

DETERMINATION AND STATEMENT OF REASONS WILLOUGHBY LOCAL PLANNING PANEL

DATE OF DETERMINATION	27 July 2021
PANEL MEMBERS	Jacqueline Townsend (Chair), Trevor Bly, James Harrison, and Robert Freestone
DECLARATIONS OF INTEREST	None

Public meeting held at Willoughby City Council on 27 July 2021 by teleconference. The meeting opened at 2.00pm. Papers circulated electronically between 22 July and 27 July 2021.

This item was heard between 2.42pm and 3.29pm.

MATTER DETERMINED

DA-2021/6 at 1 Dorset Road, Northbridge NSW 2063. Alterations and additions to existing dwelling including new carport, swimming pool, cabana, boatshed, landscaping and associated works

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7, the material presented at the meeting and briefings and the matters observed at site inspections listed at item 8 in Schedule 1 of this Determination and Statement of Reasons.

Application to vary a development standard

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the *Willoughby Local Environmental Plan 2012 (WLEP 2012)*, the panel determines they have demonstrated that:

- a) compliance with cl. 4.3 (Height of building) 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*;
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 (Height of building) of the *LEP* and the objectives for development in the E4 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 decision was unanimous.

REASONS FOR THE DECISION

The reasons outlined in the Council assessment report, specifically:

1. The proposal is consistent with the objectives of E4 – Environmental Living zone and objectives of the development standards and complies with the development standard for the floor space ratio except for the height of building under *WLEP 2012*.
2. The proposed development is considered to be consistent with the objectives for dwelling houses contained in Part D.1 of the *Willoughby DCP*.
3. The proposed development will have acceptable amenity impacts on neighbouring properties and is consistent with the streetscape and natural character of the locality.

CONDITIONS

The development application was approved subject to the conditions in the Council assessment report with the following amendment(s).

Condition 3, 13, 18, 19, and 28 are to be amended to read as follows:

3. Submit the Following Information to Willoughby City Council

Prior to the lodgement of an application for a construction certificate, the applicant shall submit plans and specifications satisfying the following requirements to Willoughby City Council for approval. Documentation

confirming approval by Willoughby City Council shall then be submitted to the Certifier for the application of a construction certificate.

The proposal is to be amended in the following manner and shown on the amended architectural plans:

- (a) Indicate the dimensions of the existing and proposed development, in particular the distance from the existing dwelling house to the new lawn area, cabana and swimming pool to the south.
- (b) The southern eave of the proposed boatshed should not be projected beyond 3.5m in height measured from the existing ground floor level.
- (c) Install a screen below the swimming pool level. The screen should be in colour and textures which are compatible with the character of the locality. In this regard a schedule of these colours and textures shall be submitted to Council.
- (d) The boat shed and surrounding works are to be redesigned to ensure that existing ground levels are maintained for a minimum set back of 2 metres from the *Acacia terminalis ssp terminalis* as identified in the Flora and Fauna Report prepared by Eco Logical Australia. This will require redesign of **the western wall of the boatshed to ensure the 2m setback is to be achieved and is not to involve relocation of the boatshed further east. Should evidence be provided from the Royal Botanic Garden that the subject *Acacia terminalis* is not a threatened species, then the modification of the boatshed specified in this sub-clause is not required to be complied with.**

(Reason: Ensure compliance)

13. Construction Management Plan (CMP)

Prior to the issue of the Construction Certificate, submit, for approval by the Certifier, detailed Construction Management Plan (CMP). The CMP shall address:

- (a) Construction vehicles access to and egress from the site
- (b) Parking for construction vehicles
- (c) Locations of site office, accommodation and the storage of major materials related to the project
- (d) Protection of adjoining properties, pedestrians, vehicles and public assets
- (e) Location and extent of proposed builder's hoarding and Work Zones
- (f) Tree protection management measures for all protected and retained trees.
- (g) **Disposal and storage of excavated and construction materials to minimise impact on existing trees and the natural environment including details of the method and timing of removal of materials from the site**

(Reason: Compliance)

18. Bushland Management Plan

- i) A Bushland Management Plan and Specification shall be prepared and approved by the Certifying Authority prior to the issue of the Construction Certificate.
- ii) The Bush Regeneration Plan and Specification shall address protection and management of the site to the south of the Foreshore Building Line and must comply with the following requirements:
 - a) The document must be prepared by a person qualified in bush regeneration and natural vegetation management, with a sound knowledge of construction site impacts on vegetation, and also experienced in construction site processes and management;
 - b) The document must provide vegetation management guidelines for pre-construction, construction, and post-construction phases of the development, including Asset Protection Zone requirements, protection of **any identified ~~the~~ *Acacia terminallis* ssp *terminallis*** (a listed Threatened Species) located near the boat shed, weed removal, rehabilitation measures and a minimum of 24 months on-site monitoring and maintenance;
 - c) A copy must be issued to the site manager prior to commencement of works;
 - d) A copy must be available on site throughout the development process as a reference guide for site management and staff;
 - e) All contractors and staff involved in works on site are to be briefed on the vegetation protection and management procedures in place as part of their site induction;
 - f) Bushland Zone protection measures must be confirmed and protective fencing, barriers, and other measures must be in place before any site clearing and demolition activity commences.
 - g) Bushland Zone protective fencing and barriers must remain in place until all construction work, including final grading, has been completed.
 - h) Plant species to be used shall consist of locally indigenous species, including plant material

grown from seed source collected on site, and be free from *Phytophthora cinnamomi* and other pathogens.

- i) Sandstone outcrops will be protected and incorporated into the bush landscape.
- j) Bushland management works specified to be undertaken during the construction phase are to be certified by a qualified bush regenerator prior to issue of a Construction Certificate.

(Reason: Environmental protection)

19. Tree Protection

Prior to the issue of a Construction Certificate the plans for boatshed and surrounding works are to be amended as follows:

- a) The boat shed and surrounding works are to be redesigned to ensure that existing ground levels are maintained for a minimum set back of 2 metres from the *Acacia terminalis ssp terminalis* as identified in the Flora and Fauna Report prepared by Eco Logical Australia. This will require redesign of **the western wall of the boatshed to ensure the 2m setback is to be achieved and is not to involve relocation of the boatshed further east. Should evidence be provided from the Royal Botanic Garden that the subject *Acacia terminalis* is not a threatened species, then the modification of the boatshed specified in this sub-clause is not required to be complied with.**
- ~~b) The *Acacia terminalis ssp terminalis* and the 2 metre offset to approved works are to be clearly shown on the plans.~~
- c) Amended plans are to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate.

(Reason: To ensure tree protection)

28. Removal of Material

Remove all excess excavation and construction material from the site at the completion of works to the satisfaction of the Certifier. Under no circumstances should any material be dumped or allowed to spill –

- (a) on to the adjoining public reserve
- (b) on to the land ~~within a Foreshore Area below the mean high water mark~~
- ~~(c) outside the primary or secondary building areas.~~

(Reason: Environmental protection)

The following conditions 19A, 49A, 80A and 80B are added:

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

The following conditions of consent must be complied with prior to the issue of a construction certificate.

19A External Finishes – Minimal Reflectivity

Prior to the issue of Construction Certificate and in perpetuity, the external materials of the proposed boatshed are to be of dark, recessive colours (copper accepted) to blend with the natural environment and ensure minimal reflectivity.

(Reason: Visual amenity)

DURING DEMOLITION, EXCAVATION AND CONSTRUCTION

The following conditions are to be complied with throughout the course of site works including demolition, excavation and construction.

49A No obstruction to the foreshore

Public access below mean high water mark/property boundary is to be maintained at all times.

(Reason: Public amenity)

ONGOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

The following conditions have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the planning instrument affecting the land, and relevant legislation

80A No obstruction to the foreshore

**Public access below mean high water mark/property boundary is to be maintained at all times.
(Reason: Public amenity)**

80B Road Reserve Planting

Replacement planting proposed within the road reserve may be undertaken subject to the following conditions:

- (a) The cost of all works being borne by the applicant.**
- (b) All service location checks and liability being the responsibility of the applicant.**
- (c) Ongoing maintenance and replacement planting will not be provided by Council.**
- (d) Council retains the right to prune or remove the planting as may be required for road or service maintenance and safety.**


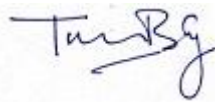


(Reason: Management of public assets)

CONSIDERATION OF COMMUNITY VIEWS

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

- Foreshore Access
- Landscape
- Privacy
- View loss
- Overshadowing
- Compliance with Height controls

The Panel considered 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 noted that in addressing these issues, appropriate conditions have been imposed.

PANEL MEMBERS	
 JACQUELINE TOWNSEND (CHAIR)	 TREVOR BLY
 JAMES HARRISON	 ROBERT FREESTONE

SCHEDULE 1		
1)	DA NO.	DA-2021/6
2)	PROPOSED DEVELOPMENT	Alterations and additions to existing dwelling including new carport, swimming pool, cabana, boatshed, landscaping and associated works
3)	STREET ADDRESS	1 Dorset Road, Northbridge NSW 2063.
4)	APPLICANT/OWNER	Design King Company / F M Mallyon.
5)	REASON FOR REFERRAL	Contentious Development – more than 10 submissions. Departure from standard by more than 10%.
6)	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ <i>SEPP BASIX.</i> ○ <i>SEPP 19 – Bushland in Urban Areas.</i> ○ <i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) (Deemed SEPP).</i> ○ <i>State Environmental Planning Policy (Coastal Management) 2018.</i> ○ <i>Willoughby Local Environmental Plan 2012.</i> • Draft environmental planning instruments:- Nil • Development control plans: <ul style="list-style-type: none"> ○ <i>Willoughby Development Control Plan</i> ○ <i>Sydney Harbour Foreshores and Waterways.</i> ○ <i>Section 7.12 (S94A) Plan</i> ○ <i>Willoughby Local Infrastructure Contributions Plan.</i> • Provisions of the <i>Environmental Planning and Assessment Regulation 2000.</i> • Provisions of the <i>Environmental Planning and Assessment Act.</i> • Planning agreements:- 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	<ol style="list-style-type: none"> 1) Council assessment report: 20 July 2021. 2) Clause 4.6 variation requests: 4.3 Building Height 3) Written submissions during public exhibition: 30 4) Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ In Support - Nil ○ In Objection – <ul style="list-style-type: none"> ○ Sharon Wyzenbeek of 3A Dorset Road Northbridge ○ John Bradley of John Bradley Architect (on behalf of 3A Dorset Road and clarifications) and ○ Candace Rutka of 7 Dorset Road Northbridge ○ On behalf of the applicant – <ul style="list-style-type: none"> ○ Jon King of Design King Company ○ Yvette Middleton of GSA Planning ○ The Applicant – <ul style="list-style-type: none"> ○ Steve Mallyon ○ Council assessment officers – Chi Wai Kong, Ritu Shankar and Ian Arnott
8)	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL/PAPERS CIRCULATED ELECTRONICALLY	<ul style="list-style-type: none"> • Site inspections were undertaken individually by Panellists at their discretion due to COVID-19 precautions. • Papers circulated electronically 22 July 2021. • Final briefing to discuss Council's recommendation, 27 July 2021 between 10:00am to 12:00pm – 27 July 2021

		<ul style="list-style-type: none"> • Attendees: <ul style="list-style-type: none"> ○ Jacqueline Townsend (Chair), Trevor Bly, James Harrison and Robert Freestone. ○ Council assessment officers Chi Wai Kong and Ritu Shankar
9)	COUNCIL RECOMMENDATION	Approval
10)	DRAFT CONDITIONS	Attached to the Council assessment report