



Report of Meeting

Independent Hearing and Assessment Panel

Tuesday, 3 July 2018

6.00pm

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

SUTHERLANDSHIRE

PRESENT: Grant Christmas (Chair), Mary-Lynne Taylor, Jan Murrell, David Russell
Staff in attendance: Manager, Major Development Assessment (Mark Adamson)

DISCLOSURES OF INTEREST

File Number: 2015/14239

David Russell declared a non-pecuniary and non-significant interest in relation to Items IHAP036-18 and IHAP 038-2018 as he knew the architect for each proposal on a professional basis. The Chairman ruled that the declarations were accepted and would not impact on Mr Russell's ability to consider the applications impartially and he was permitted to sit and vote on both Items.

IHAP036-18	Proposal:	DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING AND 19 LOT STRATA SUBDIVISION
	Property:	LOT A DP 407740, LOTS 1-5 S/P 17068 (NO. 64-66) KINGSWAY, CRONULLA
	Applicant:	INNOVATE ARCHITECTS PTY LTD
	File Number:	DA17/1207

Speaking against the proposal was Michael Burr.

Speaking for the proposal was Geoff Mead (town planner) and Cameron Jones (architect).

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. 17/1207 for demolition of existing structures and construction of a residential flat building and 19 lot strata subdivision at 64-66 Kingsway, Cronulla be approved subject to the conditions in the Council Officer's report except that condition 2A(vii) be deleted and the addition of condition 2A(ix) to read: "The landscape plan is to be amended to provide for the two angophora costata in close proximity to the loggia to be re-located approximately 5 metres from each edge of the loggia."

REASON FOR THE DECISION

1. The Panel agreed that the Clause 4.6 request for the non-compliance with the height development standard adequately addressed the contravention of the development standard by demonstrating that compliance with the development standard was unnecessary in the

circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard. Further, the Panel considered that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone. The Panel accepted that the height over and above the 16 metre standard was acceptable for the reasons stated above.

2. The development was well designed and appropriate in its context and will contribute to additional housing stock.
3. The proposed loggia was a useful item for the convenience of residents and clearly defines the entrance to the building and will sit comfortably in the streetscape.

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 of Clause 4.3, Height of buildings 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 16m building height development standard be varied to 17m, in respect to this application.
2. That Development Application No. 17/1207 for demolition of existing structures and construction of a residential flat building and 19 lot strata subdivision at Lot A DP 407740, Lots 1-5 S/P 17068 and S/P 17068 (Nos. 64-66) Kingsway, Cronulla be approved, subject to the conditions contained in **Appendix "A"** of the report.

IHAP037-18	Proposal:	DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING CONTAINING 14 DWELLINGS
	Property:	LOT 2 DP 6641 & LOT 1 DP 14636 (NOS. 19-21) ACTON STREET, SUTHERLAND
	Applicant:	GOW HOLDINGS (NSW) PTY LTD
	File Number:	DA17/0877

Speaking against the proposal was Maureen Hardy. Note: A written submission was provided by a speaker who registered but could not attend (Palvinder Sooch) and a copy of the submission was provided to the Applicant's representatives.

Speaking for the proposal was Chris Weston (town planner) and Peter Bournazos (owner).

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. 17/0877 for demolition of existing structures and construction of a residential flat building containing 14 dwellings at 19-21 Acton Street, Sutherland be refused generally in accordance with the Council Officer's recommendation as follows:

1. A written request to vary the height and landscaped area development standards pursuant to the provisions of Clause 4.6 of the *Sutherland Shire Local Environmental Plan 2015* has not been submitted and without such requests, there is no power to approve the application.
2. The proposal is considered unacceptable pursuant to Section 4.15 (1)(a) of the *Environmental Planning and Assessment Act 1979* as the development fails to achieve compliance with the landscaped area development standard of Clause 6.14 of *Sutherland Shire Local Environmental Plan 2015*.
3. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, it is considered that the proposal is inconsistent with *Sutherland Shire Local Environmental Plan 2015* with respect to Clauses 6.16 and 6.17 'Urban Design' objectives. Specifically objectives 6.16 (b)(i),(ii), (c),(d) and 6.17 (b),(c), (d),(e) and (f).
4. The proposal is considered unacceptable pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the development fails to achieve compliance with Section 28(2)(c) of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* as:
 - i. the proposed building separation is unsatisfactory in regards to the design criteria objectives and design guidance controls contained in Section 2F, Part 2 Developing the Controls and 3F Siting the Development of the *Apartment Design Guide*, whereby the

- development will fail to provide the specified building separation with consequential acoustic, privacy and overshadowing impacts to neighbouring development and the failure to achieve a satisfactory contextual transition with adjoining development particularly at the upper level; and
- ii. the design of the communal open space area is unsatisfactory in regards to the design criteria objectives and design guidance controls contained in Section 3D, Part 3 Siting the Development of the *Apartment Design Guide* whereby the communal open space area will be visually inaccessible, awkward in shape and form and will not provide the necessary amenity to encourage use or enhance safety of occupants.
5. The proposal is considered unacceptable pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the development fails to achieve compliance with Objectives 1.1(3), (5) and (8) and Control 1.2(9) and (12), Chapter 6 of *Sutherland Shire Development Control Plan 2015* whereby the proposed design has not catered for servicing or provided sufficient area to accommodate landscaping, in particular between the driveway and eastern boundary with consequent access, visual and environmental impacts.
 6. The proposal is considered unacceptable pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the development fails to achieve compliance with Objectives 2.1(3) and (4) and Control 2.2,(1) and (3) Chapter 6 of *Sutherland Shire Development Control Plan 2015* as the basement will be positioned within the front setback and will fail to provide a satisfactory area for deep soil planting;
 7. The proposal is considered unacceptable pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the development fails to achieve compliance with Objectives 3.1(1),(2),(3),(4),(5) and (9) and Control 3.2(1) and (3) whereby the development fails to provided side setbacks which achieve a satisfactory transition with adjoining development particularly at the upper level, and will generate acoustic, privacy and overshadowing impacts to neighbouring development.
 8. The proposal is considered unacceptable pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the development fails to achieve compliance with Objective 6.1(4) and Control 6.2(5), Chapter 6 of *Sutherland Shire Development Control Plan 2015* as the development will result in less than 2 hours solar access to private open space areas of neighbouring development, an impact which would be lessened by compliant building separation as specified by the *Apartment Design Guide* and Clause 3.2, Chapter 6 of *Sutherland Shire Development Control Plan 2015*.
 9. The proposal is considered unacceptable pursuant to the provisions of Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the development fails to achieve compliance with Objectives 11.1(1),(3),(7) and (8) and Control 11.2(1), Chapter 6 of *Sutherland Shire Development Control Plan 2015* as the design does not facilitate on-site collection or provide a suitable standing area for a waste collection vehicle. Kerbside collection in the subject location will have unsatisfactory safety, access and presentation related implications
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due to the number of bins and high on-street parking demand which would restrict access to bins.

10. The proposal is considered unacceptable pursuant to Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979* on the basis that the applicant has failed to demonstrate that the site is suitable for the development in the form proposed.

REASON FOR THE DECISION

The Panel notes for the reasons set out above in the Panel Decision that the Applicant can lodge a Section 8.3 review request which could include a Clause 4.6 request for any contravention of applicable development standards.

VOTES: The decision was unanimous.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

Pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act 1979, Development Application No. 17/0877 for demolition of existing structures and construction of a residential flat building containing 14 dwellings at Lot 1 DP 14636, Lot 2 DP 6641 (Nos. 19-21) Acton Street, Sutherland is determined by the refusal of development consent for the reasons outlined below.

1. The proposal is considered unacceptable pursuant to Section 4.15(1)(a) of the *Environmental Planning and Assessment Act 1979* as the development fails to achieve compliance with the height development standard of Clause 4.3 of *Sutherland Shire Local Environmental Plan 2015*.
2. The proposal is considered unacceptable pursuant to Section 4.15(1)(a) of the *Environmental Planning and Assessment Act 1979* as the development fails to achieve compliance with the landscaped area development standard of Clause 4.3 of *Sutherland Shire Local Environmental Plan 2015*.
3. A written request to vary the height and landscaped area development standards pursuant to the provisions of Clause 4.6 of the *Sutherland Shire Local Environmental Plan 2015* has not been submitted. The applicant has failed to adequately demonstrate why, in the case of this application, compliance with these development standards are unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standards.
4. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, it is considered that the proposal is inconsistent with *Sutherland Shire Local Environmental Plan*

- 2015 with respect to Clauses 6.16 and 6.17 'Urban Design' objectives. Specifically objectives 6.16 (b)(i),(ii), (c),(d) and 6.17 (b),(c), (d),(e) and (f).
5. The proposal is considered unacceptable pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the development fails to achieve compliance with Section 28(2)(c) of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* as:
 - i. the proposed building separation is unsatisfactory in regards to the design criteria objectives and design guidance controls contained in Section 2F, Part 2 Developing the Controls and 3F Siting the Development of the *Apartment Design Guide*, whereby the development will fail to provide the specified building separation with consequential acoustic, privacy and overshadowing impacts to neighbouring development and the failure to achieve a satisfactory contextual transition with adjoining development particularly at the upper level; and
 - ii. the design of the communal open space area is unsatisfactory in regards to the design criteria objectives and design guidance controls contained in Section 3D, Part 3 Siting the Development of the *Apartment Design Guide* whereby the communal open space area will be visually inaccessible, awkward in shape and form and will not provide the necessary amenity to encourage use or enhance safety of occupants.
 6. The proposal is considered unacceptable pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the development fails to achieve compliance with Objectives 1.1(3), (5) and (8) and Control 1.2(9) and (12), Chapter 6 of *Sutherland Shire Development Control Plan 2015* whereby the proposed design has not catered for servicing or provided sufficient area to accommodate landscaping, in particular between the driveway and eastern boundary with consequent access, visual and environmental impacts.
 7. The proposal is considered unacceptable pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the development fails to achieve compliance with Objectives 2.1(3) and (4) and Control 2.2,(1) and (3) Chapter 6 of *Sutherland Shire Development Control Plan 2015* as the basement will be positioned within the front setback and will fail to provide a satisfactory area for deep soil planting;
 8. The proposal is considered unacceptable pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the development fails to achieve compliance with Objectives 3.1(1),(2),(3),(4),(5) and (9) and Control 3.2(1) and (3) whereby the development fails to provided side setbacks which achieve a satisfactory transition with adjoining development particularly at the upper level, and will generate acoustic, privacy and overshadowing impacts to neighbouring development.
 9. The proposal is considered unacceptable pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the development fails to achieve compliance with Objective 6.1(4) and Control 6.2(5), Chapter 6 of *Sutherland Shire Development Control Plan 2015* as the development will result in less than 2 hours solar

access to private open space areas of neighbouring development, an impact which would be lessened by compliant building separation as specified by the Apartment Design Guide and Clause 3.2, Chapter 6 of *Sutherland Shire Development Control Plan 2015*.

10. The proposal is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the development fails to achieve compliance with Objectives 11.1(1),(3),(7) and (8) and Control 11.2(1), Chapter 6 of *Sutherland Shire Development Control Plan 2015* as the design does not facilitate on-site collection or provide a suitable standing area for a waste collection vehicle. Kerbside collection in the subject location will have unsatisfactory safety, access and presentation related implications due to the number of bins and high on-street parking demand which would restrict access to bins.
11. The proposal is considered unacceptable pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* on the basis that applicant has failed to demonstrate that the site is suitable for the development in the form proposed.
12. The proposal is considered unacceptable pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* on the basis that approval of the development is not in the public interest, as the development fails to comply with height standard or provide the minimum landscaped area prescribed by *Sutherland Shire Local Environmental Plan 2015*.

IHAP038-18	Proposal:	CONSTRUCTION OF ADDITIONAL DWELLING TO CREATE DETACHED DUAL OCCUPANCY
	Property:	Lot 2 DP 19260 (No. 135) Bunarba Road, Gymea Bay
	Applicant:	John & Hayley Ann Adis
	File Number:	DA17/0806

Speaking against the proposal was David Ward.

Speaking for the proposal was John Adis, Lyndall Wynne, Chris Freeburn, Graham Swain, Steve Adis and Daniel Tahhan.

PANEL DECISION

THAT:

The application be deferred and the Applicant be required to erect height poles on the subject site (with the location and heights of the poles being verified by registered surveyor) so that the Applicant can provide a view analysis and for the Council officers to undertake a site inspection so that a further report on view loss can be prepared. The height poles should remain in place for a subsequent Panel meeting. The Applicant is required to undertake the view analysis for Nos, 4, 6 and 8 Westringia Place and Nos. 133 and 137 Bunarba Rd.

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 variations the maximum building height development standard under Subclause 2C, Clause 4.3 satisfy the relevant provisions of Clause 4.6 and that the variations are therefore supported. It is recommended that the provisions of Clause 4.6 be invoked and the maximum building height development standard be varied as follows: 0.59m or 14.6% (pre-existing variation) for existing cottage and 2.8m or 55.6% for new dwelling, in respect to this application.
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. 17/0806 for Construction of additional dwelling to create detached dual occupancy at Lot 2 DP 19260 (No. 135) Bunarba Road, Gymea Bay is determined by granting of development consent subject to the conditions.

IHAP039-18	Proposal:	ADDITION OF 1 UNIT TO AN APPROVED RESIDENTIAL FLAT BUILDING
	Property:	LOT 100 DP 1232269, (NO. 17) MITCHELL AVENUE, JANNALI
	Applicant:	WINIM FUNDS MANAGEMENT PTY LIMITED
	File Number:	DA18/0004

No-one spoke against the proposal.

Speaking for the proposal was Jeff Mead and Ben Pomeroy.

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. 18/0004 for addition of 1 unit to an approved residential flat building at 17 Mitchell Avenue, Jannali be approved subject to the conditions recommended in the Council officer's report with the exception of condition 2.A.i. which is to be deleted and replaced with:

- a) The roof form over the eastern terrace is to be amended to align with the southern wall of the eastern bedroom to Unit 401 and to not extend more than 1500mm from the eastern wall of Unit 401.

REASON FOR THE DECISION

The Panel agreed that the Clause 4.6 request to the non-compliance with the height development standard adequately addressed the contravention of the development standard by demonstrating that compliance with the development standard was unnecessary in the circumstances of the case, and found there are sufficient environmental planning grounds to justify contravening the development standard. Further, the Panel considered that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone. The Panel accepted that the height over and above the 16 metre standard was acceptable having regard to condition proposed by the Applicant.

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 16m maximum Building Height development standard does not satisfy the relevant provisions of Clause 4.6, however a variation to the extent recommended in the assessment component of this report is acceptable.

It is recommended that the provisions of Clause 4.6 be invoked and that the building height development standard be varied to 17.8m (+1.8m or 11.25% variation).

2. That Development Application No. 18/0004 for Addition of 1 unit to an approved residential flat building at Lot 100 DP 1232269 17 Mitchell Avenue, Jannali is determined by the granting of development consent subject to the conditions contained in Appendix "A".

IHAP040-18	Proposal:	PARTIAL DEMOLITION OF EXISTING STRUCTURES, ALTERATIONS AND ADDITIONS TO A DWELLING AND CONSTRUCTION OF A BALCONY
	Property:	LOT 191 DP 262701, (NO. 9) BARNES CRESCENT, MENAI
	Applicant:	NEVILLE DAVID COSGROVE & RAYLENE ANN COSGROVE
	File Number:	DA18/0391

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. 18/0391 for partial demolition of existing structures, alterations and additions to a dwelling and construction of a balcony at 9 Barnes Crescent, Menai be approved in accordance with the conditions in the Council officer report with the addition of a condition to read:

“An appropriate street tree be planted at the owner’s cost and in consultation with the Council’s landscape assessment officer.”

REASON FOR THE DECISION

1. The Panel agreed that the Clause 4.6 request for the non-compliance with the landscape development standard adequately addressed the contravention of the development standard by demonstrating that compliance with the development standard was unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard. Further, the Panel considered that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone. The Panel considered that the shortfall in the amount of landscaped area was acceptable having regard to the particular site circumstances and the proposed built form which was located over an existing rock platform.
2. The Panel noted that the owner agreed to the imposition of the additional condition.

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 Clause 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 landscaped area development standard be varied to 29% (25% variation), in respect to this application.
2. That Development Application No. 18/0391 for partial demolition of existing structures, alterations and additions to a dwelling and construction of a balcony at Lot 191 DP 262701 9 Barnes Crescent, Menai be approved, subject to the conditions contained in Appendix "A" of the report.

The Meeting closed at 8.30pm.