



Report of Meeting

Independent Hearing and Assessment Panel

Tuesday, 19 June 2018

6:00pm

Council Chambers

4-20 Eton Street, Sutherland

SUTHERLANDSHIRE

PRESENT: Jason Perica (Chair), Charles Hill, Julie Savet Ward and Peter Flynn.

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

IHAP030-18	Proposal:	Alterations and additions to a dwelling
	Property:	178 Ellesmere Road, Gymea Bay
	Applicant:	Craig R Jones
	File Number:	DA18/0069

No one spoke for or against the proposal. A submission from the applicant was presented to the Panel in lieu of attendance – see page 4.

PANEL DECISION:

THAT:

Pursuant to the provisions of Section 4.16 and 4.17 of the Environmental Planning and Assessment Act, 1979, Development Application No. 18/0069 for alterations and additions to a dwelling at 178 Ellesmere Road, Gymea Bay be approved subject to the Conditions within the Council staff report to the Panel meeting of 19 June 2018.

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 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 proposal and 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.

Some benefits would arise from the proposal and recommended conditions to mitigate impacts, including consolidation of lots and an additional endemic tree.

The Panel discussed the possibility and potential benefits of an alternative approach or conditions to address or consider:

1. Access from the adjoining Right of Way;
2. Managing existing stormwater issues downstream; and
3. Parking restrictions between driveways.

However, given the pre-existing situation and scale of the proposal, no amendments were considered warranted or reasonable. These matters should be considered if more significant development of the site occurs in the future.

In terms of consideration of submissions and community views, it was noted one submission was received. The Panel agreed with the Council staff consideration of this submission.

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 Landscape 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 Landscape area development standard be varied to 28% in respect to this application.
2. That Development Application No. 18/0069 for alterations and additions to a dwelling at Lots B, C, D, E, F, G, H, J, K & L DP 15316 (No. 178) Ellesmere Road, GyMEA Bay be approved, subject to the conditions contained in Appendix "A" of the report.



IHAP030-18 - 19 June 2018 – DA18/0069 – No.178 Ellesmere Road, GyMEA Bay

- Thank you for the opportunity to address the panel on this DA. My name is Mairead Hawes and I have been assisting the owners and the applicant of the subject application which seeks minor alterations and additions to a dwelling and the construction of a double garage.
- The works proposes a new garage extension of 40m² and the conversion of the existing garage into a cinema room. Additional landscaping is also proposed to ensure no net loss of landscaping occurs on site having regards to the works proposed.
- The need for the alterations is simply to allow for a second living space which most dwellings have the benefit of enjoying.
- The design rationale for the development was to minimise the visual and privacy impacts on adjoining neighbours and ensure that sufficient landscaped area and building setbacks were maintained. To achieve this, we took advantage of the significant front setback and sited the garage to ensure its not visually prominent when viewed from Ellesmere Road (its setback 18.7m from Ellesmere Road).
- Additional landscaping is also proposed to offset any loss and ensure that there is no further reduction in the landscaped area on site. As you will be aware, following a previous approval under previous owners, the landscaped area existing on site is well under the 40% site area control and we have sought to increase this area in as much form as possible.
- There is a minor encroachment into the side setback on the south western boundary of 200mm and the new garage continue at the existing setback of 1.3m and do not impede emergency access and are therefore consistent with the requirements of the control.
- The project team has worked with Council staff to ensure that no adverse impacts occur as a result of the development and I raise no issues with the recommendation of approval or conditions of consent.
- I therefore respectfully request that the Council' officers recommendation is support and you grant consent to this DA to ensure it can be used and maintained to suit the needs of the owners.

IHAP031-18	Proposal:	Use of industrial building for storage premises
	Property:	444 The Boulevard, Kirrawee
	Applicant:	Manson Group Design & Construction Pty Ltd
	File Number:	DA18/0169

Speaking for the proposal was Jeff Mead (Planner).

PANEL DECISION:

THAT:

Pursuant to the provisions of Section 4.16 and 4.17 of the Environmental Planning and Assessment Act, 1979, Development Application No. 18/0169 for use of industrial building for storage premises at 444 The Boulevard, Kirrawee be approved subject to the Conditions within the Council staff report to the Panel meeting of 19 May 2018, with two additional conditions to state:

7. Storage of Materials

The materials stored at the site shall not be of a type or volume that would trigger processes within State Environmental Planning Policy No. 33 (Hazardous and Offensive Development) or its associated current Guidelines.

8. Roller Shutter Doors – Noise

The roller shutter doors facing the street shall be chosen to be quiet in operation and maintained in good working order (or replaced as needed) to avoid any noise nuisance to the surrounding area, and to comply with relevant legislation governing noise impacts.

REASON FOR THE DECISION:

The Panel generally agreed with the balance of environmental considerations outlined within the Council staff report. The Panel considered the zone objectives (as quoted in the report).

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 as approved (the non-compliance was approved by a Complying Development Certificate for the building and is not being made worse), the Panel was satisfied regarding the landscaped area. The Panel formed the view the proposal and 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.

An additional condition was warranted to ensure the storage of materials did not contravene or trigger processes within SEPP 33, given that SEPP had not been addressed, and to ensure safety for the site and area. Similarly, while the anticipated movements of trucks at night (and a recommended condition

regarding their size) was considered acceptable, the potential noise impacts of the front roller shutter doors, particularly at night, warranted a condition to ensure their quiet operation.

In terms of consideration of submissions and community views, it was noted one submission was received. The Panel agreed with the Council staff consideration of this submission.

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 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 3.4%, in respect to this application.
2. That Development Application No. 18/0169 for the use of industrial building for storage premises at Lot B DP 368826 (No. 444) The Boulevarde, Kirrawee be approved, subject to the conditions contained in Appendix "A" of the report.

IHAP032-18 **Proposal:** **Replacement retaining walls and landscaping**
Property: **2/7 The Esplanade, Cronulla**
Applicant: **Sitedesign Studios**
File Number: **DA17/1812**

No-one spoke for or against the proposal.

PANEL DECISION:

THAT:

Pursuant to the provisions of Section 4.16 and 4.17 of the Environmental Planning and Assessment Act, 1979, Development Application No. 17/1812 for replacement retaining walls and landscaping at 2/7 The Esplanade, Cronulla be approved subject to the Conditions within the Council staff report to the Panel meeting of 19 June 2018, subject to two additional conditions as below:

1A. Landscaped Area Increases

The additional landscaped areas shown on the approved landscape plan shall be detailed in the application for a Construction Certificate to ensure they are deep soil areas and existing concrete/hard stand areas are removed.

1B. Stormwater Details

Stormwater plans associated with the new work with the Construction Certificate shall ensure water is not directed to adjoining residential properties.

REASON FOR THE DECISION:

The Panel generally agreed with the assessment of environmental considerations outlined within the Council staff report. The proposal is relatively minor and the impacts are appropriately regulated and mitigated by recommended conditions of consent. The new retaining wall will improve the visual impact from adjoining public areas.

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 non-compliance was pre-existing and the proposal did not reduce landscaped area (it was actually being increased), the Panel was satisfied regarding the landscaped area. The Panel formed the view the proposal and 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.

In terms of consideration of submissions and community views, it was noted two submissions were received, both relating to stormwater drainage. There should be some improvement in the issue with

the increase in landscaped area and an additional condition relating to stormwater discharge associated with new work was imposed.

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 SSLEP2015 Cl.6.14 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 Cl.6.14 Landscaped Area development standard requiring 231m² be varied to 93m², a variation of 59%, in respect to this application.
2. That Development Application No. 17/1812 for Replacement retaining walls and landscaping at S/P 1229 7 The Esplanade, Cronulla be approved, subject to the conditions contained in **Appendix "A"** of the report.

IHAP033-18	Proposal:	Alterations and additions to existing Woollooware Golf Club
	Property:	1R Harnleigh Avenue, Woollooware
	Applicant:	Woollooware Golf Club Limited
	File Number:	DA18/0198

No-one spoke for or against the proposal.

PANEL DECISION:

THAT:

Pursuant to the provisions of Section 4.16 and 4.17 of the Environmental Planning and Assessment Act, 1979, Development Application No. 18/0198 for alterations and additions to existing Woollooware Golf Club at 1R Harnleigh Avenue, Woollooware be approved subject to the Conditions within the Council staff report to the Panel meeting of 19 June 2018, subject to revision to Condition 2 and an additional Condition 19 as below:

2. Flood Emergency Plan

Flood Emergency Response plan must be prepared by a suitably qualified flood risk consultant. The plan must include details about the allocation of flood wardens and requirements for warning signs and evacuation procedures. The plan must address any increased numbers of patrons post development. Refuge within the club/building is not supported.

19. Flood Requirements

A. Design

A suitably qualified engineer must certify that the structure can withstand the forces of floodwater, scour, debris and buoyancy up to and including the 1% AEP level of 6.5m AHD.

Details and certification must accompany the application for a construction certificate.

B. Before Occupation

i) The certification referred to above must form part of the application for an Occupation Certificate.

REASON FOR THE DECISION:

The Panel generally agreed with the assessment of environmental considerations outlined within the Council staff report. The use is permissible in the zone, supports a public recreational use and will have overall positive social and economic impacts, with environmental impacts appropriately regulated and mitigated by the recommended conditions of consent. It is noted the works will improve equitable access within the building and the parking provided meets projected demand.

The Panel received advice from Council staff that an approval under the Water Management Act 2000 (due to proximity of an apparent watercourse) was not needed. In any event, the application was not made as Integrated Development and any separate approval is a matter for separate legislation and the Council to ensure it is met.

The staff report made reference to a condition regarding flood planning that did not appear in recommended conditions. An additional condition was warranted, whose terms were provided to the Panel at the meeting, from specialist engineering staff at Council.

In terms of consideration of submissions and community views, it was noted there was no submissions regarding the proposal.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

1. Development Application No. 18/0198 for Alterations and additions to existing Woollooware Golf Club at Lot 1 DP 556090, Part Lot 2 DP 556090 1R Harnleigh Avenue, Woollooware, 1 Harnleigh Avenue, Woollooware be approved, subject to the conditions contained in Appendix "A" of the report.

IHAP034-18	Proposal:	Demolition of existing structures, construction of a 6 storey mixed use development containing 17 residential dwellings, medical facilities and basement carparking
	Property:	17 Hinkler Avenue, Caringbah
	Applicant:	H17 Pty Ltd
	File Number:	DA17/0020

Speaking for the proposal was Mohamed El Dardiry and Pavlo Doroch (ADS Architects).

PANEL DECISION:

THAT:

Pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act, 1979, Development Application No. 17/0020 for demolition of existing structures, construction of a 6 storey mixed use development containing 17 residential dwellings, medical facilities and basement carparking at 17 Hinkler Avenue, Caringbah be approved subject to the Conditions within the Council staff report to the Panel meeting of 19 June 2018, with the following changes:

- a) Incorporation of a standard condition(s) of consent addressing classification and disposal of material, and any unexpected finds, in accordance with SEPP 55 (Remediation of Land) and associated current Guidelines;
- b) Amend the second word of Condition 15 to state “avoid” rather than “minimise”;
- c) Amend Condition 29 to include the following paragraph after the first paragraph:

“Reasonable efforts must be made (and documented) seeking access to the adjoining properties. In the event that access is denied, evidence of the consultation and efforts to seek access must be provided to the Certifier and the Council. Upon Council’s acknowledgement that all reasonable attempts at gaining access have been made, the following is to occur:

 - *A remote external visual assessment from accessible property boundaries is to be made of the property denied access to, and those details are to be incorporated into a dilapidation report of reduced scope.”*

REASON FOR THE DECISION:

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

The issue of isolation of an adjoining lot to the north was detailed in the Council assessment report and the Panel was satisfied appropriate efforts had been made to seek amalgamation with the adjoining site, having regard to principles established by the Land and Environment Court.

The Panel had regard to the applicant's' Clause 4.6 variation request regarding the maximum height limit Clause 4.3 of Sutherland Shire LEP 2015. The proposal included 6 storeys, envisaged by the planning controls, and included a ground level medical use, encouraged by the planning controls. The height limit exceedance was a result of the ground level use and associated ceiling height and the rooftop structures associated with access to a communal rooftop area. The Panel supported the rooftop use and was satisfied the non-compliance resulted in a better overall environmental planning outcome than if compliance was required. The character of the area was in transition and the height and bulk had been appropriately modulated and sited. The Panel formed the view the proposal and the applicant's written request satisfactorily addressed required matters within Clause 4.6 of the LEP and it was considered compliance with the height limit standard was unnecessary and unreasonable in this case.

The proposal was satisfactory having regard to SEPP 65 (Design Quality of Residential Apartment Development) and had been modified over a long period of time in consultation with Council and its Design Review Forum.

The environmental impacts were appropriately regulated and mitigated by conditions of consent, with some minor changes warranted to address SEPP 55 (Remediation of Land) and practical issues.

In terms of consideration of submissions and community views, it was noted there was one submission to the original proposal. The Panel noted the matters raised and agreed with the Council staff assessment of those matters.

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 submissions in relation to the requested variations detailed below satisfy the relevant provisions of Clause 4.6 and are therefore supported. It is recommended that the provisions of Clause 4.6 be invoked and these development standards be varied as detailed below, in respect to this application.

Development Standard	Clause	Requirement	Proposal	% Variation
Building Height	4.3	20m	23.5m max (lift overrun)	17.5% (3.5m over)
Landscaped Area	6.14	30% (334.44m ²)	27% (301.5m ²)	9.85% (32.94m ² under)

2. Pursuant to the provisions of Section 4.16 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. 17/0020 for demolition of existing structures, construction of a 6 storey mixed use development containing 18 residential dwellings, medical facilities and basement carparking at Lot 24 DP 15573, Lot 25 DP 15573 (Nos. 17-19) Hinkler Avenue, Caringbah is determined by the granting of development consent subject to the conditions.

IHAP035-18	Proposal:	DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING
	Property:	Nos. 669 - 671 Old Princes Highway, Sutherland
	Applicant:	Cresco - Opus Fund Pty Ltd
	File Number:	DA17/1056

Speaking for the proposal was Scott Barwick (Planner), Rachid Andary and Alain Assoum (Architects)

PANEL DECISION:

THAT:

Determination of the application be deferred and the applicant be invited to, within the next 28 days:

- a) Meet and confer with Council staff about the technical disagreement about compliance with the landscaped area and FSR development standards, seeking to eliminate or minimise any areas of technical disagreement;
- b) Submit amended plans which address the design changes recommended within the Council staff report, which is to include either full or close compliance with the 3m basement setback to Old Princes Highway for deep soil planting and an associated redesign of the carpark (which in turn is not to include less than 36 car spaces, but to include at least 38 spaces if another basement level is required due to the setback change);
- c) Submit any necessary supporting information with the above to assist in the Panel's subsequent determination.

Following receipt of the above information and process above, the Council staff shall report the matter back to the Panel for determination as soon as practicable, which may occur by electronic means.

REASON FOR THE DECISION:

The Panel generally agreed with the Council staff assessment report, with some areas of disagreement. The issue of parking provision had mixed views within the Panel, with the majority of the Panel satisfied with 36 car spaces (having regard to the ADG provisions, Department of Planning and Environment's Planning Guideline, location of the site and close compliance), while Peter Flynn was of the view 38 spaces should be required, given the DCP controls tailored for the area and based on research and Council's consistent application of the parking controls. In terms of the basement setback to Old Princes Highway, the Panel agreed a 3m setback should be provided (whether or not the landscaped area standard was met) although some minor encroachment may be acceptable for part of the frontage. This would necessitate a basement redesign, which should retain 36 car spaces, hopefully achievable within 2 basement levels. If not and a third basement level was needed, then 38 car spaces could and should be accommodated.

The Panel was favourably pre-disposed to accept the height non-compliance given the minor and localised nature of the non-compliance, having regard to the provisions of Clause 4.6 of Sutherland Shire LEP 2015 and the applicant's written request, and generally agreed with the Council staff assessment in this regard.

However, there was a technical disagreement about the compliance of the proposal with the FSR and Landscaped Area development standards. This was important, as the matter could not be determined in the absence of a Clause 4.6 Variation request (despite the Council staff approach of recommending approval with conditions to require compliance). Arguments were put forward by the applicant claiming compliance was achieved with both standards, although the Panel did not have sufficient evidence and analysis before it to conclude the Clause 4.6 Variation requests were not needed.

In these circumstances, together with the scope of design changes to the basement and building, deferral was warranted. Consideration was given to delegating the subsequent determination to Council staff, although it was considered more appropriate that the Panel subsequently determine the matter, which may be by electronic means.

VOTES

The decision was unanimous, although Peter Flynn was of the view 38 car spaces should be provided, for reasons given above.

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 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 height of building development standard be varied to 22.35m with respect to this application.
2. That Development Application No. 17/1056 for Demolition of existing structures and construction of a residential flat building at Lots 16 and 17 DP 234941, 669 to 671 Old Princes Sutherland be approved, subject to the conditions contained in **Appendix "A"** of the report.

The Meeting closed at 8.10pm.