for the purposes only of Section 8.3 of the Act, taken to have notified the applicant that it is not satisfied as to those matters on the date on which that period expires.*

**Deferred commencement condition** The following information is to be submitted to Council's satisfaction, to enable an operational consent to be issued:

**Affordable Housing**

AA1 a) A final resident relocation plan, prepared in consultation with Council's Community Resilience and Sustainability Unit and any consultation with other stakeholders as deemed necessary by members of the Unit.

(Reason: To acceptably minimise the impact of the development on existing residents)

b) A revised plan of management, prepared in consultation with Council's Community Resilience and Sustainability Unit, including a commitment that room rental rates will maintain availability of affordable housing, as defined by s. 1.4 (1) of the *Environmental Planning and Assessment Act 1979* and cl. 13 of *State Environmental Planning Policy (Housing) 2021*.

(Reason: To ensure the plan of management is effective and that room rental rates remain affordable)

**Heritage Conservation**

AA2 a) Details of the following works are to be included on architectural plans:

- i) retention of nib walls and the bulkhead between the two front rooms adapted for use as the reception/lounge, to ensure ongoing interpretation of the earlier room configuration;
  - ii) retention and conservation of decorative architectural elements within the primary front rooms, such as the decorative ceiling details, ornate architraves, bulkheads and nib walls in each of the four buildings, behind the proposed false ceilings, including details of service installations for bathroom and kitchenette upgrade works;
  - iii) new accessible openings at the ground floor level in each building must be designed with a submissive expression, within the original service wing elements - existing brick lintel detailing shall remain in-situ for interpretive purposes.
- b) A heritage strategy to manage the ongoing conservation of the group of buildings and grounds the subject of this consent, including a maintenance schedule, prepared in accordance with the current NSW guidelines of the Statement of Best Practice for Heritage Asset Action Plans.  
<https://www.environment.nsw.gov.au/research-and-publications/publications-search/statement-of-best-practice-for-heritage-asset-action-plans>
- c) Performance based solutions for BCA compliance shall be appropriately applied to avoid or mitigate adverse impacts on heritage fabric.
  - d) Where practical, period doors are either to be retained in-situ or reused within the buildings, any removed heritage fabric is to be salvaged and recycled into local heritage restoration facilities.

(Reason: Paragraphs b) to d) – Heritage Conservation)

**LPP03: 1 Ben Boyd Road, Neutral Bay (C) - DA 106/24 (PAN-434660)**

Applicant: Emma Mason, De Witt Consulting

Report of Andrew Beveridge, A/Team Leader Assessments

This development application seeks NSLPP approval for alterations and additions to an existing

commercial building on the site at 1 Ben Boyd Road, Neutral Bay, which currently functions as the Australian Border Force (ABF) training college. This proposal includes a substantial internal and external refurbishment of the existing main building on the site, including the provision of a new passenger lift and entry foyer building.

The application is reported to the North Sydney Local Planning Panel for determination as the application has received more than ten (10) objecting submissions.

The application was notified in accordance with the North Sydney Community Engagement Protocol and Council received twelve submissions. The amenity impacts, particularly regarding view loss, bulk and scale, and overshadowing,

upon adjoining sites 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 building and surrounding buildings, and accords with the built form of the neighbourhood and the sloping topography of the site.

Subject to the satisfaction of conditions, it is considered that the proposal is acceptable as it will not result in significant adverse impacts upon the locality or adjoining properties, and the streetscape/area character will be maintained. The proposed development would therefore be in the public interest.

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

#### **RECOMMENDATION**

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 **grant consent** to Development Application No. 106/24 for alterations and additions to an existing commercial building and associated works, on land at 1 Ben Boyd Road, Neutral Bay, subject to the following site specific and the attached standard conditions:-

#### **Heritage Requirements**

C18. Details demonstrating compliance with the following are to be submitted with the Construction Certificate:

- a) The recommended management and mitigation strategies as documented in the Heritage Impact Statement dated 10 November 2023 prepared by Environmental Resources Management Australia (ERM) at Section 7.2 shall be undertaken.
- b) Make good all holes in the natural cliff face to reflect the surrounding natural stone in colour and composition.
- c) Re-use existing holes for new works where possible rather than creating new holes.
- d) The lift shaft is to be painted a teal colour to minimise its visual impact.

The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To be sympathetic to the character of the conservation area)

#### **Works to be Contained within Lot**

C19. The approved works must be wholly contained within the lot of the site (Lot 2 DP 800615) and must not result in any encroachment into or works upon neighbouring lots. Under no circumstances shall any works be extended or altered within adjoining lots without the prior written



consent of the adjoining owner(s). No approval is given or implied for any works outside the subject lot.

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

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

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

**Housing and Productivity Contribution**

C20. The housing and productivity contribution (HPC) set out in the table below, but as adjusted in accordance with this condition, is required to be made:

<b>Housing and productivity contribution</b>	<b>Amount</b>
Housing and productivity contribution (base component)	\$60.00
Transport project component	\$0.00
<b>Total housing and productivity contribution</b>	<b>\$60.00</b>

The amount payable at the time of payment is the amount shown as the total housing and productivity contribution for each stage specified in the tables to condition 2, adjusted by multiplying it by:

**Highest PPI number**  
**consent PPI number**

where:

highest PPI number is the highest PPI number for a quarter following the June quarter 2023 and up to and including the 2nd last quarter before the quarter in which the payment is made, and consent PPI number is the PPI number last used to adjust HPC rates when consent was granted, and June quarter 2023 and PPI have the meanings given in clause 22 (4) of the *Environmental Planning and Assessment (Housing and Productivity Contributions) Order 2024*.

If the amount adjusted in accordance with this condition is less than the amount at the time consent is granted, the higher amount must be paid instead. The HPC must be paid before the issue of any Construction Certificate. The HPC must be paid using the NSW planning portal (<https://pp.planningportal.nsw.gov.au/>).

If the Minister administering the *Environmental Planning and Assessment Act 1979* agrees, the HPC may be made, instead of as a monetary contribution, in the following ways:

- a) the dedication or provision of land for the purpose of regional infrastructure in the region in which the development will be carried out,
- b) the carrying out of works for the purpose of regional infrastructure in the region in which the HPC development will be carried out.

If the HPC is made partly as a monetary contribution, the amount of the part payable is the amount of the part adjusted in accordance with item (i) in this condition at the time of payment. Each part of an instalment that is to be made as a monetary contribution is also to be adjusted in accordance with item (i) in this condition at the time its payment. Despite the requirement of this condition, a housing and productivity contribution is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the *Environmental Planning and Assessment Act 1979* to the development, or the *Environmental Planning and Assessment (Housing and Productivity Contributions) Order 2024* exempts the development from the contribution. The amount of the contribution may also be reduced under the order, including if payment is made before 1 July 2025.

(Reason: To provide a contribution as required by the *Environmental Planning and Assessment (Housing Productivity Contributions) Order 2024*)

**Protection of Public Trees**

D1. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

Tree	Location	Protection
4 x <i>Lagunaria pattersonii</i> (15m)	Council reserve – Southeastern boundary – 1 Ben Boyd Road	Existing boundary fence
1 x <i>Ficus rubiginosa</i> (8x8m)	Council reserve – Southeastern boundary – 1 Ben Boyd Road	Existing boundary fence

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: Protection of existing environmental and community assets)

**Biosecurity Matters/Priority Weeds**

E24. All identified Biosecurity matters and Priority Weeds declared under the *Biosecurity Act 2015*, including but not limited to, *Lantana camara*, *Ageratina adenophora*, *Asparagus aethiopicus*, and other declared plants on the site, must be eradicated before the commencement of landscape works.

(Reason: To ensure that plants identified as weed species are not allowed to proliferate or interfere with a quality landscaping outcome)

**LPP04: 9 Undercliff Street, Neutral Bay – DA 430/21/3**

Applicant: QH A1 Pty Ltd c/o Corben Architects

Report of Robin Tse, Senior Assessment Officer

This S4.55(2) application seeks consent for modifications to DA 430/21 for various changes to an approved apartment development at No.9 Undercliff Street, Neutral Bay.

The application is reported to the North Sydney Local Planning Panel for determination as the application relates to modifications to a condition (C39) that was previously imposed by the Local Planning Panel in the original DA consent.

The proposed modifications are considered to be generally consistent with the originally approved development application and s.4.55 of the *EP & A Act 1979*. The proposed modifications, as amended by conditions of consent, would result in a development which is substantially the same development as originally approved in the original DA. The notification of the application has attracted a total of six (6) submissions including four (4) submissions from one household raising concerns about the adverse impacts of the proposal on carparking and landscaping.

The proposed modifications would not result in further non-compliance with the LEP maximum building height development standard because the proposal would generally maintain the overall building height, building envelope, building setbacks, built form, appearance and the use of the approved development.

The proposed modifications would not cause additional adverse amenity impacts for the neighbouring properties.

The applicant has submitted architectural and landscape plans addressing the requirements of Condition C39 and the deletion of this condition is considered to be acceptable given that the architectural and the landscaping outcomes would be consistent with the intended outcomes as required by Condition C39. A new condition requiring the provision of soft landscaping above the fire hydrant/sprinkler pump booster is recommended to reduce the impacts on landscaping and streetscape.

The issues raised in the submission have been addressed in the assessment report.

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

**RECOMMENDATION**

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

**THAT** the North Sydney Planning Panel exercising the functions of Council approve the modification of development consent **D430/21** dated 7 September 2022 in respect of a proposal for the demolition of an existing residential flat building and construction of a four storey residential flat building with basement parking at No.9 Undercliff Street, Neutral Bay under the provisions of Section 4.55 of the Environmental Planning and Assessment

Act only insofar as will provide for the following:

**1. To modify the conditions of (D430/21) in particular conditions A1, C3, C36 and G15 to read as follows:**

**Development in Accordance with Plans (S4.55 Amendments)**

A1. The development being carried out in accordance with the following drawings:

Plan Nos.	Issue	Description	Prepared by	Dated	
DA04	C	Level 1 Plan	Corben Architects	22 August 2022	
DA05	C	Level 2 Plan		25 August 2022	
DA06	B	Level 3 Plan		3 June 2022	
DA07	B	Level 4 Plan		3 June 2022	
DA08	B	Level 5 Plan		3 June 2022	
DA09	B	Roof Plan		3 June 2022	
DA10	B	Southwest Elevation		3 June 2022	
DA11	B	Northwest Elevation		3 June 2022	
DA12	B	Northeast Elevation		3 June 2022	
DA13	B	Southeast Elevation		3 June 2022	
DA14	B	Section AA		3 June 2022	
DA15	C	Section BB & CC		25 August 2022	
D100	A	Landscape Plans		Sticks and Stones	20 May 2022
D101	A	Planting Plan			20 May 2022

and endorsed with Council's approval stamp, except as modified by highlighting on the following drawings for D430/21/3:

Plan No.	Description	Prepared by	Dated
DA04 Rev D	Level 1 Plan	Corben Architects	10 July 2024
DA05 Rev D	Level 2 Plan	Corben Architects	10 July 2024
DA06 Rev C	Level 3 Plan	Corben Architects	10 July 2024
DA07 Rev C	Level 4 Plan	Corben Architects	10 July 2024
DA08 Rev C	Level 5 Plan	Corben Architects	10 July 2024
DA09 Rev C	Roof Plan	Corben Architects	10 July 2024
DA10 Rev C	Southwest Elevation	Corben Architects	10 July 2024
DA11 Rev C	Northwest Elevation	Corben Architects	10 July 2024
DA12 Rev C	Northeast Elevation	Corben Architects	10 July 2024
DA13 Rev C	Southeast Elevation	Corben Architects	10 July 2024
DA14 Rev C	Section AA	Corben Architects	10 July 2024
DA15 Rev C	Section BB & CC	Corben Architects	10 July 2024
S4.55.1 Rev C	Landscape Plan	Nelson Thomas	20 February 2024
S4.55.2 Rev C	Planting Plan	Nelson Thomas	20 February 2024

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

**Mailboxes**

C3. Individual Mailboxes for each apartments and the body corporate are to be incorporated into the design of the ~~front~~-fencing and the fire hydrant sprinkler booster pumps/bin storage enclosure within the front building setback.

The Principal Certifier must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition prior to the release of the Construction Certificate.

(Reason: To ensure the provision of site facilities in accordance with Section 1.5.13 of Part B in NSDCP 2013.)

#### **BASIX Certificate**

C36. Under clause 75 of the *Environmental Planning and Assessment Regulation 2021*, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. 1260751M\_04 for the development are fulfilled.

Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

#### **Compliance with Certain conditions**

G15. Prior to the issue of any Occupation Certificate, Conditions A5, C1, C2, C3, C38 and C40, must be certified as having been implemented on site and complied with.

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

#### **2. To insert new conditions A5 and C40 to read as follows:**

##### **Terms of Consent (D430/21/3)**

A5. Approval is granted for the following modifications only:

Level 1 (RL40.80):

- Provision of fire hydrant and sprinkler booster pump and associated design changes including replacement of a store room with fire pump room and hydraulic pump, relocation of bin store, amendment to eastern garden between driveway and stairs, relocate store room for Unit 1 and provision of electrical cupboards;
- Provision of separate 1m wide pedestrian path from the street to the entrance door;
- Amend ventilation louvres design and location to provide adequate ventilation for air conditioning units located inside the garage;
- Provision of letterboxes off path;
- Provision of visitor bicycle parking;
- Retaining wall in western setback at front of building to remain in existing location; and
- Provision of an enclosure for the fire hydrant/sprinkler pump booters, water meter and bin store within the front building setback.

## Level 2 (RL44.90):

- Relocation of entry door to Unit 3;
- Internal changes to layout including removal of the family room (to be replaced by Bedroom 3), enlargement of Bedroom 2, provide ensuite for Bedrooms 2 and 3 and changes to the layout of bedroom 1, its ensuite and robe, pantry laundry and WC; and
- Fenestration changes associated with the internal layout changes including:

## North-west (side) Elevation:

- Replacement of a sliding door and a bedroom window with a window for Bedroom 2 and an ensuite window.

## South-east (side) Elevation:

- Relocation of the ensuite window and laundry windows.

## Level 3 (RL48.00):

- Relocation of entry door to Unit 2;
- Internal changes to layout including removal of the family room (to be replaced by Bedroom 3), enlarge Bedroom 2, provide ensuite for Bedrooms 2 and 3 and changes to the layout of bedroom 1, its ensuite and robe, pantry laundry and WC and
- Fenestration changes associated with the internal layout changes including

## North-west (side) Elevation:

- Reconfiguration of Bedroom 2 window; and
- Replacement of a former bedroom window with an ensuite window.

## South-east (side) Elevation:

- Relocation of the ensuite window and laundry windows.

## North-east (Rear) Elevation:

- Deletion of Bedroom 3 window.

## South-west (Undercliff Street) Elevation:

- Deletion of lobby window.

## Level 4 (RL51.10)

- Relocation of entry door to Unit 1;
- Internal changes to layout including removal of the family room (to be replaced by Bedroom 4), enlarge Bedroom 3, provide ensuite for Bedrooms 3 and 4;
- Fenestration changes associated with the internal layout changes including in the relocation of the window to Bedroom 3 and the window to its ensuite and changes to windows including deletion of windows to the lobby and Bedroom 4

## North-west (side) Elevation:

- Reconfiguration of Bedroom 3 window; and
- Replacement of a bedroom window with an ensuite window.

## North-east (Rear) Elevation:

- Deletion of Bedroom 4 window.

South-west (Undercliff Street) Elevation:

- Deletion of lobby window.

Level 5 (RL54.20):

- Modifications to the layout for Bedrooms 1 and 2; and
- Removal of lift access to Level 5 and associated internal layout changes to provide a store room.

Roof (RL58.09):

- Removal of lift overrun from the south-east (side) elevation.

No approval is given or implied in this consent for any other works, both internal and external, within the subject property.

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

### **Design Modifications (D430/21/3)**

C40. The design of the proposed fire hydrant/sprinkler booster pump and bin storage enclosure within the front building setback shall be modified to provide soft landscaping on the roof over the fire hydrant/sprinkler booster pump to enhance landscaping outcomes and streetscape.

Plans and specifications complying with this condition must be submitted for the written approval of the Manager Development Services prior to the issue of any Construction Certificate.

The Principal Certifier 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 enhance landscaping outcome and streetscape.)

### **3. Deletion of condition C39:**

#### **Amendments to Plans**

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

- ~~a) The retaining wall within the northwestern side setback that aligns with the front building line of the basement level (DA04 C) is to be set back an additional 2m behind the front building line to break down the width of the building form as viewed from the street. The area in front of the retaining wall is to be landscaped to soften the built form. Plans and specifications which comply with this condition, including the amended landscape plan approved by Council's Landscape Development Officer, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.~~

~~The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.~~

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

**LPP05: 42 & 42A Milson Road, Cremorne Point - RD 10/24 (DA302/23)**

Applicant: Michael Briscas

Report of Michael Hornery, Executive Assessment Planner

Council is in receipt of a Section 8.2 Review of determination application relating to a development application that originally sought consent for alterations and additions to lower ground, ground level and first floor and demolition of the existing garage and replacement with a three bay garage with green roof.

Development Application DA302/2023 was refused by the North Sydney Local Planning Panel on 5 June 2024 for reasons including:

- Heritage impacts associated with the Heritage Conservation Area.
- Non-compliance with the maximum building height development standard.
- Non-compliance with the dual occupancy requirements.
- Non-compliance with site coverage and unbuilt upon area.
- Public interest.

This development application seeks consent for alterations and additions to lower ground, ground level and first floor and demolition of the existing garage and replacement with a two bay garage with green roof at 42 and 42A Milson Road, Cremorne Point.

The site is zoned R2 Low Density Residential under the provisions of *North Sydney Local Environmental Plan 2013*. The proposal in its amended form now satisfies the R2 zone objectives. The proposed application is for alterations and additions to an existing dual occupancy development which is a permitted land use within the R2 Low Density zone under *NSLEP 2013*.

The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The NSLEP identifies a maximum height control of 8.5m. The building is proposed to be 11.012m in height which exceeds the maximum building height by 2.512m, a variation of 29.6% to the development standard.

In addition to the redesign and submission of amended plans, a new and updated Clause 4.6 written request has been submitted with the Section 8.2 Review application seeking a variation to the Building Height development standard contained within Clause 4.3 of *NSLEP 2013*, to justify and support the non-compliance.

In addition, the applicant has also submitted a Clause 4.6 written request in relation to the dual occupancy requirements contained within Clause 6.6 (2) of *NSLEP 2013*. This Clause 4.6 which relates to dual occupancies within a heritage conservation area, was requested from the applicant in the original development application. Whilst the amended plans submitted have now satisfactorily addressed the provisions of Clause 6.6, as abundant caution the applicant's Clause 4.6 has been assessed and considered within the body of the report.

The written requests have been assessed and it is considered that the clause 4.6 requests demonstrate that compliance with the development standard is unreasonable and unnecessary as the objectives of the standard are achieved notwithstanding the variation, and that there are sufficient environmental



planning grounds to justify the variation in the circumstances of the case. The variations would be in the public interest as the proposed development is consistent with the objectives of the standard and the objectives of the R2 Low Density Residential zone.

The proposed development responds to the constraints of the site by reducing the site coverage and unbuilt upon area through the redesign and amendments made to the building. The development has an improved landscaped outcome by partially removing the dominant garage/carport structure on the Milson Road frontage and providing additional landscaping and planting within the front and rear of the allotment to also soften the appearance of the building when viewed from a public place

The application was notified to adjoining properties in accordance with Councils Community Engagement protocol with no submissions being received as a result. It is also noted that under the notification for the original development application there were no submissions received.

The development application is reported to the North Sydney Local Planning Panel for determination as the proposed development contravenes a development standard imposed by an environmental planning instrument by more than 10% in accordance with the Ministers Direction “Local Planning Panels Direction – Development Applications and Applications to Modify Development Consents” dated 6 March 2024, published to the NSW Planning Portal

Furthermore, this application is reported to the North Sydney Local Planning Panel (NSLPP) for consideration and determination, as the original application was refused by the LPP on 5 June 2024. Pursuant to Section 8.3(5) of the Environmental Planning and Assessment Act 1979, the Section 8.2 Review is to be determined by the NSLPP.

The application has been assessed having regard to the Matters for Consideration under Section 4.15 and Section 8.2 of the *Environmental Planning and Assessment Act, 1979*, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plan and Development Control Plans.

The proposal is an appropriate response to the site. The bulk and scale of the building within the original development application has satisfactorily been resolved via removal of the bulky elements including the dormer and provision of a number of elements to conserve the heritage significance of the building within the Heritage Conservation Area.

As a result, the application is recommended for approval subject to conditions of consent.

#### **RECOMMENDATION**

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

A. **THAT** the North Sydney Local Planning Panel exercising the functions of Council as the consent authority, assume the concurrence of the Secretary of the Department of Planning, Housing and Infrastructure and invoke the provisions of Clause 4.6 in *NSLEP 2013* with regards to non-compliance with

Clause 4.3 and Clause 6.6 of *NSLEP 2013* and grant consent as the variations sought are considered to be well founded and in the public interest as there will not be any direct or adverse environmental impacts generated by the variation sought.

- B **THAT** pursuant to Section 4.16 (1)(a) of the *Environmental Planning and Assessment Act 1979* (as amended), the North Sydney Local Planning Panel grant consent to the S8.2 Review of determination application (RD10/24) of Development Application No. 302/23 alterations and additions to lower ground, ground level and first floor and demolition of the existing garage and replacement with a two bay garage with green roof at 42 and 42A Milson Road, Cremorne Point subject to the following site specific and standard conditions.

**LPP06: 1 Warung Street, McMahons Point – DA 85/24**

Applicant: Highbury Warung Pty Ltd

Report of Thomas Holman, Senior Assessment Officer

The Applicant seeks development consent from the North Sydney Local Planning Panel (NSLPP) for demolition of an existing residential flat building, construction of a new residential flat building, excavation and construction of basement, new basement entry from Henry Lawson Avenue and new landscaping on land identified as No 1 Warung Street, McMahons Point.

The application is required to be reported to the NSLPP for determination, as directed by the Minister of Planning, as the development application has attracted 10 or more unique submissions by way of objection; involves a departure from a development standard that is greater than 10%; and is considered sensitive development which State Environmental Planning Policy Housing 2021 – Chapter 4 Design of Residential Apartment Development applies.

The proposal involves reconstruction of a residential flat building which benefits from Existing Use Rights provisions under Div 4.11 of the *EP & A Act 1979* and the incorporated provisions at s163 to 167 of the *EP & A regulations 2021*. The development application has been assessed against relevant State Planning Policies including Chapter 4 of the Housing SEPP, as well as Council policies including the *North Sydney Local Environmental Plan 2013 (NSLEP 2013)* and *North Sydney Development Control Plan 2013 (NSDCP 2013)*.

Council's notification of the original plans has attracted a total of twenty (20) submissions by way of objection including a submission by the Lavender Bay Precinct Committee raising concerns regarding privacy loss to neighbouring private open space, the uncharacteristic form and appearance of the building and its conflict with the character of the McMahons Point Conservation Area, concerns with regards to the lift overrun, view loss, privacy impacts, built form & design, site excavation and associated impacts, impact to heritage conservation area and character generally, inadequate setbacks, impact to street parking and insufficient landscaping. Amended plans illustrating a

revised scheme were re-notified in October 2024, which attracted a further seven (7) submissions by way of objection.

The proposed development prioritises views of Sydney Harbour and associated iconic views of the Harbour Bridge and Opera house views, to the detriment of the amenity of No. 3 Warung Street and the heritage significance of the McMahons Point South Conservation Area. The splayed south eastern balconies are excessive in size directing views which would have a direct impact and insufficiently mitigated impact on the private open space of No. 3 Warung Street. The built form would not relate well to the adjoining heritage item and conflicts with the predominantly rectilinear form of buildings within the conservation area. The development proposes excessive glazing and glazed balustrades which detract from the significance of the conservation area and there is a substantial increase in earthworks and excavation which does not promote substantial landscaping. Concern is also raised that the earthworks will not maintain the structural integrity of No. 3 Warung Street.

The application involves a height breach of 11.07m (exceedance of 30% or 2.57m), a non compliance with the maximum height of buildings development standard (8.5m) under Clause 4.3 of *NSLEP 2013*. The written request pursuant to Clause 4.6 of the *NSLEP 2013* is not supported as insufficient planning grounds were provided and the included information failed to demonstrate that compliance with this development standard is unreasonable or unnecessary particularly failing with satisfying Objectives of Cl. 4.3 Height of Buildings.

The assessment has considered the concerns raised in the submissions and performance against applicable planning requirements. Following this assessment and having regard to the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), the application is recommended for refusal given the proposal's failure to achieve compliance to and consistency with critical objectives, provisions and controls under the Chapter 4 of *SEPP Housing 2021*, would not achieve an appropriate outcome in terms of built form and character and would substantially impact on the amenity of No. 3 Warung Street.

#### **RECOMMENDATION**

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

In consideration of the written request made by the Applicant pursuant to Clause 4.6 of the *North Sydney Local Environmental Plan 2013*, the consent authority is not satisfied that compliance with the development standard contained in Clause 4.3 – Maximum Height of Buildings of *NSLEP 2013* is well founded.

The Local Planning Panel as the consent authority is not satisfied that there are sufficient environmental planning grounds which would justify contravening the development standard.

**THAT** the North Sydney Local Planning Panel, exercising the functions of Council as the consent authority, resolve to refuse development consent to Development Application No. 379/21 for development involving demolition of

existing structures and erection of a new residential flat building and ancillary works, on land at No. 1 Warung Street (legally described as SP 1927), as shown on Architectural Plans, prepared by Squillace and dated 09/09/24 – Rev C , for the following reasons:

**1. Variation to Height of Building Standard**

The variation request to the maximum height of buildings standard is not well founded and insufficient environmental planning grounds have been identified to support the height variation. The resulting development would present an actual impact to No. 3 Warung Street in terms of excessive overshadowing and privacy impacts and the resulting development would be uncharacteristic of the locality.

Particulars

- a) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) and s4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the relevant objectives and provisions of *North Sydney Local Environmental Plan 2013* and *North Sydney Development Control Plan 2013*.
- b) The proposed development does not achieve the objective in Clause 4.3(1)(a) of *NSLEP 2013* as the building is not stepped down the site nor does the development seek to conform with the natural gradient of the site.
- c) The proposed development does have an additional impact to the western elevation of No. 3 Warung Street casting additional shadow to various windows. It was also noted the windows/ openings on the western elevation are not accurately shown as the western elevation has not been surveyed (refer to C.M.S Surveyors Dwg 19099A detail Issue 6).
- d) The development due to the additional shadows cast does not maintain solar access but has an additional impact not promoting solar access for future development therefore not satisfying the objective in Clause 4.3(1)(d) of *NSLEP 2013*.
- e) The development does not maintain privacy for residents of existing dwellings because the balconies due to their skewed or splayed design maintains a view across the private open space of 3 Warung Street and is considered to have a poor amenity outcome to occupants of No. 3 Warung Street. Additionally, greater privacy measures are appropriate with regards to the eastern side elevation. It is noted the windows provide limited amenity benefit such as solar access and greater privacy measures should be incorporated noting louvres only partially restrict views to the adjoining No. 3 Warung Street.
- f) The development therefore does not maintain privacy for residents of the adjoining No. 3 Warung Street not satisfying the objective in Clause 4.3(1)(d) of *NSLEP 2013*.
- g) The development is not compatible with adjoining development and core concerns include the extent of glazing, glazed balustrades and the dominance of the bulk and massing of the building including the skewed

south eastern balconies in context with No. 3 Warung Street. The development does not satisfy the objective in Clause 4.3(1)(e) of *NSLEP 2013* because the development is incompatible with the adjoining dwelling at No. 3 Warung Street.

- h) The dominant appearance of the large skewed south eastern balconies is not supported and a more sympathetic outcome is required such as more modest sized balconies to reduce the prominence and dominance of the southern elevation which is highly visible from the public domain and surrounding conservation area. The development does not satisfy the objective in Clause 4.3(1)(f) of *NSLEP 2013*.
- i) The height of building is not supported and the written request to justify the contravention of the development standard is not well founded. The written request does not demonstrate compliance with the development standard would be unreasonable and there are insufficient planning grounds to justify the variation. In particular the development does not comply with the following objectives in Clause 4.3 'Height of Buildings' of *NSLEP 2013*.

## **2. Residential Amenity**

The development compromises the amenity of the surrounding area and does not ensure a high level of residential amenity particularly for occupants of the most affected neighbouring property adjoining the site to the east (No. 3 Warung Street).

### Particulars

- a) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) and s4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the relevant objectives, design criteria and provisions of Chapter 4 Design of residential apartment development in *State Environmental Planning Policy (Housing) 2021*, *North Sydney Local Environmental Plan 2013* and *North Sydney Development Control Plan 2013* (DCP 2013).
- b) The bulk and scale of the residential flat building combined with setbacks less than the minimum stipulated in Design Criteria 1, Objective 3F-1 of the ADG results in additional overshadowing compared to the existing or previously approved residential flat building. The development will have a detrimental impact reducing access to sunlight for the adjoining No. 3 Warung Street. The development does not uphold the Objective O1 in s1.3.7 of *NSDCP 2013*.
- c) The south eastern balconies do not comply with the minimum setback stipulated in Design Criteria 1, Objective 3F-1 of the ADG and the balconies are splayed to maximise views for residents of the Harbour Bridge and Opera Bridge with direct overlooking to the principal private open space of No. 3 Warung Street.
- d) The balconies due to their splayed or skewed design maintains a view across the private open space of 3 Warung Street and is considered to have a poor amenity outcome to occupants of No. 3 Warung Street.

- e) Greater privacy measures are appropriate with regards to the eastern side elevation. It is noted the windows provide limited amenity benefit such as solar access to apartments within the development and greater privacy measures should be incorporated noting louvres only partially restrict views to the adjoining No. 3 Warung Street. Incorporation of less window openings for the eastern elevation is increasingly important given the setbacks are not compliant with the minimum stipulated in the ADG.
- f) The development due to the large splayed south eastern balconies and extent of glazing on the eastern side elevation does not ensure residents of the adjoining No. 3 Warung Street are provided with a reasonable level of visual privacy contrary to Objective O1 in s1.3.10 'Visual Privacy' in NSDCP 2013.
- g) The proposal is inconsistent with the objectives of the zone because the development compromises the amenity of the surrounding area and does not ensure a high level of residential amenity particularly for occupants of the most affected neighbouring property adjoining the site to the east (No. 3 Warung Street).
- h) The development will adversely affect the residential amenity for occupants of No. 3 Warung Street in terms of visual privacy and solar access contrary to Aims of Plan 1.2(2)(c)(i) in NSLEP 2013.

### **3. Earthworks and Topography**

The proposal seeks to excavate the entire site and provide a flat topography at RL 11.820 which will require a varying excavation between 2m in the south western corner to up to 7m in the north eastern corner.

The proposal provides access to a new basement for parking and services from Henry Lawson Avenue, with apartments above, including ground level units that are subterranean.

The proposed earthworks are considered major and greater than that approved under the previous consent. The application is supported by a Geotechnical Investigation Report by Douglas Partners which notes the bulk excavation requirements, the necessity to obtain accurate information concerning the adjoining No. 3 Warung Street and methodology for earthworks and associated support.

#### Particulars

- a) The application is considered to be unacceptable pursuant to the provisions of s 4.15(1)(a)(i), 4.15(1)(a)(iii), and 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the relevant objectives and provisions of *North Sydney Local Environmental Plan 2013* and *North Sydney Development Control Plan 2013 (DCP 2013)*.
- b) The site has a crossfall from the north-eastern corner on Warung Street to its Henry Lawson and Blues Point Road frontage. The pavement on Henry Lawson Avenue is 3.5m-5.7m lower than the subject site. The Survey Plan details an RL of approximately 18m in the north eastern corner of the site with a fall of approximately 5m to the south western corner of the site.

- c) The Geotechnical Investigation Report raises several concerns regarding the potential stability of both the adjoining No. 3 Warung Street and Henry Lawson Avenue. The information contained within the Geotechnical Investigation fails to give any certainty that the bulk excavation required will not adversely affect the soil stability and amenity of the adjoining property at No. 3 Warung Street. The bulk earthworks will be reliant on accurate information on the foundations and condition of the adjacent neighbouring building which have not been obtained. The use of anchors required to extend into the neighbouring property at No. 3 Warung Street is not considered an acceptable solution and would require consent from the respective owner/s. As such, the above matter is unresolved and the development does not satisfactorily confirm earthworks will not have a detrimental impact on features on surrounding land.
- d) In accordance with the provisions of Clause 6.10(3) of NSLEP 2013 the impact of the proposed excavation and filling within the site and to surrounding properties and found that the proposed earthworks are not acceptable and the application insufficiently details measures to avoid, minimise or mitigate the impacts of earthworks. Accordingly, the proposed development is not supportable in this regard.
- e) The extent of excavation would not maintain any of the site topography contrary to Objective O1 and there are unresolved concerns with the scope of excavation and impact on the amenity structural integrity of the adjoining property at No. 3 Warung Street contrary to Objectives O3 and O5 in s. 1.3.1 of NSDCP 2013.
- f) The basement proposes overly large car parking spaces with a width of 3.6m. The basement should be reduced in size to improve the provision of deep soil landscaping including sustaining tree planting within the site as well as responding to the prominent site topography. The basement excavation is excessive for the site conditions and subject to amendments to the size of the basement the site could allow for substantial new vegetation and trees. The development therefore does not comply with Objective O2 in s1.3.1 of NSDCP 2013.
- g) The proposed earthworks will not maintain sufficient topographic features and existing ground levels of the site contrary to Aims of Plan 1.2(2)(e) in *NSLEP 2013*.

#### **4. Heritage Impacts**

The proposed development will not contribute positively to the heritage significance of the site and surrounding McMahons Point South Conservation Area because the southern rear elevation comprises too much glazing and glazed balustrades not characteristic of the conservation area. The development also is not supported due to its bulk and scale with insufficient recession in the built form of the building and the landscaping is insufficient in the context of the site to emphasise the sandstone forms evident in the street and at the site boundaries nor would the design response complement the foreground of Henry Lawson Reserve and the surrounding conservation area.

#### Particulars

- a) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) and s4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the relevant objectives and provisions of *North Sydney Local Environmental Plan 2013* and North Sydney Development Control Plan 2013 (DCP 2013).
- b) The proposed glazing to the southern rear elevation remains too extensive and a greater solidity in the façade is required to ensure the development achieves a high proportion of masonry or solid surfaces to glazed surfaces. The glazing does not comply with Provision P5, s9.8.6 in Part C ‘McMahons Point South Conservation Area’ of NSDCP 2013. The development encompassing the large glazed window/ doors and glazed balustrades would be dominated by large expanses of glass contrary to Provision P5, s1.4.7 ‘Form, Massing & Scale’ of NSDCP 2013.
- c) The glazed balustrades are not supported and the balustrades should be similar to the existing development, the approved RFB under DA 379/21 and other properties in the vicinity that comprise of metal palisade balcony balustrades. Glazed balustrades are not a supportable heritage outcome as stipulated in Provision P6, s13.9.3 ‘Verandahs and balconies’ of NSDCP 2013.
- d) The skewed orientation of the south eastern balconies is not supportable not maintaining the characteristic orientation of buildings within the conservation area and contrary to the existing building orientation of the RFB sought for demolition therefore the development fails to comply with Objective O1, s1.4.5 ‘Siting’ of NSDCP 2013.
- e) The siting of the development including proximity to the eastern boundary and the south eastern balconies detrimentally impacts upon the heritage significance of the heritage item and its setting. The bulk and scale of the development adjacent to the eastern boundary does not respond to the curtilage, setbacks, form and scale of the heritage item and has no compatibility with the orientation and alignment of the heritage item. The development does not comply with Objective O1, Provisions P1 and P3 in s13.4 ‘Development in the Vicinity of Heritage Items’ of NSDCP 2013.
- f) The proposed glazing, glazed balustrades and the bulk, scale and siting of the development will detract from the significance of the heritage conservation area and adjoining heritage item contrary to Aims of Plan 1.2(2)(f), Objective 1(b) in Clause 5.10 in *NSLEP 2013*.

##### **5. Built Form and Character**

The south eastern balconies are not considered to be integrated within the building envelope but are large protruding aspects of the building primarily sought for maximising views to the harbour and iconic items such as the Harbour Bridge and Opera House.

The skewed large balconies to the south eastern corner of the RFB is not complementary to the existing character of the locality noting the locality has more modest balconies integrated within the building envelope.

##### Particulars



- a) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) and s4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the relevant objectives, design criteria and provisions of *Chapter 4 Design of residential apartment development in State Environmental Planning Policy (Housing) 2021*, *North Sydney Local Environmental Plan 2013* and *North Sydney Development Control Plan 2013* (DCP 2013).
- b) The skewed orientation of the south eastern corner of the building is not supportable not maintaining the characteristic orientation within the conservation area and contrary to the existing building orientation of the RFB sought for demolition therefore the development fails to comply with Provision P3 and Objective O1, s1.4.5 of NSDCP 2013.
- c) The south eastern balconies are large extending significantly beyond the rear façade of the building not incorporated within the building envelope contrary to Provision P3, s1.4.8 of NSDCP 2013. The proposed skewed arrangement of the balconies is not integrated within the building dominating the overall architectural form of the building contrary to Objective 4E-3 in the ADG.
- d) The skewed south eastern balconies due to their size, orientation and insufficient integration within the building envelope is not compatible with the desired future character of the area contrary to Aims of Plan 1.2(2)(b)(i) in *NSLEP 2013*.

#### **6. Landscaped Area**

The development proposes 266.5m<sup>2</sup> (27%) landscaped area not compliant with the minimum 40% stipulated in Table B-1.7, Provision P1, s1.5.6 'Landscaped Area' of NSDCP 2013. Basement parking comprises large car parking spaces being 3.4m wide. It is noted the adaptable spaces are 2.5m and 2.5m is a nominated parking space width in the Australian Standard 2890.1 Parking facilities: off street parking.

It is considered the development prioritises generous car parking spaces and to maximise the allowance of 70% basement excavation stipulated in Provision P9, S1.3.1 of NSDCP 2013 whilst compromising landscaped area.

#### Particulars

- a) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) and s4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the relevant objectives and provisions of *North Sydney Local Environmental Plan 2013* and *North Sydney Development Control Plan 2013* (DCP 2013).
- b) The basement is excessive and subject to amendments to the size of the basement the site could allow for substantial new vegetation and trees. The development therefore does not comply with Objective O2 in s1.3.1 of NSDCP 2013.

- c) The development does not promote substantial landscaping and the contribution to landscaping within the streetscape contrary to the following objectives in s1.5.6 of the NSDCP 2013.
- d) The shortfall in landscaped area is not appropriate to the landscaped context or enhances the amenity of the North Sydney environment contrary to Aims of Plan 1.2(2)(a) in *NSLEP 2013*.

#### **7. Site suitability**

The proposed development will result in adverse impacts on the locality and is therefore unsuitable for the site.

##### Particulars:

The application is considered unacceptable pursuant to the provisions of s.4.15(1)(c) & (d) of the *Environmental Planning and Assessment Act 1979* in that the proposed development will result in an unacceptable built form that does not conform to the constraints of the site.

#### **8. Public Interest**

The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is not considered to be within the public interest and is likely to set an undesirable precedent due to the non-compliances with objectives and controls under Council policy including the NSLEP 2013 and NSDCP 2013 as well as non-compliances with Chapter 4 Design of residential apartment development of *State Environmental Planning Policy (Housing) 2021* and the Apartment Design Guide.

### **LPP07: Unit 301, 182 Kurraba Road, Kurraba Point, Lot: 4 SP: 101673 - DA/138/2024**

Applicant: The trustee for The Think Planners Unit Trust

Report of Christopher Ross, Consultant Planner – (on behalf of North Sydney)

This application under section 4.12 of the *Environmental Planning and Assessment Act 1979* (EPA Act) seeks to gain consent to install an operable vergola within the existing framed structure above the rear balcony of Unit 301, 182 Kurraba Road.

It is noted that the subject vergola was refused consent under previous modification applications to consent No. DA 333/19/2 - approved by the North Sydney Local Planning Panel (NSLPP), and again refused under a subsequent modification to consent No. DA 333/19/4, approved through consent orders by the Land and Environment Court New South Wales (L&E Court), however, the framing/roof was shown on the approved plans of both consents.

Council's notification of the proposal has attracted four (4) unique submissions raising concerns about overshadowing, view loss and visual and acoustic privacy, excessive bulk/height/scale, erroneous information, and existing roof form approvals.

The assessment has considered the concerns raised, as well as the proposed works against Council's planning requirements. Whilst a variation to the height of buildings control is proposed, the variation has been adequately justified, is

relatively minor, proposes no new bulk, height, or building scale, and would result in no significant environmental impacts. The variation is able to be supported in the circumstances of the site.

**RECOMMENDATION**

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

**A. THAT** the North Sydney Local Planning Panel exercising the functions of Council as the consent authority, assume the concurrence of the Secretary of the Department of Planning, Housing and Infrastructure and invoke the provisions of Clause 4.6 in *NSLEP 2013* with regards to non-compliance with Clause 4.3 of *NSLEP 2013* and grant consent as the variations sought are considered to be well founded and in the public interest as there will not be any direct or adverse environmental impacts generated by the variation sought.

**B. 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 **grant consent** to Development Application No. 138/24 for Installation of a Vergola on the Rear Balcony on land at Unit 301, 182 Kurraba Road, Kurraba Point subject to the

## NORTH SYDNEY LOCAL PLANNING PANEL

### DETERMINATIONS OF THE NORTH SYDNEY LOCAL PLANNING PANEL MEETING HELD IN THE COUNCIL CHAMBERS, NORTH SYDNEY, ON WEDNESDAY 6 NOVEMBER 2024, AT 2.00PM.

#### PRESENT IN THE SUPPER ROOM

**Chair:**

Alison McCabe

**Panel Members:**

John McFadden (Panel Member)

Vanessa Holtham (Panel Member)

Karla Castellanos (Community Representative)

**Staff:**

Isobella Lucic, Team Leader Assessments

**Administrative Support:**

Miranda Shoppe, Meeting Administration Coordinator (Minutes)

This meeting was otherwise conducted by remote (Teams) means.

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

**Apologies:**

Nil

**1. Declarations of Interest**

Nil

**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.*

*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>	93/24
<b>ADDRESS:</b>	34-36 Cammeray Road, Cammeray
<b>PROPOSAL:</b>	Demolition of existing structures, Torrens Title subdivision and construction of two x semi-detached dwellings and associated works.
<b>REPORT BY NAME:</b>	Jack Varka, Assessment Officer
<b>APPLICANT:</b>	Max Chipchase

**Written Submissions - Nil****Registered to Speak**

<b>Submitter</b>	<b>Applicant/Representative</b>
	Max Chipchase - Applicant Chipchase Planning
	Robert Salerno - Owner

**Panel Determination**

The Panel members have undertaken a site inspection prior to the meeting and considered both the written submissions and the oral representations at the meeting.

The Panel notes that the Council Officer's Report recommends approval for the application subject to conditions. The Panel is supportive of the redevelopment of the site for the purpose of a pair of semi-detached dwellings and Torrens title subdivision of the site into two lots.

However, the Panel requires additional information regarding the extent of the rock outcrop to be removed, boundary fencing details, and landscaping of the site. The Panel also notes that the Clause 4.6 Exception to development standards contains references to repealed provisions and outdated guidelines and needs to be amended to address the current provisions of clause 4.6 of the *North Sydney LEP 2013*.

The Panel is also concerned with the basement extending beyond the rear building line and is of the view that the basement should be contained within the building footprint. To this end, the applicant is required to provide amended plans and additional information addressing the following:

1. Further survey of the rock outcrop, prepared by a registered surveyor to determine the levels and exactly how much is to be removed. This is to be limited to the portion of fractured/splintered outcrop of sandstone recommended in the Geotechnical Report.
2. A revised landscape plan that details appropriate screen landscaping along the northeastern and southwestern boundaries to ensure privacy between adjoining properties.
3. Boundary fence details on elevation and plans.
4. A revised Clause 4.6 Exception to development standards that references current clause 4.6 provisions.

5. Amended plans and section showing both basements contained wholly below the building footprints, and any required amendments arising from the above points 1-3.

With this further information the Panel is of the view that the proposed development could be appropriate for the site, and potentially consistent with Council’s policy framework in the area.

The Panel notes that, given the amount of excavation proposed that a dilapidation report Damage to Neighbouring Properties, should be considered for inclusion in any determination.

Authority is delegated to the Manager Development Services to determine the application following the submission of additional information, specified above. This information is to be submitted to Council **no later than 14 days** after the date of the advice to the applicant of the Panel’s decision. Should the amended plans not be submitted within this period or are not to the satisfaction of the Manager Development Services, the Panel is of the view the application warrants refusal.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Alison McCabe	Y		Karla Castellanos	Y	
John McFadden	Y				
Vanessa Holtham	Y				

**ITEM 2**

<b>DA No:</b>	282/23
<b>ADDRESS:</b>	246-254 Military Road, Neutral Bay
<b>PROPOSAL:</b>	The demolition of existing structures and construction of a six storey mixed-use development comprising a retail/commercial use at basement/ground floor and boarding house accommodation, with roof-top communal living spaces, and associated works.
<b>REPORT BY NAME:</b>	Damon Kenny, Executive
<b>APPLICANT:</b>	Matthew O'Donnel, Mod Urban Pty Ltd

**Written Submission – NIL****Registered to Speak**

<b>Submitter</b>	<b>Applicant/Representative</b>
David Saba - representing 3-5 Waters Road, Neutral Bay	Nil

**Panel Determination**

The Panel members have undertaken a site inspection prior to the meeting and considered the submissions. The Panel heard from those submitters who wished to address the Panel.

The Council Officer's report outlines a number of inadequacies with the application. The Panel agrees with the assessment and conclusions within the Council report. The Panel is also of the view that the application warrants refusal for additional reasons relating to:

1. Site isolation
2. Evidence that the boarding house will be managed in perpetuity by a registered community housing provider and used for affordable housing.
3. Structural engineering details regarding the structural integrity of the neighbouring buildings.
4. Amenity of the units

The Panel adopts the recommendation in the Council report for refusal, subject to reason 9 being amended to read as follows, and additional reason 11:

## 9. Insufficient information

Insufficient information has been provided to allow for the robust and thorough assessment of the application in accordance with Section 4.15 of the *EP&A Act, 1979*, as follows:

- a. No survey Plan has been provided.
- b. A plan of management for the bar and laundromat has not been provided.
- c. Details on exhaust or ventilation for café have not been provided.
- d. Fully dimensioned plans have not been provided

- e. Site context and analysis plan showing setback of the northern adjoining property has not been provided.
- f. Plans and details showing the easement and compliance with the terms and restrictions has not been provided.
- g. A structural engineer’s report demonstrating the structural independence of the proposed development and the neighbouring eastern wall has not been provided.
- h. No information has been provided having regard to the NSW LEC Planning Principal - Redevelopment (Isolation of site by redevelopment of adjacent site) for No’s. 256 and 258 Military Road, Neutral Bay.
- i. No information has been provided verifying the boarding house will be managed by a registered community housing provider.
- j. Insufficient clarity with respect to the categorisation of the development given the references to “proposed short stay accommodation” on the architectural package.

**11. Amenity**

The proposed development does not demonstrate adequate amenity for the future residents.

Voting was as follows:

<b>Panel Member</b>	<b>Yes</b>	<b>No</b>	<b>Community Representative</b>	<b>Yes</b>	<b>No</b>
Alison McCabe	Y		Karla Castellanos	Y	
John McFadden	Y				
Vanessa Holtham	Y				



**ITEM 3**

<b>DA No:</b>	87/24
<b>ADDRESS:</b>	32 Milson Road, Cremorne Point
<b>PROPOSAL:</b>	Alterations and additions to a dwelling house including a two-storey pavilion style addition, a spa pool, car parking and landscaping.
<b>REPORT BY NAME:</b>	Robin Tse, Senior Assessment Officer
<b>APPLICANT:</b>	Peter Hosking, Quattro Architecture

**1 Written Submission****Registered to Speak**

<b>Submitter</b>	<b>Applicant/Representative</b>
Jennifer Lane – neighbouring property	Peter Hosking - Quattro Architecture

**Panel Determination**

The Panel members have undertaken a site inspection prior to the meeting and considered the submissions.

The Panel queries whether a clause 4.6 Exception to development standard is required as it is unclear whether there was any further breach to the height of building development standard arising from the works to the heritage item. The Panel notes that the rear pavilion adjacent to Milson Road complies with the height of building development standard. In the event that a clause 4.6 Exception to development standard is required, the current 4.6 needs to be amended as it addresses the repealed provisions of clause 4.6 and needs to address the current provision of the North Sydney LEP 2013.

The Panel is not satisfied with the extent of information regarding the works to the heritage item and is unclear as to what is being proposed given the lack of details, including repair and conservation works. As an example, the plans seem to indicate a new concrete slab extending into the heritage item which would be unacceptable. For the Panel to be satisfied about the siting of the rear pavilion, root mapping of the adjoining tree (T2) is required to be undertaken. Detailed sections and surveyed levels showing the landscaped area and pavilion at the Milson Road frontage in relation to both the heritage item and adjoining lands needs to be provided. The Panel cannot be satisfied regarding the landscape outcomes to the Milson Road frontage, or the broader heritage curtilage.

The application is therefore refused for the following reasons:

- 1. Insufficient and inadequate plans and supporting information;**
  - a) The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979* in that the proposed development fails to meet the requirements outlined in Clause 24 and 36 of the *Environmental Planning and Assessment Regulation 2021*. This includes the necessary additional information to properly

consider the development application:

- i) The plans and submitted documentation fail to sufficiently detail the extent of the existing rocky outcrop in the western garden, and the extent of any works to it.
- ii) Insufficient information in relation to root mapping of tree T2 (*Syncarpia glomulifera*) on the adjoining property. This is required to ensure that the works have been appropriately designed to retain this tree.
- iii) The submitted plans and documentation have not comprehensively detailed all of the likely and proposed heritage conservation works to the original dwelling, including changes to fabric and general repairs/conservation works, both internally and externally. A comprehensive schedule of maintenance works, including marked up images, addressing both interior and exterior original fabric, including but not limited to ceilings, fireplaces/mantlepieces, joinery, staircases, leadlights, exterior shingles, balustrades, chimney, brickwork, sandstone, that is documented to be retained, is considered necessary to be provided to ensure clarity on any required changes to original fabric and to ensure that the panel can be satisfied that the heritage significance of the heritage item is retained.
- iv) The submitted landscape plans do not sufficiently address the public domain presentation of the site from the Cremorne Reserve, specifically any works to the landscaping facing the reserve. Any landscaping works to this area are to be sympathetic to the heritage significance of the original dwelling and its curtilage, the Cremorne Reserve, and the broader conservation area.
- v) The landscaping outcome to the Milson Road frontage of the site is insufficiently detailed, including existing/proposed levels to demonstrate sufficient soil depths to enable tree planting, indicating the presence or removal of any concrete slabs that are likely to restrict the growth of trees/planting. A permanent physical barrier (such as a low stone wall) that will physically prevent the south-eastern corner section from being used for the purpose of car parking has not been detailed or included.
- vi) The clause 4.6 Exception to development standard requires amendment as it currently addresses the repealed provisions and outdated guidelines of clause 4.6 and needs to address the current provision of the *North Sydney LEP 2013*.

**2. The proposal would adversely impact the heritage significance, curtilage and setting of 32 Milson Road, Cremorne Point, which is listed as a local heritage item in schedule 5 of NSLEP 2013.**

- a) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the aims of *North Sydney Local Environmental Plan 2013 (NSLEP 2013)* as listed in Clause 1.2 (2)(f), in Part 1 of *NSLEP 2013*, and Clauses 5.10(1)(a), (1)(b), (4), and (5), in Part 5 of *NSLEP 2013*, in that it is unclear as to if the works will adversely affect the

significance of the existing heritage item, given the submitted plans do not adequately assess the level of works to the existing heritage item.

- b) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that the proposed development would adversely impact upon the built environment by adversely affecting the significance of a heritage item within the Cremorne Point Conservation Area.
- 3. The proposed development is inappropriate to its context and is incompatible with the built form character of the Cremorne Point Conservation Area within the South Cremorne Planning Area;**

The proposed development is not appropriate to its context or compatible with the character of the Cremorne Conservation Area within the South Cremorne Planning Area by virtue of its adverse impact upon the setting and original fabric on the primary façade of the heritage item, and its failure to respond to the landscaped and topographical context of the site and adjoining properties.

- a) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the aims of *North Sydney Local Environmental Plan 2013 (NSLEP 2013)* as listed in Clauses 1.2 (2)(a), (2)(f) in Part 1 of *NSLEP 2013*, and the Objectives of the R2 Low Density Residential zone, to ensure developments are appropriate and compatible to the character of an area and that development does not adversely affect the cultural heritage of the area.
- b) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that the proposed development would have an adverse impact upon surrounding properties, the streetscape presentation of the site, and is unsympathetic to the character of the conservation area, as there is insufficient detail provided regarding landscaping on the Cremorne Reserve frontage of the site, and landscaping on the Milson Road frontage of the site (Southeastern corner).
- c) The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development would have an unacceptable impact upon the landscaped context of the site that is located within a bushland buffer zone, including potential adverse impacts upon natural sandstone outcrops, and significant impacts arising from excavation and construction upon significant trees.
- 4. The development is not in the public interest given the above likely impacts.**
- a) The application is considered unacceptable pursuant to the provisions of s.4.15(1)(d) & (e) of the *Environmental Planning and Assessment Act 1979* in that the proposal is not considered to have adequately demonstrated that the heritage significance of the dwelling will be retained, and that the works will be sympathetic to the surrounding area. The proposal is, therefore, not considered to be in the public interest or suitable for the site.

Voting was as follows:

<b>Panel Member</b>	<b>Yes</b>	<b>No</b>	<b>Community Representative</b>	<b>Yes</b>	<b>No</b>
Alison McCabe	Y		Karla Castellanos	Y	
John McFadden	Y				
Vanessa Holtham	Y				

The public meeting concluded at 3.19pm.

The Panel Determination session commenced at 3.20pm.

The Panel Determination session concluded at 5:05pm.

Endorsed by Alison McCabe

Chair

North Sydney Local Planning Panel

**6 November 2024**