



# Report of Meeting

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## Independent Hearing and Assessment Panel

Tuesday, 20 February 2018

6.00pm

Council Chambers

Level 2, Administration Building,  
4-20 Eton Street, Sutherland

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SUTHERLANDSHIRE

**PRESENT:** Jason Perica (Chairperson/Expertise in Urban Planning), Larissa Ozog (Expertise in Town Planning), Andrew Macdonald (Expertise in Architecture), Russell Smith (Community Representative with Expertise in Marketing & Business Management).

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

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**DISCLOSURES OF INTEREST**

**File Number: 2015/14239**

There were no disclosures of interest declared.

<b>IHAP010-18</b>	<b>Proposal:</b>	<b>Demolition of existing structures and construction of a residential apartment building containing 27 apartments and 2 levels of basement parking</b>
	<b>Property:</b>	<b>Lot A DP 13773 &amp; Lot B DP 13773, (Nos. 25-27) The Grand Parade, Sutherland</b>
	<b>Applicant:</b>	<b>Mr Alistaire Ong</b>
	<b>File Number:</b>	<b>DA17/0436</b>

**Ms Cathy Graham and Ms Karen Hughes on behalf of the Objectors, and Mr Alistaire Ong (Applicant) and Ms Penny Smith (Planner), addressed the Panel regarding this matter.**

**IHAP DECISION:**

THAT:

1. 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. 17/0436 for demolition of existing structures and construction of a residential apartment building containing 27 apartments and 2 levels of basement parking at Lot A DP 13773 & Lot B DP 13773 (Nos. 25-27) The Grand Parade, Sutherland, be approved in accordance with the recommendation of Council staff to the meeting of the Sutherland Independent Hearing and Assessment Panel of 20 February 2018, subject to the following changes:
  - a) The reference in Part 2 of the recommendation be corrected from "29" units to "27".
  - b) The required 3 car wash bays in Part 1.1ii of the deferred commencement consent be reduced to 1;
  - c) The following additional sentence be added to the end of the Deferred Commencement terms:

*“Following the above information being to the written satisfaction of the Council, the consent shall become operative, subject to the Conditions of Consent in Part 2, and subject to any additional conditions reasonably arising from the information submitted in satisfying the deferred commencement.”*

- d) Condition 9A be amended to include the following additional requirements:
- “i) Measures to ensure that access to and from the site during construction is primarily from The Grand Parade and that construction activity and parking within Kurrajong Street is minimised as far as is practicable;*
  - ii) Measures to notify neighbours of construction activity, upcoming phases or events likely to cause disruption, starting of work, duration, a complaints number and the like”.*
  - viii) The designated “accessible spaces” located outside the Scout Hall shall not be utilised by any construction workers or associated vehicles.*

#### **PANEL COMMENTARY:**

##### **Site Visit**

The Panel visited the site and surrounds on 20 February 2018. This included viewing the site, surrounds and adjoining property immediately to the north. Ms Dickinson and another neighbour, addressed the Panel and explained their concerns, primarily around traffic, parking, safety and the potential construction impacts.

##### **Presentations to Panel at the Public Meeting**

Ms Cathy Graham

Ms Karen Hughes

##### **Consideration of Issues**

The Panel generally agreed on balance with the planning and environmental considerations as outlined in the Council assessment report.

The Panel had regard to the applicants' Clause 4.6 variation request regarding the maximum height limit within Clause 4.3 of the Sutherland Local Environmental Plan 2015 ('the LEP'). Given the location, the minor non-compliance was considered acceptable and no adverse amenity impacts will generated by the area of non-compliance in relation to visual bulk, overshadowing or overlooking. The lift overrun is centrally located and provides access to the roof top terrace which is designated as an area of common open benefiting the occupants and visitors to the development. The amended plans have reduced the upper level footprint to reduce the overall scale, and in addition the lack of negative impacts associated with the proposed height, the appropriate setbacks and separation distances, the recently approved adjoining development, the appropriate overall site planning massing and distribution

of the built form, the consistency with the zoning objectives and height objectives, the Panel was satisfied with the design response in regard to the proposed variation in the height of the building. The Panel formed the view the applicant's written request satisfactorily addressed required matters within Clause 4.6 of the LEP and it was considered strict compliance with the height limit was unnecessary and unreasonable in this case.

The "main" issue of concern for neighbours in submissions and expressed at the meeting related to traffic and parking impacts and particularly upon Kurrajong Street. The Panel debated the alternatives for access to the site and the relative merits. One Panel member was of the view that vehicular access should be mandated from The Grand Parade and a redesign be required. This would be a significant change to the built form and could not merely be expressed or imposed by a deferred commencement condition. The Applicant stated that access off Grand Parade was initially examined but this would have adversely affected the aesthetics of the scheme and could create a basement podium level and result in the removal of some apartments. The Panel acknowledged that access is more efficient and logical off Kurrajong Street due to the existing gradients. The Panel also considered access diagonally to Jannali Avenue through the Kurrajong Street closure. However, while this may be a potential improvement, the impact on trees, utility of the open space from the road closure, gradients, trees and services was not known and analysis was not before the Panel. Further, the vehicular access solution put forward was considered acceptable to the majority of the Panel, noting the low expected traffic movements, the location of the driveway not precluding any access to other properties (and potentially improving manoeuvring at the end of Kurrajong Street for the public), the ability to better integrate the driveway in the elevation composition given the length of the Kurrajong frontage and the site planning and sustainability benefits of reducing excavation due to entering the basement at the lower point of the site.

There were other impacts from the proposal, but generally consistent with that envisaged and facilitated by the planning controls. Good overall design and further mitigation from recommended conditions appropriately balanced considerations of setting, transition, amenity to neighbours and future amenity to occupants.

The main issue for the applicant was the requirement for additional parking. This matter was not free from doubt, with the applicant and Council having different interpretations of the applicability of the parking requirements within the Apartment Design Guide/SEPP 65 and RMS standards. The Panel acknowledged that the Applicant complied with SEPP 65 provisions for parking given that the Site is in a very accessible location within 800m of a train station. However, without the clear classification of Sutherland being a sub-regional centre, the Panel favoured the position of Council staff, noting this approach (Council relying on compliance with its DCP as opposed to SEPP 65 requirements for car parking) which has been consistently applied for some time, while also recognising parking pressures within the area.

The Panel strongly recommends that Council staff seek written advice from the Department of Planning and Environment regarding its interpretation of the application of parking provisions within SEPP 65 for Sutherland. This will provide greater clarity and assist with the determination of future matters.

#### **Reasons for Variation from Council Officer's Recommendation**

The changes to the recommendation related to:

- correcting a reference to the unit numbers,
- reducing the car wash bay requirement given the relative size of the proposal and anticipated demand,
- ensuring appropriate administrative functions following receipt of the deferred commencement information and mitigation measures during construction to reasonably reduce impacts to neighbours and improve communication.

**VOTES: 4:0 - *The vote was unanimous (noting one Panel member was not supportive of the proposed access from Kurrajong Street, yet supportive overall)***

#### **ASSESSMENT OFFICER'S 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 variation to 20m maximum building height development standard 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 building height development standard be varied to 21.6m, in respect to this application.
2. Pursuant to the provisions of Section 80 of the Environmental Planning and Assessment Act, 1979, Development Application No. 17/0436 for the demolition of existing structures and construction of a residential apartment building containing 27 apartments and 2 levels of basement parking Lot A DP 13773, Lot B DP 13773 (Nos. 25-27) The Grand Parade, Sutherland is determined by the granting of a deferred commencement development consent subject to the conditions contained in Appendix "A".

<b>IHAP011-18</b>	<b>Proposal:</b>	<b>Section 96(2) Modification to DA04/0320 - Delete conditions 9 and 11 regarding lighting and night time use and insert new condition regarding ongoing management</b> <b>Section 96(2) Modification to DEV921792 - Amend condition 1 regarding plan number and insert new condition regarding ongoing management</b>
	<b>Property:</b>	<b>Lot 1170 DP 262462, Part Lot 200 DP 1081859 (Nos. 186R) Washington Drive and No. (1R) Tudar Road, Bonnet Bay</b>
	<b>Applicant:</b>	<b>Sutherland Shire Council</b>
	<b>File Number:</b>	<b>MA17/0396 &amp; MA17/0397</b>

**Messrs Bill Woodcock, Ian Walsh & Ms Ros Gardner on behalf of the Objectors, and Mss Manjeet Grewal & Kellie Hayes, on behalf of the Applicant, addressed the Panel regarding this matter.**

#### **IHAP DECISION**

THAT:

1. 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, Modification Application Nos. 17/0396 and 17/0397 be refused for the following reasons:
  - a) The Panel appreciates and understands:
    - i) The importance of the recreational facility in the sporting social capital for the area and the role it plays in accommodating baseball for children and adults, and the general importance of sporting and recreational Clubs within the community;
    - ii) The strategic and policy direction of Council staff in moving towards a regime of a governing Plan of Management and Operational Plan of Management for the facility and the mutual benefits that may arise for an operator and community by a robust Plan of Management regime. Further, such a governing regime may also be aided by review of operations and compliance for ongoing use or change. This intended approach is supported.
  - b) However, there is a questionable track record by the operator of the facility demonstrating compliance with existing terms of various development consents, with various known non-compliances (planting, treatment of the parking area, speed humps, boom gate, no liquor licence etc) and many alleged non-compliances from neighbours (which are many and varied and to a degree and depth that favours assuming some veracity). The existing clubhouse is in poor repair. The application was not made by the operator, they do not

- appear to have been proactive in its management and did not appear at the determination meeting to assist the Panel in its deliberations. This combination of factors favours caution at this stage.
- c) In circumstances where existing conditions are sought to be varied which have an impact on the amenity of the neighbourhood (eg, finishing hours, lighting, types of use), the outcome and change should be clear, particularly if clear management credentials and compliance with existing terms cannot be established.
  - d) While a draft Operational Plan of Management was lodged with the amended application, this was deficient of much important information in terms of future management, operation and compliance.
  - e) The application (and recommendation) seeks to delete operational conditions which provide some certainty without a known set of parameters for their replacement. The deletion of conditions is premature at this stage.
  - f) The proposed extension of the use and removal of the conditions will adversely affect the amenity of the area, without appropriate alternative mitigation and safeguard measures and be inconsistent with the objectives of the zone.
  - g) Insufficient information has been provided with the application to ensure that the amended proposal will satisfy Australian Standards and associated controls in terms of the intensity of lighting and acoustic impacts.
  - h) A future regime of a Plan of Management, "POM" (with the required community consultation), a draft Operational Plan of Management, "OPM", with a clearer outline of events, timing, lighting, training, use of public address system, match days, parking, approach to alcohol consumption, Clubhouse use, maintenance, neighbour liaison and notification, complaints management and the like is fully supported. Such a OPM could include "planned flexibility" with potential performance criteria, which may be acceptable and also desirable for all parties (given the lack of such parameters in existing consents). When this process is at a stage of development that a "replacement regime" for operational management is known and clear, that would be the appropriate time for a s96 application to be made.

## **PANEL COMMENTARY**

### **Site Visit**

The Panel visited the site and surrounds on 20 February 2018.

### **Presentations to Panel at the Public Meeting**

Mr Bill Woodcock

Mr Ian Walsh

Ms Ros Gardner

**Consideration of Issues**

The reasons for the decision are outlined above.

The Panel commends the Council staff involved in the application in working towards a regime that balances the use and enjoyment of the facility, a clearer management framework with potential planned flexibility and neighbourhood amenity. It is unfortunate that the time and resources spent (also by Council assessment staff) was not able to be supported by approval at this stage, but Council are encouraged to continue towards the “proposed system of regulation” outlined on page 19 of the report.

It was disappointing the operator was not able to attend the meeting to assist the Panel in its deliberations, to explain the future direction and intent for the use of the facility, and to respond to comments made about current and past activity and concerns from many surrounding residents.

The Panel felt that the Applicant has not adequately provided detailed information to ensure that the current and proposed extension to the operation will comply and satisfy environmental standards in terms of noise and environmental impacts generated from the extended hours of lighting and acoustic impacts. The proposal seeks an extension to the existing operation and an intensification of the use by permitting competitions to be played at night rather than only permit training at night. This no doubt will generate more traffic and noise. No traffic or parking reports, noise or lighting assessments have been conducted to ensure that environmental impacts are reasonable and acceptable in respect to the changes proposed. The application also seeks the removal of Condition No. 9 which restricts the use of lighting until 9.30pm. By removing the condition this would allow for the lights to be potentially on for a much longer period and there is no further regulation in place until a POM would be implemented. Despite a Condition (No.13) being recommended regarding the POM to be prepared there is no time frame for this and the specific details of the POM are not considered to be detailed or specific enough in terms of who prepares it, who monitors, assesses, approves it and how will the residents be involved in this process.

With the refusal, existing consents and terms remain. Any direct engagement between the operator and the local community and attention to existing consents can only assist. Communication between the operator and community is a key factor in building trust in management capability, particularly where change is sought.

**VOTES: 4:0 – The vote was unanimous**

**CONSULTANT’S RECOMMENDATION**

THAT:

1. Pursuant to the provisions of Section 96 (2) of the Environmental Planning and Assessment Act 1979, the requested modification to Development Consent No. 04/0320 dated 22 September 2004 for Ancillary Development to Recreation Facility – 2 light poles for Night Training Purposes at 1R Tudar Road, Bonnet Bay Part Lot 9 DP 752064 be supported.

2. Development Application No. 04/0320 for Ancillary Development to Recreation Facility – 2 light poles for Night Training Purposes at 1R Tudar Road, Bonnet Bay Part Lot 9 DP 752064 be modified as follows:

- a) By deleting Conditions 9 and 11; and
- b) By inserting Condition 13 as follows:

*Operational aspects of the facility, such as days and hours of use, use of lighting, noise management, use of the clubhouse building, and the like, must be the subject of a Management Plan prepared in consultation with Council and implemented via provisions in a relevant policy, lease or other agreement between Council and facility user groups. The terms of the Management Plan(s) must be adhered to by users of the facility. The Management Plan must consider matters similar to those set out in section 9.4 of the assessment report written for this MA17/0396.*

THAT:

1. Pursuant to the provisions of Section 96 (2) of the Environmental Planning and Assessment Act 1979, the requested modification to Development Consent No. DEV921792 dated 22 March 1993 for Construction of 2 baseball diamonds, fences, amenities building and car park at 1R Tudar Road, Bonnet Bay incorrectly stated to be Lot 1171 (and not Lot 1170) in DP 262462 be supported
2. That Development Application No. DEV921792 for Construction of 2 baseball diamonds, fences, amenities building and car park at 1R Tudar Road, Bonnet Bay incorrectly stated to be Lot 1171 (and not Lot 1170) in DP 262462 be modified as follows:
  - a) By amending Condition 1, the notation on the approved plans (drawing 12335) referring to the “junior diamond” and instead refer to Drawing No 1 (attached) which designates the diamonds as Main Diamond and Diamond 2; and
  - b) By inserting Condition 10 as follows:

*Operational aspects of the facility, such as days and hours of use, use of lighting, noise management, use of the clubhouse building, and the like, must be the subject of a Management Plan prepared in consultation with Council and implemented via provisions in a relevant policy, lease or other agreement between Council and facility user groups. The terms of the Management Plan(s) must be adhered to by users of the facility. The Management Plan must consider matters similar to those set out in section 9.4 of the assessment report written for this MA17/0397.*

The Public Meeting closed at 7.30pm.