



Report of Meeting

Independent Hearing and Assessment Panel

Tuesday, 20 March 2018

6.00pm – 8.30pm

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

SUTHERLANDSHIRE

PANEL: Jason Perica (Chair), Grant Christmas, Julie Savet Ward, Kurt Ingle

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

Disclosures of Interest

File Number: 2015/14239

There were no disclosures of interest declared.

Apologies

There were no apologies.

IHAP012-18	Proposal:	Demolition of existing dwelling house and outbuildings and construction of a boarding house
	Property:	Lot 9 DP 31183 (No. 12) Charles Place, Jannali
	Applicant:	Yousef and Natalie Zeinab Dagher
	File Number:	DA17/0668

Speaking against the proposal were Ms Dianne Hamilton, Mr Stephen Davies, Mr Andrew O'Brien and Ms Kirsten Shardlow.

Speaking for the application were Ms Natalie and Mr Yousef Dagher (Applicants) and Ms Erica Marshall (Architect).

PANEL DECISION:

THAT:

Pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act, 1979, Development Application No. 17/0668 for demolition of an existing dwelling house and outbuildings and construction of a boarding house at 12 Charles Place, Jannali be refused for the following reasons:

1. The application is unacceptable pursuant to Section 4.15(1)(b) in that the potential social impacts have not been appropriately mitigated by the proposal, and the proposed governing management regime for the proposed use is wholly inadequate, which is a crucial aspect to ensure that social impacts are acceptable;
2. The proposal does not comply with the solar access provisions for the proposed common room, within Clause 29 of *State Environmental Planning Policy (Affordable Rental Housing) 2009*, noting there are not many key controls to comply with, the boarding rooms are small and the amenity of the common area will be important for residents;
3. The vehicular manoeuvring is likely to lead to conflicts with pedestrian movements within the site;
4. Given the above, approval would set an undesirable precedent and would not be in the public interest.

REASON FOR THE DECISION:

The reasons for the Panel decision are outlined in the decision, given refusal was decided.

The Panel deliberated for some time on the matter. While the matter was refused, there were several important aspects which the Panel did not share the position of Council staff. This included:

- The suitability of the site for the use. The Panel was of the view the site is suited to a boarding house, despite being within a residential cul-de-sac. The site is close to services and a train station. The use is permissible in the zone, and it was not agreed that “sensitive uses” in the wider area made the use unsuitable for the site. Residential uses should not be considered “sensitive” in the context of the governing SEPP, as if this was the case no boarding house could be accommodated in a residential area, where they are permissible. There was a church nearby, although not adjoining, while the separation and orientation between the uses was relevant. Similarly so for a Childcare Centre some distance from the site, to the south-east. This is not to say that potential social impacts did not exist if the use was not managed well, which was a key theme in the objections to the proposal and concerns expressed by local residents, and a concern shared by the Panel.
- The “character” test. The building was larger than immediately neighbouring buildings, while the relative width and depth of the site also accentuates massing to the street. However, the building was well articulated, within the height limit and well below the FSR. The front and rear setbacks were consistent with prevailing setbacks and the topography and nature of lots to the rear limited impacts to the east. The scale was similar to what could be reasonably expected for a new building on the site given the applicable planning controls and surrounding context. The site is not in a Conservation Area and the area is undergoing some change, while two storey buildings are not uncommon and are prevalent for new buildings in the street.
- The setback non—compliances. There is no Section within the DCP relating to Boarding Houses. If the setback controls for dwellings are applied, the proposal complied with front and side setbacks, but not to the rear, whereas if the “multi-dwelling” housing setback controls are applied, the proposal complies with the front and rear setbacks but not the side setbacks. The non-compliances either way are not significant and the proposal is broadly consistent with existing front and rear setbacks, while the upper level has been modulated to reasonably reduce impacts to adjoining land to each side. Privacy impacts were not considered unreasonable and screening issues were resolvable.

Despite the above, the Panel was very concerned with the lack of an appropriate management regime to govern the use, which was integral to its acceptability. The use is one where successful management is vital, and applying a “trial” period is not an option, as may exist for other uses where management is a key to success. The onus is on an applicant to ensure this crucial aspect of the proposal was satisfactorily resolved. The brief Plan of Management was significantly inadequate and included no provisions relating to tenure or tenant selection. There was no Crime Prevention Through

Environmental Design assessment and comments from the Police had not been received (although they had been given opportunity). While the applicant verbally advised of intended processes for selection, tenure and openness to an on-site manager at the meeting, this did not form part of the application before the Panel. The Panel also had concerns with the lack of solar access to the common room and vehicular manoeuvring.

Some consideration was given for deferral. However, the concerns held were significant, a clear and definable path to an acceptable outcome was not certain and the time for revision was not likely to be short. For these reasons, deferral was not favoured.

VOTES

The decision was unanimous.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

Pursuant to the provisions of Section 80 of the Environmental Planning and Assessment Act, 1979, Development Application No. 17/0668 for Demolition of existing dwelling house and outbuildings and construction of a boarding house at Lot 9 DP 31183 (No. 12) Charles Place, Jannali 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.79C(1)(a)(i) of the Environmental planning and Assessment Act 1979 in that the proposed development fails to satisfy Clause 30A of the State Environmental Planning Policy (Affordable Rental Housing) 2009 in that the proposal is not compatible with the character of the local area.
2. The application is considered unacceptable pursuant to the provisions of s.79C(1)(b) of the Environmental planning and Assessment Act 1979 in that the physical aspects of the built form of the development will adversely impact on the adjoining properties in terms of visual bulk & scale, privacy / overlooking to adjoining properties and nature of the use of the built form in the area.
3. The application is considered unacceptable pursuant to the provisions of s.79C(1)(d) of the Environmental Planning and Assessment Act 1979, it is considered that having regard for public submissions, the development is unsuitable with respect to its location amongst the sensitive land uses in the locality.
4. The application is considered unacceptable pursuant to the provisions of s.79C(1)(e) of the Environmental Planning and Assessment Act 1979 in that in the circumstances of the case, approval of the development would set an undesirable precedent for similar inappropriate development and therefore is not in the public interest.

IHAP013-18	Proposal:	Installation of an inground swimming pool
	Property:	Lot 109 DP 262964 (No.39) Jervis Drive, Illawong
	Applicant:	Local Pools & Spas
	File Number:	DA18/0057

Ms Leanne and Mr Jason Bury (Owners), addressed the Panel in support of the proposal.

PANEL DECISION:

That pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act, 1979, Development Application No. 18/0057 for installation of an inground swimming pool at 39 Jervis Drive, Illawong be refused for the reasons within the recommendation of Council staff in the report to the Panel of 20 March 2018.

REASON FOR THE DECISION:

The Panel generally agreed with the balance of environmental considerations outlined within the Council staff report. The Panel had regard to Council staff advice regarding the strict application of the landscape standard, particularly in the Environmental E4 zoning, where landscaping is a crucial aspect to the nature of the zone and area. The pool safety provisions would likely entail removal of trees adjoining a fence, due to being climbable. Granting consent would set an undesirable precedent

VOTES:

The decision was unanimous.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

Pursuant to the provisions of Section 80 of the Environmental Planning and Assessment Act, 1979, Development Application No. 18/0057 for Installation of an in-ground swimming pool at Lot 109 DP 262964 (No. 39) Jervis Drive, Illawong is recommended for refusal 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 it fails to satisfy the objectives for Zone E4 – Environmental Living under the Sutherland Shire Local Environment Plan 2015.
2. The application is considered unacceptable pursuant to the provisions of Section s.4.15(1)(b) of the Environmental Planning and Assessment Act, 1979, in that it fails to satisfy the objectives for landscaped areas in certain residential, business, industrial and environmental protection zone under clause 6.14 of the Sutherland Shire Local Environmental Plan 2015.
3. 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 granting of development consent would not be in the public interest.

- The site fails to meet the landscape development standard of 40%.
- Landowner's unwillingness to comply with the landscape ratio of 40%.
- Variation to the landscape development standard is 31.7%.

IHAP014-18	Proposal:	Alterations and additions to a dwelling
	Property:	Lot 72 DP 16891 (No. 29) Mitchell Road, Cronulla
	Applicant:	Van Ryn Design
	File Number:	DA17/1782

Mr Peter Van Ryn (Applicant/architect), addressed the Panel in support of the proposal.

PANEL DECISION:

That pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act, 1979, Development Application No. 17/1782 for alterations and additions to a dwelling at 29 Mitchell Road, Cronulla be approved subject to the conditions within the Council staff report to the Panel of 20 March 2018, subject to the following change:

Condition 1 be amended to delete the word “substantially” in the first sentence and adding the following sentence after the sentence ending in “as amended by the following conditions”: “Where there is any discrepancy between plans or approved documents and the conditions of consent, the requirements set out in the plans shall prevail.”

REASON FOR THE DECISION:

The Panel generally agreed with the balance of environmental considerations outlined within the Council staff report. The context of the site and mitigation measures within the design and within the recommended conditions were such that the proposal was acceptable, despite the setback non-compliance.

The Panel had regard to the applicants’ Clause 4.6 variation request regarding the minimum landscaped area control within Clause 6.14 of Sutherland Shire LEP 2015. Given the proposal is for additions which do not change the existing building footprint, the non-compliance is pre-existing and not being made worse, the Panel was satisfied regarding the landscaped area. 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 compliance with the landscaped area standard was unnecessary and unreasonable in this case.

VOTES:

The decision was unanimous.

ASSESSMENT OFFICER’S RECOMMENDATION

Γ:THAT:

1. Development Application No. 17/1782 for alterations and additions to a dwelling at Lot 72 DP 16891 (No. 29) Mitchell Road, Cronulla be approved, subject to the conditions contained in Appendix “A” of the report.
2. Pursuant to the provisions of Clause 4.6 of Sutherland Shire Local Environmental Plan 2015, the written submission in relation to the variation to the landscape ratio 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 landscape area development standard be varied to 25% in respect to this application.

The Meeting closed at 8.30pm.