

DATE OF DETERMINATION	09 August 2023
DATE OF PANEL DECISION	09 August 2023
DATE OF PANEL MEETING	27 July 2023
PANEL MEMBERS	Peter Debnam (Chair), Nicole Gurrán, Brian Kirk, Peter Biscoe, Marcus Sainsbury
APOLOGIES	Nil
DECLARATIONS OF INTEREST	Nil

MATTER DETERMINED

PPSSNH-367 - DA2021/1912 – Northern Beaches - 389 Pittwater Road, North Manly, 2-4 Lakeside Crescent, North Manly, 8 Palm Avenue, North Manly, Boarding house & Mixed-use development, alterations and additions to an existing building for a mixed-use development including seniors housing and boarding house.

Application to vary a development standard

The applicant submitted written requests to vary the following: -

- Height of Buildings under clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP);
- Height of Buildings under clause 40 (4)(a) under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD); and
- Maximum Boarding Room Size under clause 30 (1)(b) of State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)

The Panel considered the written requests from the applicant, made under cl. 4.6(3) of the LEP, having regard as to whether:

- a) compliance with cl. 4.3 of the LEP, cl. 40 (4)(a) of SEPP HSPD, and cl. 30 (1)(b) of (SEPP ARH) is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standards

The Panel is satisfied that:

- a) the applicant’s written requests adequately address the matters required to be addressed under cl. 4.6(3) of the WLEP; and
- b) the development is in the public interest because it is consistent with the following: -
 - The objectives of cl. 4.3 of the LEP;
 - The objectives of chapter 3 of SEPP HSPD and the Aims of the Policy; and
 - The Aims of SEPP ARH
 - The objectives for development in the R2 – Low Density Residential zone.

PANEL CONSIDERATION AND DECISION

The Panel considered the matters listed at item 6, the material presented at meetings and briefings and the matters listed at item 8 in Schedule 1.

Development Application

The Panel determined to approve the development application pursuant to section 4.33 of the *Environmental Planning and Assessment Act 1979*.

REASONS FOR DECISION

The Panel unanimously resolved to approve the development application for the reasons set out below and in the Independent Planner's Report prepared by the Panel's Independent Planner.

Clause 4.3 of the WLEP provides a maximum building height for the site of 8.5m and the proposal breaches this height by 3.56m at the top of the plant and by 1.36m to 1.91m at the top of the second floor roof. It is noted the existing building has a non-compliant height, in part, of 10m with heights of RL 12.65 – RL 12.68. The Applicant submitted a cl. 4.6 written variation request and the Panel concurs with the Independent Planner that the request appropriately identifies that the proposal satisfies the objectives of cl. 4.3 of WLEP and there are sufficient environmental planning grounds to justify the breach. Accordingly, the Panel believes the cl. 4.6 request should be supported.

Clause 40 of SEPP HSPD provides a maximum building height (measured to the ceiling on the topmost floor) of 8m and a maximum number of storeys adjacent to the boundary of the site of two. The proposed development has a maximum building height of 9.86m-10.41m, less the thickness of the roof (approximately 200mm at its thinnest), resulting in a breach of the control by up to approximately 2m, though the majority of the breach is less than 2m. Whilst the Applicant is of the view that the breach of the standard does not require a cl. 4.6 variation request, one addressing the above height breaches has been submitted for abundant caution. The Applicant has assumed objectives for the control as there are none detailed in SEPP HSPD. The Panel has considered this request having regard also to objectives of Chapter 3 of the SEPP and the Aims of the Policy. The Panel is satisfied that the proposal achieves the objectives of Chapter 3 of SEPP HSPD and the Aims of the Policy and there are sufficient environmental planning grounds to justify the breach. Accordingly, the Panel believes the Clause 4.6 request should be supported.

The applicant also submitted a written request for a variation to the Maximum Boarding Room Size under Clause 30 (1)(b) SEPP ARH. The ground floor boarding house is contained within the footprint of the original building and the exceedance is a direct result of the adaptive reuse of the ground floor and the existing building's shape and configuration. The Panel agrees with the Council's assessment that the Applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment. The Panel is satisfied that the proposal achieves the objectives of SEPP ARH and there are sufficient environmental planning grounds to justify the breach. Accordingly, the Panel believes the cl. 4.6 request should be supported.

The Panel considered the proposal at a public meeting in May and at a further meeting with the Applicant, Council, and Independent Planner on 27th July 2023.

At the time of deferring this matter in May, the Panel noted the design and evolution of this substantial Crown project has been underway for several years with extensive consultation between Applicant, Council and community. However, several key issues remained unresolved and the Panel decided to defer the matter to seek independent advice from an expert planner in relation to the application.

During June and July, the appointed Independent Planner liaised with Council, Applicant and the Panel to undertake a Independent Planner's Report of the Council Assessment Report focussing on the reasons for refusal and the Applicant's 5th April response to Council's reasons for refusal. At the Panel's request, the Independent Planner also considered the potential tsunami impact on the development.

At the 27th July meeting, the Panel considered the Independent Planner's Report as well as Council's response to the report and Council's draft conditions, which included the special conditions recommended by the Independent Planner. The Independent Planner's Report as well as the recommended special conditions and several conditions remaining unresolved (between Council and Applicant) were discussed in detail during the meeting and acceptable amendments were agreed to by the Panel, Council and Applicant.

As noted in the Independent Planner's Report, Council's original reasons for refusal relate to the flood nature of the site and the response of the design to flood risk, the height, bulk and scale of the development and the provision for cross ventilation.

The Panel concurred with the Independent Planner that the development is designed and can be managed in a way that appropriately minimises the risk of flooding and tsunami to residents on the site, subject to the residents sheltering in place during flood and tsunami events that impact the site, and in relation to the impact upon services during flood and tsunami evacuation if special conditions were imposed.

In assessing the amended proposal against Clause 5.21 of the WLEP, the Panel agreed with the Independent Planner that with the addition of the special conditions, the proposed accommodation on the site would be appropriately designed, located and managed in the event of a flood: to manage risk to life in the event of a flood; resulting in the site being compatible with the flood function and behaviour of the land; and would not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing flood evacuation routes for the surrounding area. In summary, the amended proposal would satisfy the requirements of Clause 5.21 of the WLEP subject to conditions.

Additionally, the Panel agreed with the Independent Planner that concerns with the height, bulk and scale of the development would be addressed by the Applicant's amended landscape plans and the Clause 4.6 request to vary the height controls.

In summary, the Panel believes the amended proposal has been properly assessed against relevant planning controls, is suitable for the site and will provide much needed accommodation for the Northern Beaches. Accordingly, the Panel believes approval of the development application is in the community interest.

The Panel's decision to approve the development application was unanimous.

CONDITIONS

During the 26th July meeting, amendments to Conditions were discussed relating to the Construction Traffic Management Plan, photovoltaic panels and mains supply, selection of residents and training and oversight of Flood Wardens. The development application was approved subject to the revised conditions in Council's email of 4 August 2023.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered 85 written submissions made during public exhibition of the proposal and heard from those members of the public wishing to address the public meeting. Issues raised included building bulk, height, scale, compatibility with the R2 Low Density Zone, parking, traffic and flooding. The Panel considers concerns raised in submissions and in the public meeting have been adequately addressed in the Assessment Reports, by Applicant responses during the meetings and in the revised conditions.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Nicole Gurrán
 Brian Kirk	 Peter Biscoe
 Marcus Sainsbury	

SCHEDULE 1

1	PANEL REF – LGA – DA NO.	PPSSNH-367 - DA2021/1912 – Northern Beaches
2	PROPOSED DEVELOPMENT	Boarding house & Mixed-use development, Alterations and additions to an existing building for a mixed-use development including seniors housing and boarding house, stratum and strata subdivision.
3	STREET ADDRESS	389 Pittwater Road, North Manly, 2-4 Lakeside Crescent, North Manly, 8 Palm Avenue, North Manly
4	APPLICANT/OWNER	Applicant: Zack Wilson Owner: Landcom
5	TYPE OF REGIONAL DEVELOPMENT	Crown Development Application over \$5 Million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Hazards and Resilience) 2021 ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 ○ State Environmental Planning Policy No 65 – Design Quality of Residential apartment Development (SEPP 65) ○ State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) ○ State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPPARH) ○ Warringah Local Environmental Plan 2011 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Warringah Development Control Plan 2011 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 10 May 2023 • Written submissions during public exhibition: 85

		<ul style="list-style-type: none"> • 24 May 2023 - Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Jennifer Hambling, Sean Fry, James Lovell ○ Council assessment officer – Jordan Davies ○ On behalf of the applicant – Janelle Goulding, Paul Grech, Hannah Blumberg, Andrew Elia, Dr. Brett Phillips, Andrew McAnulty, Jillian Sneyd • Total number of unique submissions received by way of objection: 85 • Independent Planner Assessment and attachments: 22 July 2023 • Council Memo dated 26 July 2023
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 15 March 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Nicole Gurrán, Marcus Sainsbury, Peter Biscoe ○ <u>Council assessment staff</u>: Jordan Davies ○ <u>Applicant representatives</u>: Bill Donohoe, Zack Wilson, Andrew McAnulty • Public meeting – 24 May 2023 • Final briefing to discuss expert planner’s recommendation: 27 July 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Brian Kirk, Nicole Gurrán, Peter Biscoe, Marcus Sainsbury ○ <u>Council assessment staff</u>: Jordan Davies, Patrick Stuart, Rodney Piggott ○ <u>Expert Planner</u>: Kerry Gordon ○ <u>Applicant</u>: Bill Donohoe, Jillian Sneyd, Andrew McAnulty; Janelle Goulding; Dr Brett Phillips
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Draft Conditions as agreed by Council and Landcom