



Report of Meeting

Sutherland Shire Local Planning Panel

Tuesday, 6 November 2018

6:00pm

**Council Chambers,
Level 2, Administration Building,
4-20 Eton Street, Sutherland**

SUTHERLANDSHIRE

PANEL: Jason Perica (Chairperson), Charles Hill, Jan Murrell and Kurt Ingle

STAFF IN ATTENDANCE: Manager, Development Assessment and Certification (Simone Plummer) and Manager, Major Development Assessment (Mark Adamson)

DISCLOSURES OF INTEREST

File Number: 2015/14239

Declaration from Charles Hill re: DA18/0001: *“Subsequent to signing the Council’s Declaration of Interest form, I became aware that the lawyer Christina Renner, speaking on behalf of her client in respect of DA 18/0001, 6 Hazel Place Burraneer, was known to me professionally.*

Accordingly I acknowledge that fact at the public meeting indicating that I had not met with and or discussed the subject matter with her, had not socialised with her, and had no pecuniary interest in the matter being considered by the Panel.” Charles Hill.

SSLPP038-18	Proposal:	DEMOLITION OF EXISTING DWELLING AND GARAGE AND THE CONSTRUCTION OF A DWELLING HOUSE, FRONT FENCE AND FORESHORE ACCESS TUNNEL
	Property:	LOT 4 DP 12558, (NO. 6) HAZEL PLACE, BURRANEER
	Applicant:	MEGAN RYAN
	File Number:	DA18/0001

Speaking for the proposal were Megan Ryan, Aaron Sutherland and Christina Renner.

PANEL DECISION:

Pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act, 1979, Development Application No. 18/0001 for demolition of an existing dwelling and garage and the construction of a dwelling house, front fence and foreshore access tunnel at Lot 4 DP 12558, (No. 6) Hazel Place, Burraneer is determined by the refusal of development consent for the reasons outlined below:

1. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the objectives of the E4- Environmental Living zone established within Sutherland Shire Local Environmental Plan 2015.
2. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the objectives and development standard of Clause 6.9 - Limited development on foreshore area established within Sutherland Shire Local Environmental Plan 2015.
3. The written request pursuant with the provisions of cl.4.6 of SSLEP 2015, with respect to Clause 6.9(2)(b)- Limited development on foreshore area of SSLEP 2015 is not considered to be well founded as the applicant has not adequately demonstrated why, in the case of this application, compliance with this development standard is either unreasonable or unnecessary. There are insufficient planning grounds to justify the contravention and the development is inconsistent with the objectives of Clause 6.9 of SSLEP 2015 and the E4 zone.
4. The written request pursuant with the provisions of cl.4.6 of SSLEP 2015, with respect to Clause 6.9(2)(b)- Limited development on foreshore area of SSLEP 2015 is not considered to be well founded as the applicant has not adequately demonstrated why, in the case of this application, compliance with this development standard is either unreasonable or unnecessary. There are insufficient planning grounds to justify the contravention and the development is inconsistent with the objectives of Clause 6.9 of SSLEP 2015 and the E4 zone.
5. The application has not demonstrated that the provisions of 6.9(2)(b) of SLEP 2015 have been satisfied, as there would seem reasonable alternatives that either achieve or more closely achieve compliance with the Foreshore Building Line.

6. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in that approval of the development will result in adverse amenity impacts onto neighbouring properties with regards to visual intrusion of the building bulk to the rear of the site, visual privacy and view loss.
7. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that approval of the development will create an undesirable precedent and is therefore not in the public interest.

REASON FOR THE DECISION:

The reasons are as stated above. The Panel noted an issue given considerable attention by the applicant was the legal interpretation of "rebuilding" within Clause 6.9(2)(a) of SLEP 2015. This was not fundamental to the Panel decision as the Panel's decision was made regarding the merits and in the circumstances of this case compliance or greater compliance with the Foreshore Building Line should be achieved.

VOTES

The decision was unanimous.

SSLPP039-18	Proposal:	ALTERATIONS AND ADDITIONS TO MENAI MARKETPLACE SHOPPING CENTRE TO ESTABLISH A CAR WASH FACILITY WITHIN EXISTING CAR PARK
	Property:	LOT 3801 DP848208 (NOS. 152-194) ALLISON CRESCENT, MENAI
	Applicant:	LEND LEASE
	File Number:	DA18/0395

Speaking for the proposal were: Jacqui Bell and Liv Widjaja

PANEL DECISION:

That Development Application No. 18/0395 for Alterations and additions to Menai Marketplace Shopping Centre to establish a car wash facility within existing car park at Lot 3801 DP 848208 152-194 Allison Crescent, Menai be approved, subject to conditions in Appendix "A" of the report to the Panel, as amended by inclusion of an additional condition stating:

"The approval is issued on the basis of relating to a car-wash facility only, particularly as this allows for the parking of vehicles while people shop, helping offset the loss of parking, which may not be the case for other uses".

REASON FOR THE DECISION:

The Panel agreed with the balance of considerations within the Council report. While there was a loss of parking and this was the key issue raised in submissions, leading to a deficit of 12 spaces, this was offset by the ability to park up to 14 cars in the car wash facility, whereby the most likely users would be shoppers at the complex.

The proposal would have minimal impacts and conditions of consent, as amended, appropriately regulated and mitigated potential impacts.

VOTES

The decision was unanimous.

SSLPP040-18	Proposal:	DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A NEW RESIDENTIAL FLAT BUILDING
	Property:	LOT 1-10 SP 13184, (NO. 37-39) GIRRILANG ROAD, CRONULLA
	Applicant:	NOVUS PROPERTY INVESTMENTS GIRRILANG ROAD PTY LTD
	File Number:	DA18/0078

Speaking for the proposal were Peter Couvaras and Jeff Mead.

PANEL DECISION:

THAT Development Application No. 18/0078 for the demolition of existing structures and construction of a new residential flat building at Lots 1 – 10, S/P 13184, (No. 37-39) Girrillang Road, Cronulla be approved, subject to the conditions contained in Appendix “A” of the report to the Panel, as amended by the incorporation of an additional Condition to State:

Landscaping and Street Trees

The Landscape Plan shall be amended to ensure:

- (a) An additional two street trees, of a species and pot size to meet Council specifications;*
- (b) The species of trees along the western boundary be of a type that is native, fast growing and reaching a mature height of at least 3 metres.*

This amended Landscape Plan shall be provided with the application for a Construction Certificate and this and other landscaping planted prior to Occupation Certificate and appropriately maintained subsequently.

REASON FOR THE DECISION:

The Panel generally agreed with the assessment of environmental considerations outlined within the Council staff report.

The Panel had regard to the applicant’s Clause 4.6 written request regarding the Building Height contravention within Clause 4.3 of Sutherland Shire LEP 2015 and formed the view it satisfactorily addressed required matters within Clause 4.6(3) of the LEP. The Panel was satisfied the proposal was consistent with the zone objectives and the objectives of the Building Height development standard, notwithstanding the non-compliance, and granting consent would be in the public interest. In reaching this conclusion, the Panel had regard the Council staff report, the proposal and observations at the site. It was noted the proposed height contravention was relatively minor (under 5%) and was limited to rooftop structures, which did not add apparent bulk to the streetscape or neighbours. The bulk and scale of the proposal was consistent with that to be envisaged by the planning controls and was suited to the site.

The comments and general support by the Council's Design Review Panel were noted. The suggestion to change the entry to the east was not followed, and this was acceptable, with the proposed landscaping, augmented by additional or detailed landscaping through an additional condition of consent.

In terms of consideration of submissions and community views, it was noted there were two rounds of exhibition, with 7 + 1 submissions being received. The issues raised were considered, with the Panel agreeing with the assessment of those issues outlined in the assessment report.

VOTES

The decision was unanimous.

SSLPP041-18	Proposal:	DEMOLITION OF EXISTING STRUCTURES, CONSTRUCTION OF ATTACHED DUAL OCCUPANCY AND 2 LOT STRATA SUBDIVISION
	Property:	LOT 9 DP 5516 (NO. 77) THE ESPLANADE, CRONULLA
	Applicant:	TONY FAHEY
	File Number:	DA17/1113

Speaking against the proposal were Richard Dewer and Brian Hollman.

Speaking for the proposal on behalf of the applicant were Vic Lake, Brett Daintry and Tony Fahey.

PANEL DECISION:

That Development Application No. 17/1113 for demolition of existing structures, construction of attached dual occupancy and 2 lot strata subdivision at Lot 9 DP 5516 (No. 77) The Esplanade, Cronulla be approved, subject to the conditions contained in Appendix "A" of the report to the Panel, with the following amendments:

- All conditions requiring a dilapidation report be amended as necessary to require a copy of the dilapidation report to be provided to the neighbours and the Council.
- A new condition be incorporated stating:

Dust Mitigation and Management

Dust Mitigation Measures and Methods must be documented to the satisfaction of the Certifying Authority, with the application for a Construction Certificate, including measures to wash down trucks, mist-spray during dust-generating work, avoiding dust-generating work on windy days and methods to advise neighbours in advance when excavation work likely to produce dust is scheduled to occur. These methods are to be implemented during works.

REASON FOR THE DECISION:

The Panel generally agreed with the assessment of environmental considerations outlined within the Council staff report. Prior to the meeting, Council staff tabled additional information regarding the consideration of *SEPP (Coastal Management) 2018* and *SEPP 19 (Bushland in Urban Areas)*, which the Panel considered.

The Panel had regard to the applicant's Clause 4.6 written request regarding the Building Height contravention within Clause 4.3 of Sutherland Shire LEP 2015 and formed the view it satisfactorily addressed required matters within Clause 4.6(3) of the LEP. The Panel was satisfied the proposal was consistent with the zone objectives and the objectives of the Building Height development standard, notwithstanding the non-compliance, and granting consent would be in the public interest. In reaching this conclusion, the Panel had regard the Council staff report, the proposal and observations at the site. It was noted the proposed height contravention was due to the technical

consideration of the lot being an “internal lot”, yet the nature of the site’s frontage to The Esplanade was not typical of internal lots. The proposal would comply with the height limit if it were a dwelling, and could be higher in such circumstances, with no reduction in FSR or bulk.

The proposal did comply with the setback and FSR controls, while the third storey was visibly mitigated due to proposed basement excavation, to limit overall apparent bulk, and not at the expense of the streetscape.

In terms of consideration of submissions and community views, it was noted there were over 10 objections, with a key issue being the height non-compliance and view impacts, amongst others. The Panel had regard to the principles of the “Tenacity” court judgement regarding view impacts and view sharing, and this was assisted by viewing the site from within 4 adjoining properties. While the proposal would result in the loss of some views, the overall impact was considered acceptable (also noting in some instances a slight view would be gained due to the height being lower than part of the roof, although this did not compensate for the total view impact).

The scale of the proposal was compatible with the character and height of neighbouring and surrounding development and what could be reasonably expected from the applicable planning controls. Privacy and overshadowing impacts were not of such significance to warrant refusal of the application, with the design seeking to reasonably minimise privacy impacts.

While the proposal was supported unanimously, Jason Perica was of the view the first floor pool should be deleted due to aural privacy impacts and longer term practical considerations, also considering this would allow the southern side of the terrace to be opened, which would reasonably reduce view impacts to neighbours, at no significant impost to the proposal. This was not considered necessary by other Panel members who are satisfied that the combination of obscure and clear glazing will allow for view sharing and privacy for neighbours.

VOTES

The decision was unanimous (although noting a differing view regarding a condition by Jason Perica outlined above).

SSLPP042-18	Proposal:	TORRENS TITLE SUBDIVISION OF 1 LOT INTO 3 LOTS AND THE PARTIAL DEMOLITION AND ALTERATION OF EXISTING DWELLING
	Property:	LOT 104 DP235861 (NO. 80-82) FERNLEIGH ROAD, CARINGBAH SOUTH
	Applicant:	LACHLAN DOUGLAS SIDEY
	File Number:	DA18/0628

Speaking for the proposal were Cameron Jones, Jeff Mead and Lachlan Sidey.

PANEL DECISION:

That Development Application No. 18/0628 for Torrens title subdivision of 1 lot into 3 lots and the partial demolition and alteration of existing dwelling at Lot 104 DP 235861, (No. 80-82) Fernleigh Road, Caringbah South is determined by the refusal of development consent for the reasons outlined below:

1. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal fails to comply with the minimum lot depth development standard contained in cl.4.1A(2)(b) of Sutherland Shire Local Environmental Plan 2015.
2. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the written request to vary the lot depth development standard under the provisions of cl.4.6 of Sutherland Shire Local Environmental Plan 2015 has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.
3. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development is not consistent with cl.6.16(1)(b)(i) and (ii) of Sutherland Shire Local Environmental Plan 2015 in that the proposed development will neither integrate into the existing character of the neighbourhood nor contribute to the future character of the locality.
4. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development is not consistent with cl.6.17(b) of Sutherland Shire Local Environmental Plan 2015 in that the proposed non-compliant front setback to the modified dwelling within Lot C will result in adverse impacts on adjoining land in terms of size, bulk, height, scale and siting.
5. The application is considered unacceptable pursuant to the development application

document submission requirements of Part 1.2(1)(l) of Schedule 1 of the Environmental Planning and Assessment Regulation 2000 in that a Basix Certificate has not been submitted with the application for the alterations and additions to the existing dwelling.

6. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the 0.9m rear setback to the modified dwelling is non-compliant with the 4m rear setback requirement of Chapter 2.b.2.2.2 contained in Sutherland Shire Development Control Plan 2015.
7. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that the proposed development is not in the public interest as the proposed development is not consistent with the objectives of the zone and the objectives of the lot depth development standard.

REASON FOR THE DECISION:

While reasons are outlined above, there were no compelling reasons in this instance to support the variation to the lot depth standard. The Panel had particular regard to the circumstances whereby the proposal could readily comply with the depth standard and this would provide improved shape to the front lots to address site constraints (such as existing trees), while the result would also reduce the size of the foreshore lot, although not considerably. The reduction in size of the foreshore lot would also lead to less potential conflict between the allowable GFA and the sensitivity and constraints of the foreshore lot, in terms of the Foreshore Building line. An amended plan was tabled by the applicant, although this did not address the concerns held.

VOTES

The decision was unanimous.

SSLPP043-18	Proposal:	ALTERATIONS AND ADDITIONS TO LARK ELLEN AGED CARE FACILITY
	Property:	LOTS 14, 20, 21, 24, 25 & 28, DP9306 (NOS 133-139) JANNALI AVENUE SUTHERLAND
	Applicant:	GERENDAS FAMILY TRUST T/A LARK ELLEN AGED CARE
	File Number:	DA17/0919

Speaking against the proposal were Rhonda Daniels, Mary-Lou Almeida, Helen Starr and Peter Field.

PANEL DECISION:

That pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act, 1979, Development Application No. 17/0919 for Alterations and Additions to Lark Ellen Aged Care Facility at Lots 14, 20, 21, 24, 25 and 28 DP 93065 (No's 133-139) Jannali Ave, Sutherland is determined by the granting of a deferred commencement development consent subject to the conditions contained in Appendix "A" of the report to the Panel, with the following amendments:

1. Condition 3(viii) be deleted and Condition 3(xi) be amended to make clear that the northern side boundary fence, where sharing the boundary with No 2A Glenelg Street, shall be maintained as the current existing fence (being 1.8m high + 300mm lattice), and this fence be protected during construction and works.
2. Delete Condition 21(3) and (5), as they are superfluous to the proposal
3. Add the words "if required" to the end of Condition 8A(xiii).

REASON FOR THE DECISION:

The Panel generally agreed with the assessment of environmental considerations outlined within the Council staff report. Prior to the meeting, Council staff tabled additional information regarding the consideration of Clauses 30-39 of *SEPP (Housing for Seniors or People with a Disability) 2004*, which the Panel considered.

The reasons stated below relate to the majority decision of the Panel, with the term "Panel" referring to the majority view of the Panel. A dissenting view was held by Jason Perica, outlined at the end.

The Panel had regard to the applicant's Clause 4.6 written request regarding the Building Height contravention within Clause 40 of *SEPP (Housing for Seniors or People with a Disability) 2004*, and formed the view it satisfactorily addressed required matters within Clause 4.6(3) of the LEP. The Panel was satisfied the proposal was consistent with the zone objectives and the objectives of the Building Height development standard, notwithstanding the non-compliance, and granting consent would be in the public interest. Given the lack of specific height objectives in the SEPP, regard was given to common objectives for building height and the Building Height objectives in SLEP 2015. In reaching its conclusion, the Panel had regard the Council staff report, the proposal and observations at the site. It was noted the proposed height was designed to mediate in form due to varying setbacks, to reduce overall apparent bulk and height, with some guidance from Council's Design

Review Panel and staff over a long period of time.

The proposal complied with the control for FSR in the SEPP (expressed as a control which is complied with cannot be used as grounds for refusal). Landscaping did not comply with the SEPP control (although this was not a development standard needing a Clause 4.6 Variation Request), although the landscaping proposed was considered acceptable.

The proposal was considered to provide an important service for the local and wider community, which provided public benefits, while impacts were reasonably mitigated through the design and conditions of consent, as amended.

Privacy impacts were reasonably addressed by the design, setbacks and landscaping, the placement of windows and treatment of elevated balconies. The visual impacts arising from the height were reasonably reduced by setbacks. In terms of consideration of submissions and community views, it was noted there were 6 objections, and regard was given to concerns raised at the Panel meeting, assisted by site inspections including to some neighbouring properties. The Panel agreed with the Council's assessment of the issues raised in submissions. The Panel notes that to conserve the heritage item a third level is proposed, however, this is concentrated towards the centre of the site to mitigate impacts on surrounding properties and in the circumstances approval is warranted.

Mr Perica did not support approval. He was of the view that insufficient justification on environmental planning grounds were provided by the applicant to support the height variation. The primary argument that the height distribution is the most appropriate while achieving the maximum FSR did not give adequate regard to the impact of a wide site and building has on the character of the surrounding area, as required by the SEPP. This is exacerbated by the limited landscaping, while the height and relationship with neighbours is not sufficiently mediated by setbacks. The proposal has been pushed to the edges of the site and the height relationship between the existing heritage item and neighbouring land did not warrant a relatively large variation to the height and an additional storey as proposed. While the public benefit of the facility was acknowledged, the bulk and height distribution for the site in the context of the surrounding area was not appropriate, in Mr Perica's view.

VOTES

The decision was 3-1, with Mr Perica having a dissenting vote, as outlined above.

The Meeting closed at 9.51pm.