

MINUTES

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

held via Teleconference on

WEDNESDAY 19 MARCH 2025

Minutes of the Northern Beaches Local Planning Panel held on Wednesday 19 March 2025

The public meeting commenced at 12.00pm and concluded at 1.25pm.

The deliberations and determinations commenced at 1.35pm following the public meeting and concluded at 3.20pm.

ATTENDANCE:

Panel Members

Ross Bonthorne	Chair
Oliver Klein	Town Planner
Heather Warton	Town Planner
Frank Bush	Community Representative

The Panel have visited all sites personally, or electronically, and have had regard to the assessment report, all accompanying documentation, submissions from the public and any supplementary reports in determining all applications.

1.0 APOLOGIES AND DECLARATIONS OF INTEREST

No Apologies

In accordance with Section 4.9 of the NSW Government Code of Conduct for Local Government Planning Panels, all members have signed a declaration of interest in relation to each item on the agenda. Oliver Klein disclosed a historic social association with a submitter on item 4.3 which was over a decade ago. The disclosure was not a significant non-pecuniary conflict of interest and did not exclude his participation in the item. No other conflicts of interest were disclosed.

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF THE NORTHERN BEACHES LOCAL PLANNING PANEL MEETING HELD ON 5 MARCH 2025

The Panel notes that the minutes of the Northern Beaches Local Planning Panel Meeting held on 5 March 2025, were adopted by the Chairperson and have been posted on the Council's website.

3.0 CATEGORY 3 APPLICATIONS

Nil

4.0 PUBLIC MEETING ITEMS

4.1 DA2024/0946 - 80 UNDERCLIFF ROAD, FRESHWATER - USE OF THE PREMISES AS A RESTAURANT INCLUDING ANCILLARY USE AS A FUNCTION CENTRE

PROCEEDINGS IN BRIEF

The proposal is for use of the premises as a restaurant including ancillary use as a function centre.

At the public meeting the Panel was addressed by 7 neighbours and 3 representatives of the applicant.

DETERMINATION OF DEVELOPMENT APPLICATION

The Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2024/0946 for use of the premises as a restaurant including limited ancillary use as a function centre at Lot B DP 329073, 80 Undercliff Road, Freshwater subject to the conditions set out in the Assessment Report and as amended below:

1. The addition of the following Condition **Accessibility Solution** to read as follows:

Accessibility Solution

Access to and within the internal restaurant from the north-eastern entry gate is to be provided for Persons with a Disability and is to comply with the Building Code of Australia and AS 1428.1.

Any work to ensure adequate accessibility is to maintain the significance of, and to complement the heritage significance of the subject site.

The applicant is to submit amended plans and relevant documentation to the satisfaction of Executive Manager Development Assessment prior to the issue of a Construction Certificate.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

2. The amendment of Condition **3** to read as follows:

3. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a **restaurant or cafe**, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011, as follows:

***restaurant or cafe** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided, but does not include the preparation and serving of food and drink to people that occurs as part of—*

- (a) *an artisan food and drink industry, or*
- (b) *farm gate premises.*

Up to a maximum of 20 single bookings are permitted per calendar year (January to December), on a pro rata basis for 2025 as the approved function use will commence after January 2025.

A log book detailing each single booking is to be kept up to date for inspection by Council at any time.

The maximum capacity for the restaurant use is 130 patrons.

The maximum capacity for a single booking is 100 patrons.

The maximum number of patrons utilising the pavilion shall not exceed 50 at any time.

Any variation to the approved land use beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

3. The amendment of Condition **24** to read as follows:

24. Noise Management

The restaurant is to be operated in accordance with the following:

- Any amplified music must be limited to, and restricted during the hours of 10:00am and 10:00pm. Noise levels to be limited to 90 dBA Sound Power Level (or equal to 73 dBA @ 3m) when measured as a sound pressure level.
- No outdoor amplified music.
- Outdoor background and/or acoustic (non-amplified) music is limited to 10pm.
- Background music is assumed to be 65 dBA for dining areas, all measured as a sound pressure level.
- All doors and windows are to remain shut after 10:00pm and not opened before 7:00am and anytime amplified music is used. Low level background music is permitted to be played with windows open.
- Removal of glass or waste should be done internally and must not be externally of the premises after 8:00pm and before 7:00am.
- Signs must be displayed at all exits reminding patrons to be mindful of noise when leaving the premise.
- A revised Plan of Management (PoM) is to be prepared based on the following conditioned amendments:
 - Amended Operating Hours
 - Amplified and non-amplified and background music requirements
 - Opening of windows
 - A contact number must be displayed for the purposes of receiving any complaints if they arrive.
 - A copy of the PoM to be available on restaurant's webpage.

The PoM should be sent to Council and approved prior to operating under this consent. The PoM is to be reviewed regularly to ensure any required updated proposed for approval by Council.

Reason: To maintain reasonable levels of amenity to residential neighbouring properties.

4. The Amendment of **Condition 6** to read as follows:

6. Extent of Consent

No approval is granted or implied under this Development Consent for any physical works beyond the fire and accessibility upgrades noted on the plans and review of accessibility matters (prepared by City Plan, dated 11 July 2024) and revised review of accessibility matters prepared by City Plan, dated 23 October 2024).

The approved upgrade works are limited to the following:

- Bathroom alterations
- Equitable access to and within the site, excluding the Undercliff Road access path.

Approval is given for the use of the site only.

Reason: To ensure compliance with the terms of this consent.

5. The amendment of **Condition 23** to read as follows:

23. Undercliff Entrance

The existing entranceway/gate fronting Undercliff Road is not to be used by restaurant patrons for access, and/or for deliveries and services.

Reason: In order to maintain privacy to the adjoining / nearby property.

6. The amendment of **Condition 27** to read as follows

Hours of operation – reviewable condition

This condition is imposed under s4.17(10B) of the Environmental Planning and Assessment Act to enable Council to review the performance of the approved development with respect to the hours of operation. This review will take place with 14 days notice within the first 12 months of operations, or with 14 days notice at any time following the first 12 months of operations, where Council is in receipt of complaints related to hours of operation and amenity impacts.

The hours of operation are to be restricted to:

- Sunday: 10:00am – 10:00pm
- Monday to Thursday: 10:00am - 11:00pm
- Friday and Saturday - 10:00am - 12:00am
- New Years Eve – 10:00am – 01:00am

Should upon a review of this condition and following a proper investigation Council finds that limiting the hours of operation is the most efficient and effective means of reducing amenity impacts then the hours of operation will be required, at the expiration of 14 days written notice, to revert to the following:

Restaurant trading hours

Restaurant trading hours including any take away meals service shall be confined to:

- Sunday to Thursday: 10:00am - 10:00pm
- Friday and Saturday - 10:00am - 12:00am
- New Years Eve – 10:00am – 01:00am

REASONS FOR DETERMINATION

The Panel agrees generally with the Assessment Report with amendments in consideration of the amenity impacts on neighbours with regards to the playing of amplified music, access for persons with a disability and the provision of a reviewable condition allowing hours until 11pm Monday to Thursday.

Vote: 4/0

4.2 DA2024/0597 - 21 OAKS AVENUE, DEE WHY - DEMOLITION WORKS AND CONSTRUCTION OF SHOP TOP HOUSING

PROCEEDINGS IN BRIEF

The proposal is for demolition works and construction of Shop Top Housing.

At the public meeting the Panel was addressed by 1 representative of the applicant.

DECISION ON EXCEPTIONS TO DEVELOPMENT STANDARDS

The applicant did not submit a written request under cl 4.6 of the Warringah Local Environmental Plan 2011 seeking a contravention to cl 7.12 Provision for Promoting Retail Activity,

Further the application involved a variation to the cl 4.3 Height of Buildings but which cl 4.6(8A) does not permit the development standard to be varied under cl 4.6.

These jurisdictional matters precludes the granting of consent by the Panel.

DETERMINATION OF DEVELOPMENT APPLICATION

The Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2024/0597 for demolition works and construction of Shop top Housing at Lot 10 DP 8172, 21 Oaks Avenue, Dee Why for the reasons for refusal set out in the Assessment Report.

REASONS FOR DETERMINATION

The Panel agrees generally with the Assessment Report. The Panel notes the constraints of the site and is of the view that a satisfactory development will only be possible with amalgamation with one or more of the adjoining properties. The Panel also notes that the design was not supported by the Design and Sustainability Advisory Panel.

Vote: 4/0

4.3 DA2024/0715 - 11 TAYLOR STREET, NORTH CURL CURL - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL

PROCEEDINGS IN BRIEF

The proposal is for alterations and additions to a dwelling house including a swimming pool.

At the public meeting the Panel was addressed by 3 neighbours and 2 representatives of the applicant.

DETERMINATION OF DEVELOPMENT APPLICATION

The Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2024/0715 for alterations and additions to a dwelling house including a swimming pool at Lot 22 DP 1040941, 11 Taylor Street, North Curl Curl, for the reasons of refusal set out below:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 4.3 Height of Buildings of Warringah Local Environmental Plan 2011 (WLEP 2011) and a Clause 4.6 Exception to development standards of WLEP has not been submitted.

In particular

- i) The application has indicated that the proposal achieved compliance with the maximum building height control in accordance with Clause 4.3 Height of Buildings of the WLEP 2011. The assessment has determined that the proposed maximum building height exceeds the 8.5 metre requirement under Clause 4.3. Additionally, the principles established in *Merman Investments Pty Ltd v Woollahra Municipal Council* have not been adequately considered in measuring the building height.
- ii) The plans that contain the height breach have not been supported by a written objection pursuant of Clause 4.6 of the LEP. The requirements of Clause 4.3 of the LEP in relation to building height restricts the issue of development consent unless development complies with the maximum building height provisions.
- iii) In any case, a variation to the maximum building height in the circumstances of this development is not supported.

2. Pursuant to Section 4.15(1)(a)(iii) and 4.15(1)(b) & (c) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following controls within the Warringah Development Control Plan: B1 Wall Heights, B7 Front Boundary Setbacks, D7 Views, and D9 Building Bulk.

In particular

- i) The existing development contains a significant variation to D1 Landscaped Open Space and the proposed development fails to adequately resolve this in in association with the proposed non compliance and underlying objectives of the controls as listed above. As a result of the cumulative impact of non-compliances to the relevant WDCP controls, the proposed development is an overdevelopment of what is a constrained site, and will result in unreasonable amenity impacts upon adjoining and nearby properties.
- ii) The proposed development, by way of its building mass, bulk and non-compliant building height will have an unacceptable impact on the views enjoyed by adjoining properties. It is considered that the impact to these views are not representative of view sharing and the outcome is contrary to the planning principle established

in *Tenacity v Warringah Council*.

REASONS FOR DETERMINATION

The Panel does not agree generally with the Assessment Report and Supplementary Memo for the reasons above, and the absence of the required written clause 4.6 objection to the Height of Building development standard non-compliance compels the refusal by the Panel.

Vote: 4/0

5.0 NON PUBLIC MEETING ITEMS

5.1 DA2024/1310 - 2 SYDENHAM ROAD, BROOKVALE - DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A FOUR (4) STOREY LIGHT INDUSTRIAL BUILDING INCLUDING, A TAKEAWAY FOOD AND DRINK PREMISE, BASEMENT CAR PARKING AND SIGNAGE

PROCEEDINGS IN BRIEF

The proposal is for demolition of existing structures and construction of a four (4) storey light industrial building including, a takeaway food and drink premise, basement car parking and signage.

DECISION ON EXCEPTIONS TO DEVELOPMENT STANDARDS

A. The Panel is satisfied that:

- 1) the applicant's written request under clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of clause 4.3 Height of Buildings development standard has adequately addressed and demonstrated that:
 - a) compliance with the standards is unreasonable or unnecessary in the circumstances of the case; and
 - b) there are sufficient environmental planning grounds to justify the contraventions.

B. The Panel assumes the concurrence of the Secretary, Department Planning and Environment required under clause 4.6.

DETERMINATION OF DEVELOPMENT APPLICATION

The Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2024/1310 for demolition of existing structures and construction of a four (4) storey light industrial building including, a takeaway food and drink premise, basement car parking and signage at Lot 6 DP 1521, 2 Sydenham Road, Brookvale subject to the conditions set out in the Assessment Report and Supplementary Memo.

REASONS FOR DETERMINATION

The Panel agrees generally with the Assessment Report and Supplementary Memo.

Vote: 4/0

5.2 DA2024/1591 - 77 WIMBLEDON AVENUE, NORTH NARRABEEN - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE

PROCEEDINGS IN BRIEF

The proposal is for demolition works and construction of a dwelling house.

DECISION ON EXCEPTIONS TO DEVELOPMENT STANDARDS

A. The Panel is satisfied that:

- 1) the applicant's written request under clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of clause 7.8 Limited development on foreshore area has adequately addressed and demonstrated that:
 - a) compliance with the standards is unreasonable or unnecessary in the circumstances of the case; and
 - b) there are sufficient environmental planning grounds to justify the contraventions.

B. The Panel assumes the concurrence of the Secretary, Department Planning and Environment required under clause 4.6.

DETERMINATION OF DEVELOPMENT APPLICATION

The Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2024/1591 for demolition works and construction of a dwelling house at Lot 15 DP 17768, 77 Wimbledon Avenue, North Narrabeen subject to the conditions set out in the Assessment Report.

REASONS FOR DETERMINATION

The Panel agrees generally with the Assessment Report.

Vote: 4/0

**5.3 DA2024/1739 - 141A FULLER STREET & 41 LINDLEY AVENUE, NARRABEEN -
SUBDIVISION OF TWO LOTS INTO TWO LOTS (BOUNDARY ADJUSTMENT)**

PROCEEDINGS IN BRIEF

The proposal is for Subdivision of two lots into two lots (boundary adjustment).

DECISION ON EXCEPTIONS TO DEVELOPMENT STANDARDS

A. The Panel is satisfied that:

- 1) the applicant's written request under clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of clause 4.1 Minimum Lot Size Development Standard has adequately addressed and demonstrated that:
 - a) compliance with the standards is unreasonable or unnecessary in the circumstances of the case; and
 - b) there are sufficient environmental planning grounds to justify the contraventions.

B. The Panel assumes the concurrence of the Secretary, Department Planning and Environment required under clause 4.6.

DETERMINATION OF DEVELOPMENT APPLICATION

The Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2024/1739 for subdivision of two lots into two lots (boundary adjustment) at Lot 1 & 2 DP 222881, 141A Fuller Street & 41 Lindley Avenue, Narrabeen subject to the conditions set out in the Assessment Report.

REASONS FOR DETERMINATION

The Panel agrees generally with the Assessment Report.

Vote: 4/0

This is the final page of the Minutes comprising 12 pages
numbered 1 to 12 of the Northern Beaches Local Planning Panel meeting
held on Wednesday 19 March 2025.