



northern
beaches
council

MINUTES

DEVELOPMENT DETERMINATION PANEL MEETING

Electronically determined on

MONDAY 10 OCTOBER 2022

Minutes of a Meeting of the Development Determination Panel
Electronically determined on Monday 10 October 2022

1.0 APOLOGIES AND DECLARATIONS INTEREST

Nil

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

3.5 DA2021/1265 - 11 PITT ROAD NORTH CURL CURL - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL

PANEL MEMBERS

Steve Findlay	Manager, Development Assessment
Phil Lane	Acting Manager, Development Assessment
Phil Jemison	Manager, Strategic & Place Planning

DEFERRAL AND FINAL CONSIDERATION OF THE APPLICATION

The Panel previously deferred this matter based on concerns raised by the objectors in relation to the height of the proposed dwelling, and specifically the way building height had been determined in the Assessment Report.

The applicant conceded that the height of the dwelling was measured according to the principle of extrapolation to establish “ground level (existing)” as embodied in the *Bettar v City of Sydney* caselaw and this is also how it was determined and stated in the Assessment Report. As detailed in the Panel minutes deferring the matter, the objectors raised issue with this measurement, requesting the height be measured according to the latter caselaw of *Merman v Woollahra Council* and that in doing so, this would trigger a Clause 4.6 Variation, which had not been lodged with the application.

The Panels deferral of the application requested the Applicant to address the building height issue by the submission of a Clause 4.6 Variation, and that the application be re-notified to allow residents to review the documentation and make any submissions.

On 10 August 2022, the applicant submitted a Clause 4.6 Variation in relation to Building Height and the application was re-notified from 12 August to 31 August 2022. The Clause 4.6 submission was also accompanied by amended plans (dated 2 August 2022) which reduced the overall ridge height from RL 39.31 to RL 39.12 (19mm reduction).

Four (4) submissions were made in relation to the re-notification.

A Supplementary Memo was prepared by the Assessment Officer, providing an assessment of the Clause 4.6 Variation and consideration of the 4 submissions. The memo supports the Clause 4.6 variation, considers the objections to not have determining weight and recommends that the application be approved. The memo also provided assessment comments against the new SEPP (Transport and Infrastructure) 2021 and SEPP (Resilience and Hazards) 2021.

The Panel have considered the Supplementary Memo, the Clause 4.6 Variation and 4 submissions made in relation to the re-notification and have concluded that the information submitted in response to the Panels deferral and residents’ concerns in relation to the building height have been satisfactorily addressed. Incidentally, the Panel’s decision to defer the matter included a request for a “*supplement to the Statement of Environmental Effects*”, which was not submitted by the applicant, but which is not considered necessary in the proper assessment and determination of the application.

The Panel concurs with the assessment officer’s memo that the Clause 4.6 Variation is well founded in relation to establishing that it is unreasonable and unnecessary to require compliance with the development standard and that there are sufficient environmental planning grounds, including the historical excavation of the site and the moderate slope of the site, to vary the development standard.

The matter of the excavation of the site and potential impacts on adjoining properties has been satisfactorily addressed in terms of the relevant provisions of the WLEP 2011 and WDCP 201,

through the submission of a detailed geotechnical engineer's report and the imposition of appropriate conditions of consent, including dilapidation reports for adjoining properties.

The applicant submitted a Quantity Surveyors Report addressing the cost of construction and the revised costing has been incorporated into the relevant condition of consent.

The Panel acknowledged that significant amendments have been made to the proposal since the application was lodged to address view sharing, with a 6.1m setback to the western side boundary to create a view corridor for properties on the northern side of Pitt Road and the overall height of the building has been reduced by 400mm (to parapet), through a lowering of the floor levels. The Panel is satisfied that the application demonstrates view sharing in accordance with Part D7 Views of the WDCP 2011.

Finally, in relation to privacy, the Panel considers that the applicants request for the deletion of the requirement of Condition 8(c) in relation to window W103 is reasonable, considering the 4.0m side setback to the adjoining property to the west. Also, that window W106 is substantial and close to the eastern boundary, and requires privacy treatment. These changes have been incorporated into Condition 8.

Therefore, the Panel is satisfied that; the reasons for deferral have been addressed, the residents' concerns have been satisfactorily addressed, and that the merits of the application are satisfactory.

Incidentally, the plans the subject of the approval of the application will be those dated 2 August 2022 (lodged on 10 August 2022), which incorporate the 19mm height reduction, and supersede the plans (dated 5 October 2021) referred to in Condition 1 in the Assessment Report, as per the revised Condition 1 in the Supplementary Memo prepared by the assessment officer.

STATEMENT OF REASON

The Panels reasons for deferral have been satisfactorily addressed and there are no remaining concerns in relation to the merits of the proposed development.

COMMUNITY CONSULTATION

Issues raised in the submissions to the original notification and re-notification have been considered in the Assessment Report, at the public meeting, in the Supplementary Memo and the applicants Clause 4.6 Variation.

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 LEP 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 standard is unreasonable or unnecessary in the circumstances of the case; and
 - b) there are sufficient environmental planning grounds to justify the contravention.
- 2) the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority **approves** Development Application No. DA2021/1265 for demolition works and construction of a dwelling house, including a swimming pool on land at Lot 1 DP 21968, No. 11 Pitt Road NORTH CURL CURL, subject to the conditions contained in the Assessment Report, subject to the following:

1. The amendment of condition 1 to read as follows:

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

- a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA101 Rev 03 - Site Plan	2 August 2022	PopovBass
DA104 Rev 04 - Ground Floor Plan	2 August 2022	PopovBass
DA105 Rev 04 - Lower Ground Floor Plan	2 August 2022	PopovBass
DA106 Rev 04 - Rear Yard Plan	2 August 2022	PopovBass
DA107 Rev 04 - Level 01 Plan	2 August 2022	PopovBass
DA108 Rev 04 - Roof Plan	2 August 2022	PopovBass
DA109 Rev 03 - North Elevation	2 August 2022	PopovBass
DA110 Rev 03 - South Elevation	2 August 2022	PopovBass
DA111 Rev 03 - East Elevation	2 August 2022	PopovBass
DA111 Rev 03 - West Elevation	2 August 2022	PopovBass
DA113 Rev 04 - Section AA	2 August 2022	PopovBass
DA113 Rev 04 - Section BB	2 August 2022	PopovBass
DA113 Rev 04 - Section CC	2 August 2022	PopovBass
DA116 Rev 03 - Driveway Section	2 August 2022	PopovBass
DA126 Rev 02 – Section DD	2 August 2022	PopovBass

Engineering Plans		
Drawing No.	Dated	Prepared By
Dwg No. SW1 - Cover Sheet and Notes	14 February 2022	Waterdesign Civil Engineers
Dwg No. SW2 - Stormwater Management Plan	14 February 2022	Waterdesign Civil Engineers
Dwg No. SW3 - Sections and Details	14 February 2022	Waterdesign Civil Engineers
Dwg No. SW4 - Erosion and Sediment Control Plan	14 February 2022	Waterdesign Civil Engineers
Dwg No. SW5 - Roadway / Gutter Catchment Plan	14 February 2022	Waterdesign Civil Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No./ Drawing No. / Section No.	Dated	Prepared By
Geotechnical Report	25 January 2021	White Geotechnical Group
BASIX Report No. 1171905_S02	1 July 2021	Frys Energywise

- b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
Plant Design Layout (All pages)	Not dated	Wilder Gardens
Plant Colour Code (All pages)	Not dated	Wilder Gardens

Waste Management Plan		
Drawing No./Title.	Dated	Prepared By
Northern Beaches Waste Management Plan	28 July 2021	Glen Van Den Hoek

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. The amendment of condition 2 to read as follows:

2. No Works on Adjoining Land

No Approval is granted under this consent for any works on adjoining land. In this regard, all approved works are to be wholly contained within the boundaries of the subject site.

Reason: To ensure compliance with the terms of this consent and protect adjoining properties.

3. The amendment of condition 5 to read as follows:

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$14,034.85 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$1,403,484.94.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

4. The amendment of condition 8 to read as follows:

8. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- (a) The first floor balcony located off the master bedroom is to be reduced in depth to 3.0m.
- (b) A minimum 1.65 metre high privacy screen (measured from finished floor level) is

to be installed for the entire length of the outermost eastern and western edge of the first floor balcony located off the master bedroom as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

- (c) The sill height of windows labelled W002 and W102 on the western elevation, and the windows servicing the ensuite and walk-in-robe at first floor level along the eastern elevation are to be a minimum height of 1.65m above the finished floor level or to incorporate obscure glazing 1.65m measured from the finished floor level.
- (d) A minimum 1.65 metre high privacy screen (measured from finished floor level) is to be installed for the entire length of the window labelled W106 (Pantry and Laundry windows) on the eastern elevation (Ground Floor Level), as shown on the approved plans. The privacy screen shall be of fixed panels/battens or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

5. The amendment of condition 29 to read as follows:

29. Swimming Pool/Spa & Mechanical and Hydraulic Motor Noise

The swimming pool / spa and mechanical and hydraulic motor(s) shall not produce noise levels that exceed 5dB(A) above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

6. The addition of the following condition:

External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

Vote: 3/0

This is the final page of the Minutes comprising 10 pages numbered 1 to 10 of the Development Determination Panel meeting held on Monday 10 October 2022.