

DATE OF DETERMINATION	03 April 2023
DATE OF PANEL DECISION	29 March 2023
DATE OF PANEL MEETING	29 March 2023
PANEL MEMBERS	Peter Debnam (Chair), Nicole Gurran, Brian Kirk, Che Wall, Karla Castellanos
APOLOGIES	Nil
DECLARATIONS OF INTEREST	Nil

Public meeting held by teleconference on 29 March 2023, opened at 9.30am and closed at 10.27am.

MATTER DETERMINED

PPSSNH-325 - DA204/2022 (PAN-239356) – North Sydney, 175-177 Ben Boyd Road and 10 & 16 Bydown Street, Neutral Bay, Alterations and additions to an existing educational establishment (Neutral Bay Public School), including removal or demolition of six buildings, refurbishment of two buildings, construction of a three-storey building, expansion of school site, signage, and associated landscaping.

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 listed at item 8 in Schedule 1.

Application to vary a development standard

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the North Sydney Local Environmental Plan 2013 (LEP), that has demonstrated that:

- a) compliance with cl. 4.3 Height of Buildings is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

The Panel is satisfied that:

- a) the Applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 Height of Buildings of the LEP and the objectives for development in the SP2 Infrastructure and R2 Low Density Residential zone; and
- c) the concurrence of the Secretary has been assumed.

Development application

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

The Panel's decision was unanimous.

REASONS FOR DECISION

The Panel approved the development application for the reasons below and in Council's comprehensive Assessment Report. The subject site is owned by the NSW Department of Education and is an existing educational establishment being Neutral Bay Public School, which provides co-educational primary (K-6) education. The Panel noted the main school building was constructed in 1886 and Building B was constructed in 1924 and have been in use since. The application is a Crown Development.

The application included a Clause 4.6 written request to vary a development standard being the height of buildings in Clause 4.3 in NSLEP 2013. The proposed new building (Building L) and internal works to two existing buildings (Buildings A & B) result in a non-compliance with the height of buildings development standard in Clause 4.3 in NSLEP 2013 by up to 5.65m.

The Panel notes the site falls from north to south through the length of the footprint of proposed Building L and the site also falls from west to east. The Panel concurs with Council that the proposed location of Building L has regard to the fall of the land and the design seeks to minimise cut and fill thereby reducing the potential height of the building. Further, the multi-storey form of Building L minimises the building footprint having the intended effect of increasing available outdoor space for students.

The Panel concurs with Council that the written request demonstrates that compliance with the development standard would be 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 land where the height variations occur is zoned SP2 Infrastructure (Educational Establishment). The Panel agrees the acceptance of the height variation would be in the public interest as the proposed development is consistent with the objectives of the standard and the objectives of the SP2 Infrastructure (Educational Establishment) zone.

The Panel notes application has been the subject of considerable consultation between the Applicant and Council and the design has evolved and benefited over the last year as community, council and Design Excellence Panel comments were addressed. The Panel has been briefed on the proposal several times over the last year.

During the public meeting, the Panel sought and received advice from the Applicant regarding future sharing of school facilities with the public, safety measures for children during construction and also confirmation regarding the texture of the proposed brickwork on external walls.

The Panel concurs with Council that the proposal has been properly assessed against relevant planning controls and will provide fit for purpose permanent teaching and associated facilities whilst increasing the amount of outdoor play space per student. The proposed development will provide public infrastructure whilst having acceptable impacts on the amenity and character of the area. On balance, the application is considered reasonable and approval is in the public interest.

CONDITIONS

The development application was approved subject to the conditions in Council's Assessment Report with addition of conditions to ensure the enclosure of services, limit the height of solar panels to not exceed building parapets and to clarify sustainability objectives. The additional conditions are listed below –

Design of roof mounted Photo Voltaic cells

- C32. Prior to the issue of the relevant Crown Approval, the applicant is to provide design details and specifications demonstrating that the photo voltaic cells mounted on the roof of Building L (drawing reference ARDA 1123) are located wholly below the height of the surrounding parapet roof form (RL97.82). The Crown is to ensure that the Crown building work documentation complies with this condition.

(Reason: to ensure any photovoltaic cells are provided within the roof form and not visible from the public domain or surrounding properties)

Enclosure of Services

- C33. Prior to the issue of the relevant Crown Approval, the applicant is to provide plans demonstrating that all ground level plant and services (e.g. gas meter, water meter, and if required fire hydrant and sprinkler booster valves and the like) are enclosed in a manner that complements the building and in accordance with the requirements of EP1.3 & EP1.4 of the NCC. The Crown is to ensure that the Crown building work documentation complies with this condition.

(Reason: to ensure essential services are appropriately screened from the public domain)



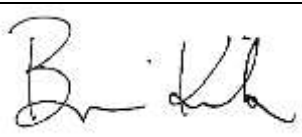


5-Star Green Star Rating

- C34. The design of Building L is to aim to achieve a minimum 5-Star Green Star rating or equivalent in accordance with the Green Building Council Australia rating system. Prior to the issue of the relevant Crown Approval, the applicant is to provide details to the Crown Certifier outlining the measures which have been incorporated into the detailed design documentation to achieve the 5-Star rating or equivalent. The Crown is to ensure that the Crown building work documentation complies with this condition.

(Reason: to promote Environmentally Sensitive Design principles)

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered nineteen written submissions made during the public exhibition of the proposal and also heard from four members of the public who wished to address the public meeting. Issues raised included bulk and scale of Building L, building height, design, heritage, residential amenity impacts, overshadowing, noise, traffic and parking, landscaping and tree removal, construction impacts and sustainability. The Panel considers community concerns in the submissions and expressed during the public meeting have been adequately addressed in Council's Assessment Report, in Applicant and Council responses during the public meeting and in the amended conditions.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Nicole Gurran
 Brian Kirk	 Che Wall
 Karla Castellanos	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-325 - DA204/2022 (PAN-239356) – North Sydney
2	PROPOSED DEVELOPMENT	Alterations and additions to an existing educational establishment (Neutral Bay Public School), including removal or demolition of six buildings, refurbishment of two buildings, construction of a three-storey building, expansion of school site, signage, and associated landscaping.
3	STREET ADDRESS	175-177 Ben Boyd Road and 10 & 16 Bydown Street, Neutral Bay
4	APPLICANT/OWNER	School Infrastructure NSW / Office of Education
5	TYPE OF REGIONAL DEVELOPMENT	CIV > \$5M - Crown Development
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Industry and Employment) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 North Sydney Local Environmental Plan 2013 Environmental Planning and Assessment Regulations 2021 Biodiversity Conservation Act 2013 Environmental Protection and Biodiversity Act 1999 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> North Sydney Development Control Plan 2013 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. 29 March 2023 - Applicant's statement regarding Section 3.36(6)(b) of SEPP (T & I) 2021. Architectural and Landscape Plans Clause 4.6 – Height of Buildings Design Excellence Panel minutes Agreed Conditions of Consent

		<ul style="list-style-type: none"> • Written submissions during public exhibition: 19 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Members of the community – Duncan Adams, Dave Kinsman, Trinette Kinsman, Frank Morsella. ○ Council Assessment Officers – Michael Stephens, Robin Pearson ○ On behalf of the applicant – Thu Thanapalasuntheram, Olivia Page.
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • 10 August 2022 – Kick off briefing • 02 November 2022 – Briefing • 14 December 2022 – Further Briefing • 29 March 2023 - Final briefing to discuss council's recommendation: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Nicole Gurran, Brian Kirk, Che Wall, Karla Castellanos ○ <u>Council assessment staff</u>: Michael Stephens, Robyn Pearson, Stephen Beattie
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report