



# **Report of Meeting**

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## **Independent Hearing and Assessment Panel**

**Tuesday, 1 May 2018**

**6:00pm**

**Council Chambers**

**4-20 Eton Street, Sutherland**

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**SUTHERLANDSHIRE**

**PANEL:** Jason Perica (Chair), Charles Hill, 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 declarations of interest.

### **Apologies**

There were no apologies.

### **IHAP Members Disclosures of Interest**

Jason Perica tabled the Disclosure of Interest forms of the Panel members, consistent with the Code of Conduct.

<b>IHAP020-18</b>	<b>Proposal:</b>	<b>Continue use to operate Shire Farmers Market</b>
	<b>Property:</b>	<b>123-125 Flora Street, Sutherland</b>
	<b>Applicant:</b>	<b>James McMahon</b>
	<b>File Number:</b>	<b>DA18/0218</b>

Speaking for the proposal was Kathleen McMahon.

### **PANEL DECISION:**

THAT:

Pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act, 1979, Development Application No. 18/0218 to continue use to operate Shire Farmers Market at 123-125 Flora Street, Sutherland be approved subject to the Conditions within the Council staff report to the Panel of 1 May 2018, with one amendment to Condition F(i) to add the words "(including recycling bins)" after the words "public litter bins".

### **REASON FOR THE DECISION:**

The Panel generally agreed with the balance of planning considerations outlined within the Council staff report. The proposal had due regard to the applicable planning controls, the context of the site and rational use of land. The use of parking outside peak hours is sensible, and the use provides a positive social and economic outcome, with minimal and acceptable impacts upon others. The use is existing and has operated with no apparent problems or significant impacts, with the operating hours and duration not being excessive.

In terms of consideration of submissions and community views, it was noted one submission was received, relating to concerns with sale of non-food items. The Panel agreed with the staff consideration of this issue and noted the matter was addressed by an existing condition of consent. It was also noted there were no objections from local Police.

**VOTES**

The decision was unanimous.

**ASSESSMENT OFFICER'S RECOMMENDATION**

THAT:

That Development Application 18/0218 for continue use to operate Shire Farmers Market at Lot 1 DP 1164554 (Nos. 123-125) Flora Street, Sutherland be approved, subject to the conditions contained in Appendix "A" of the report.

<b>IHAP021-18</b>	<b>Proposal:</b>	<b>Change of use, fitout and alterations to an existing industrial unit for use at a recreation facility (indoor) - Unit 1</b>
	<b>Property:</b>	<b>23-27 Waratah Street, Kirrawee</b>
	<b>Applicant:</b>	<b>Phil O'Donnell Architects</b>
	<b>File Number:</b>	<b>DA17/1750</b>

Speaking for the proposal was Belinda Patton and Anthony McCosker.

**PANEL DECISION:**

THAT:

Pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act, 1979, Development Application No. 17/1750 for change of use, fitout and alterations to an existing industrial unit for use at a recreation facility (indoor) - Unit 1 at 23-27 Waratah Street, Kirrawee be approved subject to the Conditions within the Council staff report to the Panel of 1 May 2018, with no changes.

**REASON FOR THE DECISION:**

The Panel generally agreed with the balance of planning considerations outlined within the Council staff report. The use was permissible in the zone and the potential impacts of the proposal were appropriately managed and mitigated by recommended conditions of consent.

The proposal represents a positive social and economic outcome, supports healthy living for a residing and working population, while having minimal and acceptable impacts upon others.

The Panel had regard to the applicant's Clause 4.6 variation request regarding the minimum landscaped area standard within Clause 6.14 of Sutherland Shire LEP 2015. Given the proposal did not reduce landscaped area (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, the proposal was consistent with the objectives of both the landscaped area standard and the zone objectives (and thereby in the public interest) and it was considered compliance with the landscaped area standard was unnecessary and unreasonable in this case.

The provision of a trial period beyond 10.00pm (until 11.00pm) was appropriate to allow monitoring of the use, its impact and compliance with conditions of consent.

In terms of consideration of submissions and community views, it was noted no submissions were received.

**VOTES**

The decision was unanimous.

**ASSESSMENT OFFICER'S RECOMMENDATION**

THAT:

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 landscaped area 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 landscaped area development standard be varied to 1%, in respect to this application.

That Development Application No. 17/1750 for change of use, fitout and alterations to an existing industrial unit for use at a recreation facility (indoor) - Unit 1 at Lot 1 DP 522941 (No. 23-27) Waratah Street, Kirrawee be approved, subject to the conditions contained in Appendix "A" of the report.

<b>IHAP022-18</b>	<b>Proposal:</b>	<b>Change of use and fit-out to vehicle sales or hire premises, car wash and car detailing together with ancillary cafe and signage</b>
	<b>Property:</b>	<b>60-62 Captain Cook Drive, Caringbah</b>
	<b>Applicant:</b>	<b>Planning Direction</b>
	<b>File Number:</b>	<b>DA17/0310</b>

No-one spoke for the proposal.

Speaking against the proposal was Joanne Siryani.

#### **PANEL DECISION:**

THAT:

Pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act, 1979, Development Application No. 17/0310 for change of use and fit-out to vehicle sales or hire premises, car wash and car detailing together with ancillary cafe and signage at 60-62 Captain Cook Drive, Caringbah be approved subject to the Conditions within the Council staff report to the Panel of 1 May 2018, with one additional Condition to Part 1 (Deferred Commencement) of the consent, as follows:

#### **2. Increased Landscaping**

*The plans shall be amended to include additional landscaping in the vicinity of the outdoor seating area of the food and drink premises (which may be planter boxes) and to increase the dimensions of the existing garden bed along the northern edge of the property (which must be deep soil planting to support planting of a height at maturity as high as possible while not obscuring the signage element of the pylon sign), to the maximum footprint possible while not reducing parking or affecting vehicular manoeuvring in accordance with Australian Standards. The landscaping shall be installed prior to the issue of an Occupation Certificate.*

#### **REASON FOR THE DECISION:**

The Panel generally agreed with the balance of planning considerations outlined within the Council staff report. The use was permissible in the zone and the potential impacts of the proposal were appropriately managed and mitigated by recommended conditions of consent.

The Panel had regard to the applicant's Clause 4.6 variation request regarding the minimum landscaped area standard within Clause 6.14 of Sutherland Shire LEP 2015. Given the proposal did not reduce landscaped area and actually increased the provision of landscaping despite not involving substantive alterations, the non-compliance is pre-existing and not being made worse, the Panel was satisfied regarding the landscaped area, subject to further landscaping required by an additional condition. The Panel formed the view the applicant's written request satisfactorily addressed required

matters within Clause 4.6 of the LEP and subject to conditions it was considered compliance with the landscaped area standard was unnecessary and unreasonable in this case.

The Panel noted the use and signage was existing and no development approval could be given retrospectively for structures erected. The Panel was disappointed prior consent had not been sought and that no representatives of the applicant attended the Panel meeting to answer questions. Despite this, the recommended approach by Council staff of dealing with prior unauthorised works was supported.

In terms of consideration of submissions and community views, it was noted one submission and representation was made to the Council/Panel, with the main concern relating to parking and traffic safety. In circumstances where the proposal provides double the parking required under Council's DCP, it was difficult to uphold a concern regarding parking. Traffic safety is a matter for the Council and RMS.

#### **VOTES**

The decision was unanimous.

#### **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 landscaped area 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 10% landscape area development standard be varied to 4.6%, in respect to this application.
2. Pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act, 1979, Development Application No.17/0310 for Change of use and fit-out to vehicle sales or hire premises, car wash and car detailing together with ancillary cafe and signage at Lot 2 DP 205999 60-62 Captain Cook Drive, Caringbah is determined by the granting of a deferred commencement development consent subject to the conditions contained in Appendix "A".

<b>IHAP023-18</b>	<b>Proposal:</b>	<b>Demolition of existing garage and construction of new detached garage and cabana</b>
	<b>Property:</b>	<b>69 Tara Street, Sylvania</b>
	<b>Applicant:</b>	<b>Scard Design</b>
	<b>File Number:</b>	<b>DA18/0270</b>

Speaking for the proposal was Damian Scard and Lyndal Wynne.

Speaking against the proposal was Hannah Abdioglu.

**PANEL DECISION:**

THAT:

Pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act, 1979, Development Application No. 18/0270 for demolition of existing garage and construction of new detached garage and cabana at 69 Tara Street, Sylvania be approved subject to the recommended conditions within the Council staff report to the Panel of 1 May 2018, with three amendments to conditions:

- (a) A new Condition 1A be inserted, stating:

**1A Garage Design Change**

*The footprint of the garage shall be amended in the south-west corner, so that the diagonal garage wall opposite the diagonal boundary component (running NW-SE) be setback a minimum of 1500mm (increased from 600mm) where perpendicular to the diagonal boundary component, and the area between the boundary and the relocated wall be landscaped with species to reach a mature height greater than the garage roof, although not greater than the ridgeline of the existing dwelling. Details shall be submitted to the Council for written approval prior to the release of a Construction Certificate for the garage.*

- (b) Condition 2 be amended such that the design changes must be included in the documentation submitted with the Construction Certificate, but that the landscaping works (including from the new Condition 1A) be complete prior to the issue of an Occupation Certificate for the new garage.

- (c) Condition 11A be amended to add a sentence which states:

*The roof colour shall be chosen after earnest consultation with the neighbour at No. 67 Tara Street. If agreement is not reached, evidence of the consultation which occurred shall be provided to Council and the Council shall decide on the appropriate colour.*

**REASON FOR THE DECISION:**

The Panel generally agreed with the balance of planning considerations outlined within the Council staff report, with some refinements through additional conditions. The main reasons for overall support were:

1. The garage generally replaced an existing garage, with a slightly larger footprint and increased height;
2. The height of the garage was minimised through the use of a stacked parking system, while excess parking floorspace had been included in FSR calculations, to which the proposal complied.
3. The height of the garage complied with the ancillary height control for the garage/ancillary structure.
4. The overall landscaped area was increasing.
5. The impacts of the increased garage height were localised and affected some aspects of outlook, not views. The relative heights of the sites helped reduce and mitigate impacts.
6. The impacts from the cabana were very minor.

Despite overall support of the proposal and noting an increase in landscaped area, the Panel was mindful of the overall size of the garage, the proximity to the neighbour, its increase in height and the non-compliance with the setback control. While the landscaped area was increasing, the proposal also led to a loss of a green roof, which while not technically landscaped area, provided a green outlook to the immediate southern neighbour. In the circumstances, the Panel formed the view it would be reasonable to require a 1.5m setback (increased from 600mm) from the diagonal component of the boundary opposite the rear S-W corner of the garage, being the minimum setback if the boundary was considered a side boundary (let alone a front boundary), and despite the proposed footprint being similar to an existing rear inaccessible footing of the garage. This change would provide visual relief achieved by increased landscaping to mitigate visual and outlook impacts to the southern neighbour, given the increase in height of the garage and its overall size. It would also still allow the proponent to achieve the 8 stacked car spaces sought.

The Panel had regard to the applicant's Clause 4.6 variation request regarding the minimum landscaped area standard within Clause 6.14 of Sutherland Shire LEP 2015. Given the proposal generally replaced a garage with a similar footprint, the non-compliance is pre-existing and the overall landscaped area was increasing, including in areas closest to neighbours and adjoining new structures (and subject to further increases from revised conditions), 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, the proposal was consistent with the objectives of both the landscaped area standard and the zone objectives (and thereby in the public interest) and it was considered compliance with the landscaped area standard was unnecessary and unreasonable in this case, subject to additional conditions imposed.

In terms of consideration of submissions and community views, it was noted there was one submission and the main concerns related to visual impacts, outlook, size and proximity of the garage. This was considered both within the Council assessment report and by the Panel, as outlined above. The Panel noted, from advice by Council staff, that there was a typographical error in the report relating to the depth of excavation at pg 68 of the report, which should have read 1.75m.

**VOTES**

The decision was unanimous.

**ASSESSMENT OFFICER'S RECOMMENDATION**

THAT:

1. Development Application No. 18/0270 for demolition of existing garage and construction of new detached garage and cabana at Lot 12 DP 859645 (No. 69) Tara Street, Sylvania 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 landscaped 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 landscaped area development standard be varied to 30.1%, in respect to this application.

**IHAP024-18**            **Proposal:**            **Alterations to existing dwelling**  
**Property:**            **2 Beulah Place, Engadine**  
**Applicant:**           **John Welsh Design & Draft**  
**File Number:**        **DA17/1612**

No-one spoke for or against the proposal.

**PANEL DECISION:**

THAT:

Pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act, 1979, Development Application No. 17/1612 for alterations to existing dwelling at 2 Beulah Place, Engadine be approved subject to the Conditions within the Council staff report to the Panel of 1 May 2018, with no changes.

**REASON FOR THE DECISION:**

The Panel generally agreed with the balance of planning considerations outlined within the Council staff report. The proposal was minor and suited to the site.

The Panel had regard to the applicant's Clause 4.6 variation request regarding the minimum landscaped area standard within Clause 6.14 of Sutherland Shire LEP 2015. Given the proposal was very minor, it did not reduce landscaped area (the non-compliance is pre-existing, is not being made worse and is actually increasing), 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, the proposal was consistent with the objectives of both the landscaped area standard and the zone objectives (and thereby in the public interest) and it was considered compliance with the landscaped area standard was unnecessary and unreasonable in this case.

In terms of consideration of submissions and community views, it was noted no submissions were received.

**VOTES**

The decision was unanimous.

**ASSESSMENT OFFICER'S RECOMMENDATION**

THAT:

Pursuant to the provisions of Clause 4.6 of Sutherland Shire Local Environmental Plan 2015, the written submission in relation to the variation to minimum landscaped area 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 minimum landscaped area development standard be varied to 35.01%, in respect to this application.

1. That Development Application No. 17/1612 for alterations to existing dwelling at Lot 9 DP 238949 (No. 2) Beulah Place, Engadine be approved, subject to the conditions contained in Appendix "A" of the report.

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<b>IHAP025-18</b>	<b>Proposal:</b>	<b>Section 4.56(1) - Modification of DA11/1270 - modification of landscaping, revegetation scheme and additional vegetation clearing within the SE portion of the site for the purpose of reducing fire hazard and amending a covenant</b>
	<b>Property:</b>	<b>44R Forum Drive, Heathcote</b>
	<b>Applicant:</b>	<b>Paul Fooks</b>
	<b>File Number:</b>	<b>MA17/0540</b>

Speaking against the proposal was Alan Paterson, Christine Paterson, Glenda Beath, Trevor McGuire and John Veltmeyer.

No-one spoke for the proposal, and no-one attending for the applicant was willing to answer questions from the Panel. Representatives of the applicant instead requested the Panel consider the written requests to defer the matter.

**PANEL DECISION:**

THAT:

Pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act, 1979, Modification Application No. 17/0540 for modification of landscaping, revegetation scheme and additional vegetation clearing within the SE portion of the site for the purpose of reducing fire hazard and amending a covenant at 44R Forum Drive, Heathcote be refused subject to the reasons within the Council staff report to the Panel of 1 May 2018, with the following additional reasons:

6. The nature of the portion of the site where the tree removal was proposed is on higher land, wherein the tree-line provides a silhouette to the sky for the immediate and wider locality, such that the visual impact from the meeting hall and associated infrastructure currently under construction will be magnified due to the nature of the land, and the loss of trees would also diminish the natural aspect of the overall site when viewed from the locality.
7. There are no compelling reasons to support the proposal, noting the balance of environmental conservation and bushfire safety was given close, detailed and expert consideration at the development approval stage.
8. The proposal is inconsistent with the objects of the EPA Act 1979, particularly objects in Section 1.3 (a), (b), (c) and (e).

**REASON FOR THE DECISION:**

The reasons for the decision are outlined in the decision itself, as outlined above.

The Panel had regard to the applicant's request for deferral. The following principles are reasonable to apply in such circumstances:

- (a) Are the matters for deferral able to be clearly defined and certain?
- (b) Are the matters able to be resolved in a reasonable timeframe?
- (c) Are there good prospects the deferral will lead to an acceptable outcome?

A further converse matter to consider is whether changes to achieve an acceptable outcome would result in a fundamentally different proposal.

In the circumstances, the Panel was not supportive of deferral. The proposal was fundamentally not able to be supported.

In terms of procedural fairness and the applicant's "surprise" about issues and concerns in the report, the lack of support from Council staff should not be surprising given the history and nature of the proposal. Further, the Panel noted concerns were provided by Council to the applicant by letter dated 8 February 2018, including advising the proposal was not likely to be supported for reasons not inconsistent with those in the staff assessment report.

The Panel considered the written submissions and verbal presentations from the community and agreed the proposal should not be supported.

#### **VOTES**

The decision was unanimous.

#### **ASSESSMENT OFFICER'S RECOMMENDATION**

THAT:

That pursuant to the provisions of Section 80 of the Environmental Planning and Assessment Act 1979, the requested modification to Development Consent No. 11/1270 dated 9 April 2013 for Construction of a Meeting Hall (Place of Public Worship), Construction of an Internal Road and Ancillary Works Comprising Translocation of Existing Melaleuca Deanei at Lot 1 DP 1061705, (No. 44R) Forum Drive, Heathcote not be supported for the following reasons:

1. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental planning and Assessment Act 1979 in that the proposed development fails to satisfy the objectives of the E4 – Environmental Living Zone of the Sutherland Shire Local Environmental Plan 2015 in that the proposed removal of additional trees does not preserve or enhance the natural landscape setting of the locality as well as fails to protect and restore trees, bushland and scenic values particularly along ridgelines and in other areas of high visual significance.

2. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental planning and Assessment Act 1979 in that the proposed development fails to satisfy Clause 6.5 of the Sutherland Shire Local Environmental Plan 2015 in that the proposal will not satisfy the objectives for the affected environmentally sensitive land—terrestrial biodiversity.
3. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental planning and Assessment Act 1979 in that proposed development fails to satisfy Clause a.1.2.3, Chapter 40 of the Sutherland Shire Development Control Plan 2015 in that the proposal results in the excessive removal of more 50% of the existing trees.
4. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental planning and Assessment Act 1979 in that proposed development fails to satisfy Clause a.1.2.4, Chapter 40 of the Sutherland Shire Development Control Plan 2015 in that the proposal results in the destruction of significant environmental features.
5. The application is considered unacceptable pursuant to the provisions of Section 4.15(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.

The Meeting closed at 8.15pm.