



Report of Meeting

Independent Hearing and Assessment Panel

**Held on Tuesday, 25 July 2017
commencing at 6:00pm
in the Council Chambers,
Level 2, Administration Building,
4-20 Eton Street, Sutherland**

PRESENT: Justin Doyle (Chairperson/Expertise in Law), Jason Perica (Expertise in Urban Planning), Michael Mantei (Expertise in Planning Law) and Russell Smith (Community Representative with Expertise in Marketing & Business Management).

Staff in attendance was the Acting Manager Major Development Assessment (Annette Birchall).

Disclosures of Interest

File Number: 2016/260430

There were no disclosures of interest declared.

IHAP001-18 Proposal: Construction of 138 Place Child Care Centre - Kingsway & Marion Street Gynea
Property: Lot 1 DP 9983, Lot 38 DP 9983, (No. 677) Kingsway & (No. 38) Marion Street, Gynea
Applicant: Sutherland District Trade Union Club Limited
File Number: DA16/1613

Messrs' Donohue, Mackinnon, Sleeman, Wooley & Zarb and Ms Dadley, Halls, Hasn & Mackinnon, on behalf of the Objectors, Ms Wilkinson, Wynne & Abby and Messrs' McAleer, McCarthy, Maluccio & Webb on behalf of the Applicant, addressed the Panel regarding this matter.

IHAP RECOMMENDATION:

THAT:

1. Pursuant to the provisions of Section 80 of the Environmental Planning and Assessment Act, 1979, Development Application No. 16/1613 for Construction of 138 Place Child Care Centre at Lot 1 DP 9983, Lot 38 DP 9983 (No. 677) Kingsway, Gynea, (No. 38) Marion Street, Gynea is determined by the refusal of development consent for the reasons outlined below:-
 - a. The proposed development is considered unacceptable pursuant to the provisions of s.79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that it fails to satisfy the requirements for Parking Controls under Chapter 34 clause 3.4.1 of the draft Sutherland Shire Development Control Plan 2015 which results in the insufficient provision of car parking spaces and a lack of safe pedestrian transfer of children to and from the centre.
 - b. The proposed development is considered unacceptable pursuant to the provisions of s.79C(1)(b) of the Environmental Planning and Assessment Act 1979 in that it fails to demonstrate that the impacts on the surrounding locality will be acceptable.

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- c. The proposed development is considered unacceptable pursuant to the provisions of s.79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that it fails to satisfactorily resolve the relevant issues raised within the public submissions.
- d. Pursuant to the provisions of Section 79C(e) of the Environmental Planning and Assessment Act 1979, it is considered that in the circumstances of the case approval of the development would set an undesirable precedent for similar inappropriate development and it is therefore not in the public interest.
- e. The reliance on parking off-site both on street and upon another separate lot with its own parking needs is not conducive to rational and orderly development of land and raises potential safety issues.
- f. The proposed planning for parking, building location, building massing and open space provision is inappropriate to the site and its context.**
- g. The proposal results in the removal of some significant trees on the site which should be considered for retention.**
- h. Further consideration of acoustic compliance is warranted as to whether the constraints on the use of open space necessary to achieve compliance indicate an unsatisfactory design.**

PANEL COMMENTARY:*Site Visit*

The Panel attended the site and inspected its relationship both to the Tradies Club operating across the road, and the local street network. Housing in the vicinity was observed to include a mix of detached housing and townhouse developments.

Presentations to Panel at the Public Meeting

The meeting was addressed by nine local residents:

- Ms Hasn who resides on the corner of Lancaster and Manchester Road's presented concerns about traffic safety. She complained about the removal of street trees as replacement of trees under overhead electricity wires will not occur.
- Ms Dadley of 34 Marion Street GyMEA addressed issues of parking and specifically the accuracy of the Council traffic engineers' assessment, plant noise and the extension of the commercial zone into the residential locality.
- Mr Donohue of Unit 11, 10 – 14 Marion Street GyMEA questioned the Tradies' larger plans for the area and the resulting issues of cumulative traffic.
- Ms Halls of 17 Wolstenholme Avenue said that the development was not needed and the land could be better employed for socially beneficial uses.

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- Mr & Mrs Mackinnon of 29 Marion Street Gynea, addressed the Panel criticising the scale and design of the project, its height and character, and the compatibility of the development with the R3 zoning.
- Mr Sleeman of 25 Marion Street Gynea complained that spaces on the street should not be used for a commercial development and said that the narrowness of Manchester's Road would cause safety issues.
- Mr Wooley of 8 Wolstenholme Avenue Gynea suggested that the proposed 15 minute bays would not work and that various traffic measures should be adopted to increase pedestrian safety.
- Mr Zarb of 37 Marion Street Gynea referred to the assessment of plant noise supporting the DA and complained that as the plant got older, it would exceed acceptable guidelines.

Consideration of Issues

The Panel overall considered that unsatisfactory performance against a number of key planning considerations indicated that the proposal was an overdevelopment of the site. They are addressed separately below.

Built form and character

First, the proposed building would be substantially out of character with the R3 Zone in which it was located, and particularly the residential development in the south extending down both the Kingsway and Marion Street.

Housing in that area is characterised by detached housing on elongated lots fronting to either Marion Street or the Kingsway, divided by consistent back fences. That arrangement of housing means that the block is characterised by substantial rear setbacks which gives the development its residential feel.

In contrast, the subject site is the end to end amalgamation of two of those lots extending the whole distance between the Kingsway and Marion Street. While the proposal complies overall with the 9 metre height limit (albeit with a small non-compliance) that 9 metre height is extended substantially over the length of the extended allotment with no separation in the built form. The building will for that reason dominate and change the locality.

While it is inevitable that a non-residential use on the consolidated site will have a different presentation to that of residential housing, not enough has been done in the design of the development to respond to its context.

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The ARAP report produced in response to an earlier set of plans criticised the bulk and scale of the development and suggested a number of ways in which the design could be improved. In particular, the ARAP Panel suggested that a basement carpark would free up additional areas at ground level to accommodate increased and improved landscaping. It would also allow a breaking up of the form of the total development, possibly into two distinct or connected buildings.

Whilst the revised plans introduced a degree of articulation which was an improvement, the problems identified by ARAP were not satisfactorily resolved.

Parking

The site is a level cleared block with three frontages. For such a site there is a general expectation that the parking needs for a commercial use could be accommodated on site. Instead, half of the parking required for the use is proposed to be accommodated off-site, including the exclusive use of four on street spaces for at least part of the day.

In addition to the reservation of four on street spaces in the morning for pickup and drop-offs, 16 spaces within the Tradies' car park are proposed for designation exclusively for staff of the child care centre. Representatives of the applicant could not adequately explain where the vehicles currently utilising those spaces would be displaced to.

It seems at least possible that as the car park becomes more congested with 16 spaces permanently reserved for the centre, some of the vehicles now using the car park will move out onto the adjacent Manchester Avenue.

Even if it was otherwise acceptable, use by the Centre of the Tradies carpark across the road for half of its car parking needs relies upon common ownership and control of both allotments. However, no mechanism is offered to ensure the spaces would remain available if the Centre was in the future operated or owned independently.

Acoustic

Issues arose during assessment of the DA in relation to the regulation of open space areas to achieve acoustic compliance, particularly after balustrading had been lowered to achieve FSR compliance. It appeared from the staff report that more than 5 children using at least one area of elevated open space would lead to non-compliance with relevant acoustic standards. The Panel was concerned the need for those constraints (which may not be realistic to enforce) are symptomatic of problems in the design of the building in that regard. Further attention is needed to that issue.

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Trees

Clearing of the site has include two large hollow bearing eucalypt trees. Insufficient justification had been given as to why neither could be retained, and further examination in that regard is encouraged.

Overall, the location of the site is appropriate for a child care centre and an improved design is likely to be acceptable. However the concerns identified above indicate that substantial change to the current design (possibly with a reduction in child numbers) will be necessary.

Reasons for Variation from Council Officer's Recommendation

On that basis, the Panel supports the staff recommendation for refusal, but has made some modifications to the proposed reasons for refusal including the addition of reasons f, g and h above (which have been emboldened for ease of reference).

VOTES: 4:0

ASSESSMENT OFFICERS RECOMMENDATION:

THAT:

1. Pursuant to the provisions of Section 80 of the Environmental Planning and Assessment Act, 1979, Development Application No. 16/1613 for Construction of 138 Place Child Care Centre at Lot 1 DP 9983, Lot 38 DP 9983 (No. 677) Kingsway, Gymea, (No. 38) Marion Street, Gymea is determined by the refusal of development consent for the reasons outlined below:-
2. The proposed development is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it fails to satisfy the objectives for the Height of buildings under clause(s) 4.3(1)(a)(i), (ii); (c); (d) and (f) of the Sutherland Shire Local Environment Plan 2015 resulting in an inappropriate building form of excessive height.
3. The proposed development is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it fails to satisfy the objectives for Floor space ratio under clause(s) 4.4(1)(a); (b), and (c)(ii) of the Sutherland Shire Local Environment Plan 2015 resulting in an inappropriate building form of excessive bulk and scale.
4. The proposed development is considered unacceptable pursuant to the provisions of s.79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that it fails to satisfy the requirements for Health and Safety Controls under Chapter 34 clause 3.3.1 of the draft Sutherland Shire Development Control Plan 2015 which results in conclusions that are not in accordance with the approved NSW EPA modelling guidelines.

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5. The proposed development is considered unacceptable pursuant to the provisions of s.79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that it fails to satisfy the requirements for Parking Controls under Chapter 34 clause 3.4.1 of the draft Sutherland Shire Development Control Plan 2015 which results in the insufficient provision of car parking spaces and a lack of safe pedestrian transfer of children to and from the centre.
6. The proposed development is considered unacceptable pursuant to the provisions of s.79C(1)(b) of the Environmental Planning and Assessment Act 1979 in that it fails to satisfactorily resolve potential visual and privacy impacts on adjacent properties.
7. The proposed development is considered unacceptable pursuant to the provisions of s.79C(1)(d) of the Environmental Planning and Assessment Act 1979 in that it fails to satisfactorily resolve the relevant issues raised within the public submissions.
8. Pursuant to the provisions of Section 79C(e) of the Environmental Planning and Assessment Act 1979, it is considered that in the circumstances of the case approval of the development would set an undesirable precedent for similar inappropriate development and it is therefore not in the public interest.

The Meeting closed at 8:30 pm.