

DETERMINATION AND STATEMENT OF REASONS
 SYDNEY NORTH PLANNING PANEL

DATE OF DETERMINATION	11 August 2021
PANEL MEMBERS	Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Martin Smith and Cheryl Szatow
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 11 August 2021, opened at 2.35pm and closed at 2.58pm.

MATTER DETERMINED

PPSSNH-156 – Ku-ring-gai – DA0144/20, 2-2A Marian Street & Selkirk Park, Killara, Significant alterations and additions to upgrade Marian Street Theatre (249 seats), including new theatrette (63 seats), new rehearsal space (60 seats), café, lifts, signage, amendments to loading and parking arrangements, extensive landscaping works to adjoining Selkirk Park to include tree removal, accessible pathways and new outdoor amphitheatre (50 seats) (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.

Application to vary a development standard

Following consideration of a written request from the applicant, made under cl 4.6 (3) (Building Height) of Ku-ring Gai Local Environmental Plan 2015 (LEP), that has demonstrated that:

- a) compliance with cl. 4.3 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 of the LEP and the objectives for development in the R4 High 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 4.55 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel approved the Clause 4.6 Variation Request and the development application for the reasons set out below and in the Assessment Report.

The Panel concurred with the Independent Assessor that the request submitted under Clause 4.6 to vary the height development standard of Clause 4.3 of the KLEP is acceptable. The Panel concurs that strict

compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify the variation.

By way of background, the theatre building is currently vacant, having previously been used as a theatre for an extended period. The theatre site was leased (and occupied) by the Marian Street Theatre for Young People Inc., a not for profit organisation, which held theatre classes and workshops at the premises and held theatrical performances on the site. Theatrical performances ceased to be held on the site in March 2008 due to the lack of a POPE licence, however theatrical classes and workshops, rehearsals and the supportive administrative uses continued from the site. Use of the theatre site ceased in 2012 due to the state of repair of the building.

The current development application was lodged in May 2020 and additional information and amended plans were provided in April 2021. Neighbouring property owners were notified of the original application and the amended plans.

Given Council is the Applicant and Owner of the site, an Independent Assessor was appointed and a comprehensive Assessment Report was prepared and considered by the community and the Panel.

The Panel concurs that the proposal has been appropriately assessed against the relevant environmental planning instruments and is acceptable for the site. The development will deliver significant alterations and additions to upgrade the Marian Street Theatre thereby enhancing a valuable community asset. The Panel believes approval of the proposal is in the public interest.

CONDITIONS

The development application was approved subject to the conditions in the Assessment Report with amendments to Condition 25 and a correction to Condition 26.

Condition 25 to read as follows -

Fire hydrant and sprinkler booster valves

Prior to the issue of a Construction Certificate, the Certifying Authority is to be provided with plans indicating that all fire hydrant and sprinkler booster valves and the like are enclosed in accordance with the requirements of AS 2419.1 2017.



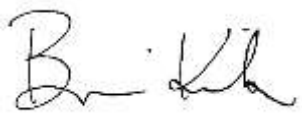
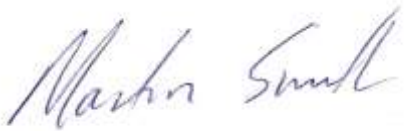

Reason: To provide appropriate fire safety measures and to protect residential amenity.

Condition 26 – typo correction in last line of bullet points - “replacemed” should be “replaced”.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered 18 written submissions made during the public exhibition and heard from all those wishing to address the public meeting. The Panel notes that issues of concern included: Parking; Traffic; Pedestrian crossing; Driveway access; Impact upon trees; Retention of “Killara Soldiers Memorial” plaque; Acoustic impact; Noise, littering, graffiti and safety; Hours of operation; Overshadowing; Waste removal on weekends or public holidays and Loss of air quality.

The Panel considers that community concerns raised have been adequately addressed in the Independent Assessment Report, by Applicant and Assessor responses during the public meeting and by the conditions as amended.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Julie Savet Ward
 Brian Kirk	 Martin Smith
 Cheryl Sztatow	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-156 – Ku-ring-gai – DA0144/20
2	PROPOSED DEVELOPMENT	Significant alterations and additions to upgrade Marian Street Theatre (249 seats), including new theatrette (63 seats), new rehearsal space (60 seats), café, lifts, signage, amendments to loading and parking arrangements, extensive landscaping works to adjoining Selkirk Park to include tree removal, accessible pathways and new outdoor amphitheatre (50 seats)
3	STREET ADDRESS	2-2A Marian Street & Selkirk Park, Killara
4	APPLICANT/OWNER	Ku-ring-Gai Council
5	TYPE OF REGIONAL DEVELOPMENT	Modification 4.55(2)
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy No. 55 – Remediation of Land ○ Ku-ring Gai Local Environmental Plan 2015 • Draft environmental planning instruments: Nil <ul style="list-style-type: none"> ○ Draft Remediation of Land State Environmental Planning Policy • Development control plans: <ul style="list-style-type: none"> ○ Ku-ring Gai Development Control Plan ○ Ku-ring Gai Development Contributions Plan • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil • 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

		<ul style="list-style-type: none"> • 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: 28 July 2021 • Written submissions during public exhibition: 18 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Members of the community – David Castle and Jessica Blaxland Ashbury ○ Council Assessment Officers – Kerry Gordon and Fiona Ambrosino • On behalf of the applicant – Peter Tonkin and Lauren Sideris
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing – 7 April 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Martin Smith and Cheryl Szatow ○ <u>Council assessment staff</u>: Kerry Gordon (consultant planner for council), Selwyn Segall, Michael Doyle • Briefing – 2 June 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Martin Smith and Cheryl Szatow ○ <u>Council assessment staff</u>: Kerry Gordon (consultant planner for council), Selwyn Segall, Michael Doyle • Final briefing to discuss council’s recommendation: 11 August 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Martin Smith and Cheryl Szatow ○ <u>Council assessment staff</u>: Kerry Gordon (consultant planner for council), Robert Martinez, Trudi Coutts, Fiona Ambrosino, John Whyte, Michael Doyle, Ross Nettle and Selwyn Segall.
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report