

DETERMINATION AND STATEMENT OF REASONS

SYDNEY EASTERN CITY PLANNING PANEL

DATE OF DETERMINATION	11 April 2024
DATE OF PANEL DECISION	11 April 2024
DATE OF PANEL MEETING	3 April 2024
PANEL MEMBERS	Carl Scully (Chair), Doug Lord, Pam Dean-Jones and Jan Murrell
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 22 March 2024.

MATTER DETERMINED

PPSSEC-239 - Waverley - DA-455/2022 - Bronte Road, Bronte, Waverley, Demolition of Bronte Surf Club building and construction of a new Bronte Surf Life Saving Club and associated community facility upgrades, including pathway access upgrades (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was 3:1 in favour, against the decision was Doug Lord.

REASONS FOR THE DECISION

The majority of the Panel (the Panel) grants approval to the application for the reasons outlined in the Consultant's Assessment Report and this includes advice from Council's coastal consultant on the supplementary report by Urbis. The consultants also recommend appropriate changes to certain conditions, including new conditions.

The above supplementary report clearly sets out the relevant legislation and provisions that must be considered in the determination of this application. This includes a detailed assessment for the life of the development under the Coastal Management Act 2016, (CM Act) and the Environmental Planning & Assessment Act.

In making the decision to approve the application, the Panel is satisfied that approval is warranted in the circumstances of the case. In this regard, it is noted that concern about the location was raised in terms of coastal hazard and risk management and sea level rise and that part of the facility should be relocated landward and/or at a higher AHD in the adjoining park to reduce risk. However, this is not the application before the Panel and this would conflict with the adopted 'Plan of Management' for Bronte Park. The Plan of Management specifies the location of the surf club and council park maintenance works infrastructure and the width of public promenade between the seawall and the seaward wall of the building.

The Panel also notes the location is highly constrained by the presence of sandstone cliff and the local heritage item owned by Sydney Water as identified in the Waverley Local Environmental Plan.

The Panel must assess the application before it and this includes the location as shown on the plans. On balance, considering all relevant matters, the Panel determines that the proposal warrants approval for the 60 year life of the development. The applicant's coastal experts have provided extensive documentation to satisfy Council's planning consultant and coastal engineer. The majority of the Panel accepts the works can be designed to meet required safety standards for the life of the development (60 years), subject to conditions being satisfied, including detailed modelling, prior to a construction certificate being issued and the preparation and regular review of detailed management plans.

In deciding to grant approval the Panel has imposed a number of additional conditions to those recommended, being cognisant of the risks associated with coastal hazards and sea level rise. The Panel considers for the life of the development the proposal will provide a much needed community asset to ensure greater access for all and the continued safety of beach goers. The design of the facility will provide for greater accessibility to the beach than currently exists, including the disabled members of the community, and this is to be commended.

Similarly, for the life of the development, the works, including the sea wall, will not unreasonably limit public access to the beach under normal or average beach conditions, or likely pose an unacceptable risk to public safety. Council has acknowledged that management controls will be required during coastal storms to maintain public safety and these controls are to be included in the Building Operational Management Plan (condition 69). This decision is made on the understanding that projected sea level rise is acknowledged by the applicant to result in a significant reduction in the width of the existing beach over the life of the works.

Council has advised the Panel that it has consulted the local community about the coastal hazard risks in the context of this development application. The approach to the location and protection of the surf club and promenade area is established on the basis of community consultation and the Plan of Management. There is currently no certified Coastal Management Program to provide strategic direction for the management of this part of the coastal zone.

The Panel determines to approve the development for its 60 year life and notes the importance of this development to the local community in terms of access, amenity and safety and a clear preference to not construct additional structures in the park and to maintain the alignment of the park and beach interface for as long as possible.

While the proposal is not entirely consistent with all the particular objects and management objectives of the Coastal Management Act, the Panel is satisfied that for the life of the development it is consistent with and satisfies the over-arching object *"to manage the coastal environment of NSW in a manner consistent with the principles of ecologically sustainable development for the social, cultural and economic well-being of the people of NSW"*.

The Panel notes the CM Act makes provision for Coastal Management Programs (CMP) and a local council may, and must if directed by the Minister, prepare a coastal management program. It is noted Waverley, Randwick and Woollahra councils, in collaboration with NSW Department of Planning, Housing and Infrastructure are developing a CMP for Sydney's Eastern Beaches. The purpose of a CMP is to set the long term strategy for the coordinated management of land within the coastal zone, with a focus on achieving the objects of the Coastal Management Act. However, the absence of a CMP does not preclude the determination of the application by the Panel.

On balance, the Panel has had regard to the relevant legislation and on a merits assessment the application warrants a time limited consent of 60 years, subject to the recommended conditions as amended by the Panel.

Doug Lord disagreed with the majority decision for the following reasons:

The information as provided for assessment was not final and, in my opinion, as presented, does not accord fully with several of the objects and management objectives of the NSW Coastal Management Act 2016,

namely Object 3(a), 3(e), 3(h), 3(i) and 3(j) ; and in relation to the coastal vulnerability area, management objectives 7(2) (b), (c), (e), (g (v)) and (i). It is also inconsistent with the requirements of NSW SEPP 21 Resilience and Hazards 2023 and further NSW Government guidance in relation to land affected by coastal hazards and contained in the NSW Coastal Management Manual 2018, NSW Coastal Crown Lands Guidelines 2023, NSW Coastal Design Guidelines 2023 and the NSW State Disaster Mitigation Plan 2024. The Government guidance clearly highlights the increasing coastal hazards over time and the need to avoid increasing the value of/hazard to infrastructure and development in vulnerable coastal areas.

The applicant information confirms that the SLSC building and protection works, as provided for assessment, will result in the permanent loss of a significant portion of the sandy beach area seaward of the proposed development on what is clearly identified as a receding beach when sea level rise is taken into account. While improving the protection of the building from erosion and inundation beyond that which exists at present, the assessment as provided highlights the narrowing of the beach and ongoing risk of wave overtopping and inundation, requiring an increasing reliance on temporary/emergency management measures over time.

The development as proposed continues to be modified with physical modelling, detailed design of the protection works, and the final assessment of the overtopping hazards, all of which were not finalised at the time of the determination.

The proposed surf club, and adjacent facilities are to be protected by the sea wall to enable the building to be located on its historical footprint. They rely on design, ongoing vigilant monitoring and management and emergency response to mitigate coastal hazard risks (including structural damage and safety during storm events), and do not fully address the avoidance of exposure to coastal hazards.

The proposal has been developed in the absence of a Coastal Management Program for this beach and/or all the beaches of the local council area. The Coastal Management Program would provide the strategic direction for management of coastal hazards and coastal development in this community in a structured way in accordance with the NSW Legislation.

CONDITIONS

The Development Application was approved subject to the conditions in the Council Assessment Report with the following amendments:

- Amend Condition 4, to read as follows:
A Maintenance Management Plan (MMP) is to be prepared for the maintenance of the coastal protection works for their intended design life and shall be reviewed on a 5 year basis, and/or following any major storm event (to be commenced within three (3) months of the storm event) and should be updated to be consistent with any future certified CMP. The MMP is to include details on the condition of the beach and the access, amenity and use to and along the beach and foreshore, at the time of the plan being prepared and at every subsequent review. The MMP is to be prepared by a suitably qualified coastal engineer and is to be approved by **Council's Executive Manager, Development Assessment (or delegate)** in writing prior to issue of the relevant construction certificate. The MMP must be complied with at all times.

The MMP may be modified from time to time with the approval of **Council's Executive Manager, Development Assessment (or delegate)**. These modifications to the MMP must also be made (if necessary) each time the design life is extended in accordance with condition 5. This is to ensure the MMP continues to be suitable for the life of the works.

The Building Operational Management Plan (Condition 69) is to be updated to reflect the requirement to review the MMP on a 5 year basis and/or after any major storm event. The Building Operational Management Plan must also give consideration to any Coastal Management Program and the Maintenance Management Plan and Beach Maintenance Program adopted by Waverley Council during the design life of the works.

- Amend Condition 5, by inserting the following:

vi. Details on the condition of the beach and the access, amenity and use to and along the beach and foreshore.

- Insert new Condition 10A, which reads as follows:

A Beach Maintenance Program is to be prepared detailing the maintenance activities of the beach area of Bronte for the intended design life of the works. This Beach Maintenance Program is to be reviewed following the certification of a Coastal Management Program for the beach so that it is consistent with the strategic direction identified in the CMP, including any strategic provision for beach re-nourishment. Beach nourishment is distinct from, and in addition to, beach scraping.

The Beach Maintenance Program is to be prepared by a suitably qualified coastal engineer and is to be approved by **Council's Executive Manager, Development Assessment (or delegate)** in writing prior to issue of the relevant construction certificate for the BSLSC building.

The Beach Maintenance Program must be complied with at all times. The Beach Maintenance Program may be modified from time to time with the approval of **Council's Executive Manager, Development Assessment (or delegate)**. These modifications must also be made (if necessary) each time the design life is extended in accordance with condition 5. This is to ensure the Beach Maintenance Program continues to be suitable for the life of the works.

- Amend Condition 21, by inserting the new part (g) and re-lettering the former (g) to (h):
(g) Provide details on the impacts of coastal inundation on the proposed development. This is to ensure that the minimum flood level of 5.7m (AHD) referred to in Condition 22 of this consent for building materials, electrical utilities (such as power points and switches) and storage (including toxic and hazardous materials), also incorporate coastal inundation, including sea level rise for the life of the development .
- Insert new Condition 55A, which reads as follows:
A Works-As-Executed drawing (WAED) of the coastal works must be prepared by a Registered Surveyor. This drawing must detail the alignment of the seawall with wave return and the ramp and stairs extending onto the beach area. An original or a colour copy must be submitted to **Council's Executive Manager, Infrastructure Services (or delegate)** at final completion prior to issuance of the occupation certificate. Where changes have occurred from the approved design, the Council approved plans shall be marked-up in red ink and shall include levels and location for the coastal works and be approved by **Council's Executive Manager, Infrastructure Services (or delegate)** at final completion prior to issuance of the occupation certificate.


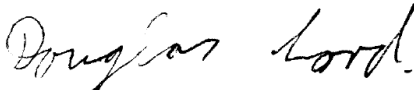


A suitably qualified and practising Engineer must provide certification of the WAED of the coastal works (including the seawall with wave return, and the ramp and stairs extending onto the beach area) and that the coastal works were constructed to their satisfaction and in accordance with the Development Consent, all applicable Codes, Policies, Plans, Standards and good engineering practice.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- A strong preference for maintaining and enhancing facilities to support the coastal lifestyle of the high-density community who live in surrounding areas and the value of both Bronte Park and the surf club building and promenade as public open space in a relatively natural setting, for the benefit of the community
- Maintaining the safety, access and amenity of beach users
- Sustainability – climate change and cross ventilation
- Operational – future growth and community hub
- Acoustic impacts
- Design – signs/advertisements and amenities

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting. The Panel notes that in addressing these issues, appropriate conditions have been imposed.

PANEL MEMBERS	
 Carl Scully (Chair)	 Doug Lord
 Pam Dean-Jones	 Jan Murrell

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSEC-239 – Waverley – DA-455/2022
2	PROPOSED DEVELOPMENT	Demolition of Bronte Surf Club building and construction of a new Bronte Surf Life Saving Club and associated community facility upgrades, including pathway access upgrades
3	STREET ADDRESS	Bronte Road, Bronte (Lot 7102 DP 1058385)
4	APPLICANT/OWNER	Waverley Council Crown Lands (managed by Waverley Council)
5	TYPE OF REGIONAL DEVELOPMENT	Council related development over \$5 million Crown development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental Planning & Assessment Act, 1979 • Environmental planning instruments: <ul style="list-style-type: none"> ◦ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ◦ State Environmental Planning Policy (Planning Systems) 2021 ◦ State Environmental Planning Policy (Resilience and Hazards) 2021 ◦ Waverley Local Environmental Plan 2012 • Draft environmental planning instruments: Draft Remediation of Land SEPP • Development control plans: <ul style="list-style-type: none"> ◦ Waverley Development Control Plan 2012 • Planning agreements: Nil • Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> • Coastal Management Act, 2016 • Coastal zone management plan: N/A • Certified Coastal Management Program: none prepared to date • Adopted Plan of Management of Bronte Park • 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: 19 January 2024 • Written submissions during public exhibition: 95 • Total number of unique submissions received by way of objection: 45 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ◦ Joel Stuhler, Nick (Michael) Hollo and Helen Wilson ◦ Council assessment officer – Angela Rossi ◦ Independent Consultants – Margaret Roberts ◦ On behalf of the applicant – Robert Saboto, Thomas Halle, Greg Britton, Gary Blumberg
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Kick-Off Briefing: 8 December 2022 <ul style="list-style-type: none"> ◦ <u>Panel members</u>: Jan Murrell (Chair) and Doug Lord ◦ <u>Council assessment staff</u>: Jo Zancanaro, Angela Ross ◦ <u>Independent Consultants</u>: Melissa Rodrigues ◦ <u>Department staff</u>: Carolyn Hunt and Jordan Clarkson • Site inspection and Briefing: 30 March 2023 <ul style="list-style-type: none"> ◦ <u>Panel members</u>: Carl Scully (Chair) and Alice Spizzo

		<ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Jo Zancanaro and Angela Rossi ○ <u>Independent Consultants</u>: Melissa Rodrigues and Margaret Roberts ○ <u>Applicant</u>: Marcos Gonzalez Puga, David Finnimore, Kimberley Johns, Peter Horton and Robert Sabato, ○ <u>Department staff</u>: Lillian Charlesworth and Suzie Jattan <ul style="list-style-type: none"> ● Site Inspection and Council/Applicant Briefing: 28 September 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Doug Lord, Pam Dean-Jones and Jan Murrell ○ <u>Council assessment staff</u>: Jo Zancanaro and Angela Ross ○ <u>Independent Consultants</u>: Melissa Rodrigues ○ <u>Applicant</u>: Robert Sabato, Sven Ollmann, James Morgan, David Finnimore, Greg Britton and Thomas Halle ○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis ● Briefing to discuss Council's recommendation: 01 February 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Doug Lord, Pam Dean-Jones and Jan Murrell ○ <u>Council assessment staff</u>: Jo Zancanaro and Angela Rossi ○ <u>Independent Consultants</u>: Margaret Roberts and James Carley ○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis ● Applicant Briefing: 03 April 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Doug Lord, Pam Dean-Jones and Jan Murrell ○ <u>Council assessment staff</u>: Ben Magistrale ○ <u>Independent Consultants</u>: Margaret Roberts and James Carley ○ <u>Applicant</u>: Robert Sabato, Edward O'Connor, Genevieve Wilson, Gary Blumberg, Vijay Prabhu, Kimberley Johnson, Greg Britton, Basil Scaffid and Sam McGough ○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis ● Final briefing to discuss Council's recommendation: 03 April 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Doug Lord, Pam Dean-Jones and Jan Murrell ○ <u>Council assessment staff</u>: Ben Magistrale ○ <u>Independent Consultants</u>: Margaret Roberts and James Carley ○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Supplement Assessment Report