

Minutes of the Electronic Cumberland Local Planning Panel Meeting held on Wednesday  
14 August 2019.

**PRESENT:**

Julie Walsh (Chairperson), Brian Kirk, Larissa Ozog and Allan Ezzy.

**DECLARATIONS OF INTEREST:**

There were no declarations of interest.

ITEM LPP051/19 – DEVELOPMENT APPLICATION FOR 9-19 MARY STREET,  
AUBURN

**BACKGROUND**

At the Local Planning Panel meeting on 24 July 2019 this item was deferred for the following reasons:

a. To allow the applicant to make the following design changes:

i. The applicant to submit a redesign of the internal layout of each floor to minimise the number of bedrooms sharing a common wall with the living areas of adjoining units. In the event that a redesign of any particular unit is not practicable then the applicant is to submit a construction methodology statement demonstrating how noise transfer from living area to bedroom is to be controlled.

ii. The walls to the studies on level 1-4 shall be removed and that area opened up to become part of the living space.

iii. The 4 storage spaces adjoining the central columns within basement levels 1, 2, 3 and 4 shall be removed and relocated as storage cages within each basement to improve visibility when manoeuvring through the basement.

b. to enable the applicant to provide clarification on the following matters:

i. whether the submitted clause 4.6 request requires amendment having regard to the applicant's advice that the maximum RL will be RL64.90.

ii. the maximum GFA and FSR of the development.

c. to enable consideration of the relationship of the conditions under development consent DA52/2017 for 13-19 Mary Street Auburn and the conditions recommended for the subject development application.

d. Council Officers are to provide to the Panel a complete set of recommended conditions for the proposed development having regard to the information received in response to a-c above.

The Panel is satisfied in relation to the following matters:

- The redesign of the internal layouts of each floor regarding bedrooms and living rooms of adjoining apartments in terms of item 1(a)(1).
- The walls of the studies on level 1-4 being removed in terms of item 1(a)(2).
- The 4 storage spaces identified in the basement being removed in terms of item 1(a)(3).
- The amended clause 4.6 request and the maximum GFA of the development in terms of item 1(b).

In terms of items 1(c) and item 1(d), the panel notes the following:

1. The existing development consent for construction of a residential flat at building 13-19 Mary Street namely DA 52/2017 (“the first consent”) has been acted upon and that building is in the course of construction. The subject DA 92/2019 seeks to amend the first consent and obtain development consent for an additional residential flat building at 9-11 Mary Street Auburn.
2. It is proposed that the 2 development consents will subsist together and the development over both sites be combined.
3. The case of *Waverley Council v CM Hairis Architects (2002) NSWLEC 180* established that a later development consent can of itself “amend” conditions of an earlier development consent on the same site pursuant to section 4.17 (formerly section 80A) of the Environmental Planning and Assessment Act 1979 and clause 97 of the Environmental Planning and Assessment Regulations 2000 without the need for the earlier consent to be the subject of a modification application pursuant to section 4.55 of the Act.
4. *Waverley Council v CM Hairis Architects* was recently applied in *Secretary, Department of Planning and Environment v Leda Manorstead Pty Ltd (no 4) (2019) NSWLEC 58*.

### **Panel Decision**

The Panel defers the application and requests the following:

1. The Council provide a supplementary report specifying how the conditions of the first consent need to be amended by the second consent (i.e. what specific conditions on the first consent need to be amended and how). For example, condition 2 of the first consent regarding plans requires amendment to refer to the new plans with the coloured modifications.
2. When that report has been provided, Council obtain legal advice that the pathway proposed is legally permissible and this advice be provided to the panel.

3. This is to ensure that both consents can work together in a cohesive and practical way and achieve the form of development contemplated, i.e. a combined development of both sites.

**For:** Julie Walsh (Chairperson), Brian Kirk, Larissa Ozog and Allan Ezzy.

**Against:** Nil.

Signed:



Julie Walsh  
Chairperson