



Report of Meeting

Independent Hearing and Assessment Panel

**Held on Tuesday, 21 February 2017
commencing at 6:05pm
in the Council Chambers,
Level 2, Administration Building,
4-20 Eton Street, Sutherland**

PRESENT: Justin Doyle (Chairperson/Expertise in Law), Larissa Ozog (Expertise in the Town Planning), Andrew Macdonald (Expertise in Architecture) and Christine Theodore (Community Representative with Expertise in Property Law).

Staff in attendance were the Manager Major Development Assessment (Mark Adamson) and Manager Development Assessment and Certification (Simone Plummer).

Disclosures of Interest
File Number: 2015/1778

Prior to the meeting, Andrew Macdonald, disclosed that he had a client in the Antiochian Orthodox Church in relation to item IHAP009-17, but that he had had no involvement in the project, nor had he had any discussions with the client in respect of the subject proposal. This client was not a resident of Sutherland Shire nor a Sutherland Shire parishioner.

**IHAP009-17 Proposal: Alterations and additions to existing dwelling –
Bampton Avenue, Illawong**
Property: Lot 23 DP 261004, (No.2) Bampton Avenue, Illawong
Applicant: Aaron Sutherland
File Number: DA16/1564

Mr Ansell and Ms Stirling on behalf of the Objectors, and Messrs Sutherland and Deiri, on behalf of the Applicant, addressed the Panel regarding this matter.

IHAP RECOMMENDATION:

That pursuant to the provisions of Section 80 of the Environmental Planning and Assessment Act, 1979, and in accordance with the delegated authority issued by the General Manager of Sutherland Shire Council, Development Application No. 16/1564 for alterations and additions to a dwelling at Lot 23 DP 261004 (No. 2) Bampton Avenue, Illawong is determined by the granting of development consent subject to the conditions contained in Appendix "A" of the Report.

PANEL COMMENTARY:

Site Visit

The Panel inspected the subject site including both the upstairs and downstairs areas of the existing dwelling, as well as the external part of the site where the extensions are proposed. Particular note was taken of the extent of the separation from surrounding bushland and the conditions on the local road system.

IHAP009-17 Cont'd

Presentations to Panel at the Public Meeting

The meeting was addressed by Mr Ansell and Ms Stirling, objectors residing at 25 Bampton Avenue, Illawong. They presented four principal objections being:

- a) Their belief that a business was being conducted at the premises which was independent of the residential use. In support of that belief they cited a website, two Priests living on-site, two women observed arriving to work in an administrative capacity, and well attended fortnightly meetings.
- b) They had observed unacceptable traffic impacts arising particularly from the fortnightly meetings exacerbated by the narrow street.
- c) The unsuitability of the site due to bushfire risk.
- d) Inaccuracies and non-compliances within the plans.

Mr Sutherland and Mr Deiri addressed the meeting to answer each of those issues. They denied the business use citing recent ill health of the Archbishop residing in the house as responsible for larger numbers attending the premises. They said the Church had their main headquarters and administrative offices elsewhere as well as 14 parish churches.

Consideration of Issues

In substance, the Panel members unanimously supported the conclusions from the staff assessment report.

While the subjective observations of the objectors might be consistent with aspects of a non-residential use, there was no information presented which could reliably lead to a conclusion that the use extended beyond a home occupation within the permissible bounds of that exempt form of development.

As the Panel announced to the meeting, ultimately any unlawful use outside what is described in a development consent is a matter to be investigated by Council's Compliance Officers upon complaint.

Irrespective of the outcome of any such investigations, the works proposed in this development application are permissible and can be approved by the Council.

There was no evidence of exceptional traffic constraints affecting the site which would argue for this DA for a single (albeit large) residence to be refused.

The issue of bushfire is addressed in the Council staff report, with appropriate conditions to be included in the consent to ensure appropriate preventive design measures are adopted.

VOTES: 4:0

IHAP009-17 Cont'd

ASSESSMENT OFFICERS RECOMMENDATION:

That pursuant to the provisions of Section 80 of the Environmental Planning and Assessment Act, 1979, and in accordance with the delegated authority issued by the General Manager of Sutherland Shire Council, Development Application No. 16/1564 for alterations and additions to a dwelling at Lot 23 DP 261004 (No. 2) Bampton Avenue, Illawong is determined by the granting of development consent subject to the conditions contained in Appendix "A" of the Report.

IHAP010-17 Proposal: Demolition of Existing Structures and Construction of 3 Townhouses – Houston Street, Gymea
Property: Lot 47 DP9458 (No.16) Houston Street, Gymea
Applicant: Shri Atharva Pty LTD
File Number: DA16/0662

Messrs Black and Panchal, on behalf of the Applicant, addressed the Panel regarding this matter.

IHAP RECOMMENDATION:

That Development Application No. 16/0662 for the demolition of existing structures and construction of 3 townhouses at Lot 47 DP 9458 (No. 16) Houston Street, Gymea be approved, subject to conditions of development consent and design changes detailed in Appendix "A" of the Report subject to replacement of conditions 2 and 15 with the following:

2. Design Changes Required

A. Before Construction

The following design changes must be implemented. These changes must be read in conjunction with, and be consistent with the Council marked plans approved as part of this development consent:

- a) Houston Street Dwellings: The following conditions apply to both dwellings HS1 and HS2.
 - i. The retaining wall along the front boundary at Houston Street, at ground level adjoining the basement entry driveway shall be deleted ((but the retaining walls to a level courtyard at RL51.60 is to be kept). The retaining wall to this terrace is to be screened by planting.
 - ii. The entry path shall be relocated to be setback 1.2m from the side boundaries and the entry stairs re-orientated accordingly.
 - iii. Planting shall be provided alongside the basement ramp / entry patio and side boundary within the frontage.
 - iv. The entry door shall be switched with the adjoining windows (i.e. greater setback from boundary to door / larger landing to accommodate the stair access arrangement).
 - v. The area of the walk-in-robe (bedroom 3) shall be combined with the ground floor bathroom to form a combined laundry / bathroom area. The laundry depicted in the kitchen area shall be deleted. A window and access door shall be provided from the combined laundry / bathroom area to the reconfigured rear yard.
 - vi. Bed 3 (in both dwellings) shall be relocated to be south of the proposed dining room with zero setback to the rear boundary. It is felt this will orient the private open spaces to be east and west rather than south and away from the dwelling to the rear. Door access to the new patios shall be provided from the enlarged dining rooms on the side elevations.

IHAP010-17 Cont'd

- vii. The fixed louvered privacy screens (side elevations of forward balconies) shall be designed in a manner to limit direct views into the adjoining properties.
 - viii. Landscaped areas shall be provided in accordance with the Council marked plans and the landscape conditions of development consent.
- b) View Street Dwelling
- i. The western component of the ground floor (the living/lounge, dining and kitchen component) is to have a reduced front setback/alignment to more closely match the other properties on View Street, so that a larger outdoor area can be created at the rear of the unit, to produce the minimum setback possible without unacceptably impacting the large tree at the View Street frontage as determined by the recommendations of a practising arborist to be submitted with the amended drawings.
 - ii. The northern orientated window adjoining the internal stairs shall be provided with opaque / frosted glazing.
 - iii. The sill height to the first floor windows on the western elevation shall be increased to standard window sill height.
 - iv. Screen planting shall be provided adjoining the rear terrace area along the western boundary and northern common boundary.
 - v. Landscaped areas shall be provided in accordance with the Council marked plans and the landscape conditions of development consent.

Details of the above design changes must be included in documentation submitted with the application for a Construction Certificate.

15. Approved Landscape Plan**A. Design Changes**

The landscape works on the site must be carried out in accordance with the approved Landscape Plan except as amended by the following:

- i. Landscape plans must be amended to show the latest architectural changes and associated conditions of consent.
- ii. Plant two additional *Leptospermum polygalifolium* (Lemon Scented Tea Tree) to the garden beds located between the basement driveway entry ramp and the entry paths to House 1 and 2.
- iii. Delete *Elaeocarpus reticulatus* (Blueberry Ash) to south eastern corner of site and replace with one *Syncarpia glomulifera* (Turpentine).
- iv. Tree Protection Zones (TPZ) must be shown on plan for all existing trees and/or natural site features to be retained and protected.

IHAP010-17 Cont'd

- v. The private open space of each dwelling must be provided with one tap with a removable water key, connected to a pump and the rainwater tank/OSD tank.
- vi. As the subject site is identified as being within a Greenweb Restoration area, all new tree plantings must be indigenous species and 50% of understorey plants must be indigenous species. All indigenous species must be selected from Council's 'Native Plant Selector' available on Council's website (www.sutherlandshire.nsw.gov.au) and search for Native Plant Selector)

PANEL COMMENTARY:

Site Visit

The Panel inspected the site of the proposed new townhouses including both its View Street and Houston street frontages. The tree at the View Street frontage was closely examined.

The design of the proposed new buildings was considered in terms of the relationship of the site to adjoining properties, as well as the wider streetscape which characterised the locality.

The Panel observed that the adjoining property at 14 Houston Street was vacant, and subject to a pending development application for redevelopment advertised by notice affixed to the boundary fence.

The Panel also inspected the rear yard of the house at No. 18 Houston Street, and spoke to Mrs Thompson, whose principal concern was potential overlooking into that area.

Presentations to Panel at the Public Meeting

No objectors presented to the public meeting. Notably, Mr Walters who had been listed to speak in support of his objection concerning his property at No. 14 Houston Street advised the panel on site that his objections had been resolved through earlier amendments to the DA plans.

The applicant was represented by Mr Black, town planner. Mr Black addressed the Panel at length to argue his client's reasons for disagreeing with a number of the recommended deferred commencement conditions.

The Panel's evaluation of the applicant's specific challenges to those conditions taking into account the written objections are taken up in the discussion below.

Consideration of Issues

The objection made by Ms Thompson in relation to overlooking of the backyard at 18 Houston Street was resolved when it was pointed out that privacy screening is shown in the DA plans to mitigate that potential problem, and the raising of the window sill heights to bedrooms 2 & 3 will prevent the flat roof being used as a balcony.

IHAP010-17 Cont'd

The main contest then arose between the conditions recommended by Council staff and the arguments of the applicant's town planner.

In substance, the Panel was of the opinion that many of Mr Black's objections to the proposed conditions had substance.

The Panel felt that the proposal complied in substance with the floor space ratio and the two storey scale of the proposed buildings, and was accordingly sufficiently in keeping with the existing and desired future character of both streetscapes. The Panel was keen to maximise the internal amenity of both new dwellings, particularly by maximising the separation distance between the two buildings and increasing areas of private open space where possible.

In particular, the Panel ultimately concluded that there was no need to delete the third bedroom of the Houston's Street dwellings provided it was located to the south of the dining room and oriented sideways (east and west). It would also assist if the building fronting View Street was relocated (to the extent possible without damaging the tree on View Street) to be closer to the established common front setback observable on the existing development on other properties on the northern side of View Street.

The Panel was at the same time satisfied that some of the detailed design changes recommended by Council staff were warranted.

The changes recommended to deferred commencement condition 2 and condition 15 are marked up with comments explaining the changes to the Council's proposed conditions included in bold italics.

Reasons for Variation from Council Officer's Recommendation

Reasons for each of the changes to the Council officer's recommendation are addressed individually as follows:

2. Design Changes Required

A. Before Construction

The following design changes must be implemented. These changes must be read in conjunction with, and be consistent with the Council marked plans approved as part of this development consent:

- a) Houston Street Dwellings: The following conditions apply to both dwellings HS1 and HS2.
 - i. ~~The basement level storage area shall be deleted. The basement level bin storage area is permitted to be enlarged to the southern alignment of the stairs to allow for additional general storage.~~

IHAP010-17 Cont'd

Comment -The Panel agreed that as the storage area was below ground, and therefore would not increase or contribute to any additional visual bulk it would have no impact and would provide additional useful storage to the units.

- ii. ~~The terracing with the site's frontage shall be deleted and existing site levels shall be maintained.~~ The retaining wall ~~and the balustrade above~~ along the front boundary at Houston Street, at ground level adjoining the basement entry driveway shall be deleted (but the retaining walls to a level courtyard at RL51.60 is to be kept). The retaining wall to this terrace is to be screened by planting.

Comment -The Panel agreed that one of the retaining walls ought to be deleted but if screened the second low retaining wall would be acceptable.

- iii. The entry path shall be relocated to be setback 1.2m from the side boundaries and the entry stairs re-orientated accordingly.
- iv. Planting shall be provided alongside the basement ramp / entry patio and side boundary within the frontage.
- v. The entry door shall be switched with the adjoining windows (i.e. greater setback from boundary to door / larger landing to accommodate the stair access arrangement).
- vi. ~~Bedroom 3 shall be deleted. The dining room and internal dwelling area is to be enlarged to the 4m side setback alignment. The resulting external area (in the location of bedroom 3) is to be used as a paved patio. The roof form above shall be deleted and replaced with an open pergola structure.~~

Comment – The need for deletion of bedroom 3 could be avoided if it was located to the south of the dining room and oriented sideways (east and west). It is also appeared that the calculation of FSR by Council had in error taken into account the floor space of the internal stairs. That approach would conflict with the position taken by the Land & Environment Court in *Lord v Manly Council [2010] NSWLEC 1223*, and the approach in wider Sydney. The FSR should be recalculated, and if a clause 4.6 request is still necessary it should be invited before the issuing of a notice of determination.

- vii. The area of the walk-in-robe (bedroom 3) shall be combined with the ground floor bathroom to form a combined laundry / bathroom area. The laundry depicted in the kitchen area shall be deleted. A window and access door shall be provided from the combined laundry / bathroom area to the reconfigured rear yard / paved patio.
- viii. The patios (and above pergolas) on the southern side of the dwellings shall be deleted. The door access to these patios shall be replaced with a ~~window opening wall and door to a relocated bed 3.~~ Door access to the new patios shall be provided from the enlarged dining rooms on the side elevations.

IHAP010-17 Cont'd

Comment -The Panel agreed that the door access should be prevented, but concluded that a window would result in undesirable impacts.

- ix. The fixed louvered privacy screens (side elevations of forward balconies) shall be designed in a manner to limit direct views into the adjoining properties.
- x. Landscaped areas shall be provided in accordance with the Council marked plans and the landscape conditions of development consent.

b) View Street Dwelling

- i. ~~The eastern component of the ground floor (i.e. garage, bathroom, stairs and laundry) and entire first floor shall be relocated 750mm northward in the allotment. The living / lounge, dining and kitchen component of the ground floor shall maintain the proposed setbacks / alignment. The western component of the ground floor (the living/lounge, dining and kitchen component) is to have a reduced front setback/alignment to more closely match the other properties on View Street, so that a larger outdoor area can be created at the rear of the unit, to produce the minimum setback possible without unacceptably impacting the large tree at the View Street frontage as determined by the recommendations of a practising arborist to be submitted with the amended drawings.~~

Comment -The Panel considered that the Council ought to permit the minimum setback to view street that is consistent with retention of the tree at View Street (The Panel also noted significant borer activity to the base of the tree that ought to be investigated by the arborist and treated as appropriate).

- ii. ~~The floor level of the garage shall be reduced to RL 52.60. The ground floor level where west of the garage shall be reduced to RL 52.78. The first floor shall be reduced accordingly or alternatively permitted to be maintained at RL 55.90.~~
- iii. ~~The double garage shall be reduced to a large single garage space by increasing the eastern side setback to the ground floor of the dwelling to align with the first floor above. An access door to the rear private open space shall be provided on the eastern elevation.~~
- iv. ~~The driveway shall be relocated 1m eastward (500mm from the eastern side boundary). Note: Design change to be read in conjunction with tree protection condition.~~
- v. ~~A covered open form hard stand parking space shall be provided within the eastern setback to a maximum depth behind the building alignment required to accommodate a vehicle (minimum eastern side setback 900mm.~~
- vi. ~~A 1.8m high fence to privatise the rear private open space shall be located at the rear of the vehicle space.~~

IHAP010-17 Cont'd

- vii. ~~The rear terrace adjoining the kitchen / dining shall be provided at ground level with stairs provided from the dwelling to access the area. A ramp is permitted to be constructed adjacent to the kitchen / dining area to enhance accessibility to the terrace area.~~

Comment -The Panel concluded that these design changes were not warranted. The design was acceptable without them and the Panel did not see it as appropriate to undertake a redesign of these aspects of the building.

- ii. The northern orientated window adjoining the internal stairs shall be provided with opaque / frosted glazing.
- iii. The sill height to the first floor windows on the western elevation shall be increased to standard window sill height.

Comment -To clarify the windows referred to.

- iv. Screen planting shall be provided adjoining the rear terrace area along the western boundary and northern common boundary.
- v. Landscaped areas shall be provided in accordance with the Council marked plans and the landscape conditions of development consent.

Details of the above design changes must be included in documentation submitted with the application for a Construction Certificate.

15. Approved Landscape Plan

A. Design Changes

The landscape works on the site must be carried out in accordance with the approved Landscape Plan except as amended by the following:

- i. Landscape plans must be amended to show the latest architectural changes and associated conditions of consent.
- ii. Plant two additional *Leptospermum polygalifolium* (Lemon Scented Tea Tree) to the garden beds located between the basement driveway entry ramp and the entry paths to House 1 and 2.
- iii. Delete *Elaeocarpus reticulatus* (Blueberry Ash) to south eastern corner of site and replace with one *Syncarpia glomulifera* (Turpentine).
- iv. Tree Protection Zones (TPZ) must be shown on plan for all existing trees and/or natural site features to be retained and protected.
- v. ~~The communal open space areas and all planter boxes on slab must be provided with a water efficient irrigation system, connected to a pump and the rainwater/OSD tank, to enable effective landscape maintenance.~~

Comment -There are no such communal open space areas, and inclusion of this condition is not required.

IHAP010-17 Cont'd

- vi. The private open space of each dwelling must be provided with one tap with a removable water key, connected to a pump and the rainwater tank/OSD tank.
- vii. As the subject site is identified as being within a Greenweb Restoration area, all new tree plantings must be indigenous species and 50% of understorey plants must be indigenous species. All indigenous species must be selected from Council's 'Native Plant Selector' available on Council's website (www.sutherlandshire.nsw.gov.au <<http://www.sutherlandshire.nsw.gov.au>> and search for Native Plant Selector)

VOTES: 4:0**ASSESSMENT OFFICERS RECOMMENDATION:**

That Development Application No. 16/0662 for the demolition of existing structures and construction of 3 townhouses at Lot 47 DP 9458 (No. 16) Houston Street, Gymea be approved, subject to conditions of development consent and design changes detailed in Appendix "A" of the Report.

IHAP011-17 **Proposal:** **Alterations and additions to a dwelling – Gannons Road, Caringbah South**
Property: **Lot 5 DP259700 (No.220) Gannons Road, Caringbah South**
Applicant: **Rocco Raso**
File Number: **DA16/0831**

Mss Costas and Rudge and Mr Tiernan on behalf of the objectors and Messrs Swaine and Raso on behalf of the Applicant, addressed the Panel regarding this matter.

IHAP RECOMMENDATION:

That Development Application No.16/0831 for alterations and additions to a dwelling at Lot 5 DP 259700, (No. 220) Gannons Road, Caringbah South is deferred for further assessment by Council staff, with the General Manager delegated the authority to determine the development application after considering the matters identified in the IHAP report and these resolutions:

1. The applicant is to be invited to make a request under Clause 4.6 of Sutherland LEP to permit variation of Council's floor space ratio control, as necessary, taking into account the floor space of the boatshed.
2. The applicant is to be allowed the opportunity to lodge amended DA plans that incorporate the following modifications:
 - a. Deletion of the 'walk in robe' and the associated portion of the building envelope.
 - b. The reduction of the maximum roof height of the building to be no higher than RL 19.133 AHD.

PANEL COMMENTARY:

Site Visit

The Panel inspected the site and considered the appearance of the existing building and likely impacts of the proposed building work when viewed from adjoining properties and the waterfront.

Access was obtained to the residences of objectors residing at 218 Gannons Road and 10 Irwine Road so as to permit an assessment of the view impacts of the new building work.

Presentations to Panel at the Public Meeting

The meeting was addressed by Ms Costas of 218 Gannons Road, Ms Rudge of 10 Irwine Road, and Mr Tiernan of 8 Irwine Road.

Mr Swain, Town Planner, endeavoured to respond to the criticisms of his design made in the staff report for the applicant. He foreshadowed further amendments to the plans which would reduce the roof height and delete a substantial portion of the upper level to improve neighbours' views and address the criticisms of the Council staff. The Panel supported those changes

IHAP011-17 Cont'd

Consideration of Issues

The Panel toured the existing house at the DA site to examine the use of the currently available floorspace.

Ultimately it was concluded that the reduction in the proposed floorspace that was called for by the conditions recommended by the staff report would ultimately make no material difference to the amenity impacts of the subject residence.

The main issue was clearly that of view loss when measured from the principal living areas and verandas of the properties to the north.

The assessment of view loss was made significantly more difficult by inconsistencies within the drawings and an absence of clearly presented information that would permit a comparison of the proposed roof heights and existing structures on site and on adjoining properties. There was also no long section (that included the neighbour to the north) to allow an understanding of the view lines that would be impacted.

However, after the plans were explained at the meeting, and after the Panel considered the significant design changes which were offered by the applicant at the meeting, the Panel concluded that the views of the objectors would in fact improve substantially (if the latest changes offered by the applicant were incorporated).

Specifically, the applicant offered to remove half of the built form at the upper level by deleting the walk in robe and replacing it with a flat roof over the level below. That would significantly improve the views from the objectors living areas. The Panel were of the opinion that attention to suitable roofing materials would also assist in reducing the impacts.

While the Panel noted the existence of a registered covenant on the title referred to in the objections, Clause 1.9A of Sutherland LEP specifically permits the Council to approve development notwithstanding the covenant.

Given the significant changes required to the plans, a deferred commencement approval was not possible.

The recommendations of the Panel therefore allow for the modified application to be determined under delegated authority by the General Manager. As the changes foreshadowed result only in the reduction of the building envelope and therefore a lessening of any amenity impacts on neighbours, re-notification of the drawings will not be necessary. There is no need for IHAP to reconsider the matter.

IHAP011-17 Cont'd

VOTES: 4:0**ASSESSMENT OFFICERS RECOMMENDATION:**

THAT:

1. Pursuant to the provisions of Clause 4.6 of Sutherland Shire Local Environmental Plan 2015, the written submission in relation to the requested variation to the minimum landscaped area development standard (40%) satisfies the relevant provisions of Clause 4.6 and is therefore supported. It is recommended that the provisions of Clause 4.6 be invoked and that the minimum landscaped area development standard (40%) be varied to 6.9% (68m²), in respect to this application.
2. The proposed variations to the development standards detailed below are not supported and will be conditioned to comply.

Development Standard	Clause	Requirement	Proposal Variation
Building Height	4.3	Max 8.5m	8.7m 2% variation
Floor Space Ratio	4.4	Max 0.5:1 494.35m ²	0.51:1 (503m ²). 1.8% variation

3. Pursuant to the provisions of Section 80 of the Environmental Planning and Assessment Act 1979, Development Application No.16/0831 for alterations and additions to a dwelling at Lot 5 DP 259700, (No. 220) Gannons Road, Caringbah South is supported by granting of a deferred commencement development consent, subject to the conditions contained in Appendix "A" of the report.

The Meeting closed at 9:45 pm.