

CITY OF CANTERBURY BANKSTOWN

MINUTES OF THE

INDEPENDENT HEARING AND ASSESSMENT PANEL MEETING

**HELD IN THE COUNCIL CHAMBERS
CAMPSIE CUSTOMER SERVICE CENTRE**

ON 7 AUGUST 2017

PRESENT: Mr Anthony Hudson (Law) - Chairperson
Mr Michael File (Planning)
Dr Ian Garrard (Environment)
Mr Garth Paterson (Urban Design)

STAFF IN

ATTENDANCE: Ms Chauntelle Mitchell (Administration Officer - IHAP)
Mr Ian Woodward (Manager Development, not present for the closed session)
Mr Stephen Arnold (Coordinator Planning - West, not present for the closed session)
Ms Lia Chinnery (Coordinator Governance, not present for the closed session)
Mr George Gouvatsos (Coordinator Planning - East, not present for the closed session)
Mr Nicholas Aley (Team Leader Planning - West, not present for the closed session)
Ms Casandra Gibbons (Senior Planner, not present for the closed session)
Ms Alice Pettini (Senior Planner, not present for the closed session)
Mr Ryan Bevitt (Planner, not present for the closed session)
Mr Peter Wells (Planning Consultant, not present for the closed session)

THE CHAIRPERSON DECLARED THE MEETING OPEN AT 6.00 PM.

INTRODUCTION

The Chairperson welcomed all those present and explained the functions of IHAP and that the Panel would be considering the reports and the recommendation from the Council staff and the submissions made by objectors and the applicant and/or the applicant's representative(s) and determining the development applications.

DECLARATIONS OF INTEREST

The Chairperson asked the Panel if any member needed to declare a pecuniary interest in any of the items on the agenda. There were no declarations of interest.

DELEGATION

By Minute No. 205, dated 25 October 2016 the Council delegated to the Independent Hearing and Assessment Panel the Council's power to determine certain development applications, to consider all Planning Proposals and make subsequent recommendations as to whether the matter should proceed to Gateway Determination.

DECISION

1 9-11 WEYLAND STREET, PUNCHBOWL: DEMOLISH EXISTING STRUCTURES, CONSOLIDATION OF BOTH LOTS INTO ONE AND CONSTRUCTION OF A SIX-STOREY MIXED USE DEVELOPMENT COMPRISING 39 APARTMENTS, TWO COMMERCIAL TENANCIES, A TWO LEVEL BASEMENT FOR PARKING AND ASSOCIATED LANDSCAPING

Site Visit

An inspection of the site was undertaken by the Panel and staff members prior to the public hearing.

Public Addresses

<p>Mr Philip Bull (planner on behalf of the applicant) and Mr Napoleon Perdis (on behalf of owner)</p>	<ul style="list-style-type: none">• The applicant's representative noted further amendments have been made as a result of the Section 34 Conference, significant amendments included:<ul style="list-style-type: none">- Block B reduced in height and roof form has been changed;- Increased setback in Block B to the fifth and sixth levels;- Reduction in the number of units from 42 to 39.• Notes the design has been amended ten times.• Advised a revised clause 4.6 request and structural statement has been provided.• Answered questions from the Panel in regard to clause 4.6 height control justification, departures from the minimum requirements of the ADG, BCA performance solutions and clarification of amendments made, specifically in regard to internal building separation.
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Panel Assessment

The Panel does not agree with the recommendation for entering into a Section 34 agreement based on the plans presented to the Panel.

The Panel previously emphasised the internal separation between the two unit blocks, and it appears to the Panel that this has not changed significantly since the Panel previously reviewed the application, despite what the owner and the planner representing the applicant indicated.

The internal separation non-compliances are between 25 - 40% throughout the building design and site layout, and the Panel does not accept that the treatments proposed would properly address privacy, amenity and sunlight access issues between the south facing and north facing apartments for the two blocks. Additionally a significant height exceedance remains, with a 7 storey lift entrance required to meet the rooftop terrace and amenities. The proposal also exhibits non-compliance with the SEPP 65 design quality principles including:

- 100% non-compliance with deep soil zone;
- 100% non-compliance with the side setbacks, impacting neighbouring developments;
- 20% non-compliance with ceiling height for commercial areas; and
- Exceeds the 18 metre height control by over 2 metres, even setting aside the proposed lift over exceedances.

These issues of non-compliance are further addressed below.

Further, the Panel is of the opinion that the justification for the proposed breaches is fundamentally flawed. The applicant justifies the breaches in height on the basis that the site would “*not be implementing urban consolidation to the fullest extent practicable on the site or provide a functional 6 storey building on the site*”. The Panel interprets this to mean that the applicant is seeking the maximum yield to the fullest extent possible and then working backwards to justify this as part of the clause 4.6 variation.

Adopting such a justification usurps the need for compliance with planning controls, such as SEPP 65, creating detrimental impacts on both future residents and the surrounding area. It is considered approval would encourage further non-compliance in subsequent proposals beyond, for example, the 40% internal separation exhibited by this proposal. Further, it is also stated that various departures do not create any detrimental environmental impact, whereas the Panel is of the opinion that there is significant impact as referred to above, particularly to the future occupants.

In addition the Panel notes that there is still inadequate communal open space which is 14% below the recommended ADG standards even allowing for the rooftop communal open space.

The proposal presents with very minimal deep soil, nil side setback and reduced ceiling heights and depths for the commercial space. While these matters of themselves may not be reasons for refusal, when considered cumulative with the other matters, this further demonstrates poor design quality and overdevelopment of the site. The Panel notes that the adjoining developments which the applicant uses to justify the non-compliances by way of precedent, all have lower unit numbers, density and height exceedances.

The landscape plans submitted indicate one tree species, which more than likely would struggle to provide amenity based on the lack of solar access into the courtyards.

IHAP Determination

The Independent Hearing and Assessment Panel does not concur with Council entering into a Section 34 agreement to approve DA-632/2015.

Vote: 4 – 0 in favour

2 159 PRIAM STREET, CHESTER HILL: ALTERATIONS AND ADDITIONS TO APPROVED MIXED USE DEVELOPMENT, INCLUDING AN ADDITIONAL LEVEL CONTAINING FOUR APARTMENTS

Site Visit

An inspection of the site was undertaken by the Panel and staff members prior to the public hearing.

Public Addresses

Mr Jin Wang (objector)	<ul style="list-style-type: none"> • Raised concern with regard to privacy impacts; bulk, height and appearance of the proposed development; structural concerns in regard to cracking viewed on the existing building; loss of value of their property and construction and impact noise.
Mr Garry Chapman (Planner on behalf of Applicant)	<ul style="list-style-type: none"> • Noted the application relates to the addition of four units. • Responded to concerns raised by the previous speaker, as follows: <ul style="list-style-type: none"> - Structural concerns: A structural engineering report has been provided. - Building form: Advised a photomontage has been

	<p>provided, is of the view the proposed development is consistent with the character of Chester Hill. Notes proposal complies with the FSR and ADG requirements. A cl 4.6 request has been submitted in relation to the lift overrun.</p> <ul style="list-style-type: none"> - Privacy: The separation distance to the previous speaker's residence is in excess of ADG guidelines. - Loss of value to property: Made reference to the Act. - Construction noise: Notes construction conditions proposed. <ul style="list-style-type: none"> • Responded to Panel's query regarding landscaping; advised a landscape plan had not been submitted and had no objection to a condition to provide podium level landscaping.
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Panel Assessment

The Panel agrees with the report and the recommendations.

The Panel noted the concerns of the neighbour in relation to privacy, bulk and height, loss of value and construction and impact noise.

Importantly this application relates only to the additional four units on top of the already approved development from 2009 (which the Panel notes that there is no dispute that this has been lawfully commenced).

However, the Panel agrees with the assessment that the impacts from the new development are minimal and not sufficient to warrant refusal of the application. The additional development is well set back from the boundary and the Panel agrees with the clause 4.6 for the small variation in height which arises primarily from the change in level towards the south east corner.

Reference was also made to the stability of the building and visible cracking. The Panel notes proposed condition 15 which addresses this prior to the issue of the construction certificate.

IHAP Determination

THAT Development Application DA-940/2016 be **APPROVED** in accordance with the Council staff report recommendation, subject to the following change to the recommended conditions:

Amend Condition 6 to add the following words after the last sentence:

“Also careful consideration needs to be given in the selection of suitable mid sized shrubs (for example Lilly Pilly (*Acmena smithii* “Red Tip” as a mid sized hedge plant) and small trees (for example Weeping Lilly Pilly *Waterhousia floribunda* a mid sized evergreen or Crepe Myrtle *Lagerstroemia indica* as deciduous) in the planters on the eastern side of the podium level. This planting is to provide further visual amenity and screening to residents within the proposed podium level units and to the western rear yards of the properties in Grevillea Road.”

Vote: 4 – 0 in favour

3 25 MACTIER AVENUE, MILPERRA: DEMOLITION OF THE EXISTING STRUCTURES ON SITE, AND THE CONSTRUCTION OF A TWO STOREY ATTACHED DUAL OCCUPANCY WITH ASSOCIATED CAR PARKING, LANDSCAPING, FRONT FENCE AND SITE WORKS, WITH TORRENS TITLE SUBDIVISION

Site Visit

An inspection of the site was undertaken by the Panel and staff members prior to the public hearing.

Public Addresses

There was no public address for this matter.

Panel Assessment

The Panel agrees with the recommendation.

The Panel notes that the introduction of the dual occupancy including the fencing along the northern side to create the private open space and courtyards for the development will be a change to the streetscape.

Fencing could be erected without approval under the NSW Exempt and Complying Code SEPP. The Panel noted the conditions require certain changes to the fencing to address aspects of streetscape.

IHAP Determination

THAT Development Application DA-83/2017 be **APPROVED** in accordance with the Council staff report recommendation, subject to the following change to the recommended conditions:

Insert new point (i) under condition 4 as follows:

“4 i) include additional planting to the north east corner to provide a more softer more contextual landscape definition to this area.”

Vote: 4 – 0 in favour

4 1236-1244 CANTERBURY ROAD, ROSELANDS: MODIFICATION APPLICATION TO MODIFY THE NUMBER OF APARTMENTS FROM 62 TO 66 AND AMEND THE BASEMENT AND BUILDING FAÇADE TREATMENT FOR A MIXED USE DEVELOPMENT

Site Visit

An inspection of the site was undertaken by the Panel and staff members prior to the public hearing.

Public Addresses

Mrs Sophie Plessas (objector)	<ul style="list-style-type: none">• Speaking on behalf of a number of residents.• Is of the view the applicant is seeking to obtain retrospective approval for gross breaches of the original development consent.• Provided details of breaches of the consent, including dilapidation and excavation deferred commencement conditions, building in excess of the height limit, construction closer to her boundary and setback compliance, construction of a balustrade not in accordance with the plans, working outside the approved construction hours, damage to her property and
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	<p>non-compliance with conditions relating to dust control.</p> <ul style="list-style-type: none"> • Advised she has been unable to obtain a copy of the dilapidation report from the applicant or the certifier following requests on numerous occasions. • Raised concern about overshadowing to her backyard. Tabled photographs of her backyard. • Is of the view breaches of building height is not justified. Believes it would be premature to determine any section 96 application until all investigation of breaches has taken place. • Requests if the s96 application is approved the following is imposed: <ul style="list-style-type: none"> - a full privacy screen is erected and paid for by the applicant for her outdoor entertainment area; - glass balconies on the southern elevation facing her boundary are frosted and full louver screening erected for privacy; - a retaining wall/barrier constructed on the boundary to prevent vehicular traffic hitting the boundary fence; - applicant to clean her home due to the dust and white powder covering her property and remove rubbish deposited in her backyard. • Requests the Panel to defer the matter to visit her property to see the impact of the development on her home.
<p>Mr Nasr Atie (Architect on behalf of applicant)</p>	<ul style="list-style-type: none"> • Notes the original application approved a variation above the maximum 18m building height standard. The applicant's representative advised there has been no height breach on the boundary of the previous speaker's property. • Believes the building line has not moved closer to the previous speaker's property. • Confirmed driveway is a dual carriageway, this has not been amended. • Answered questions from the Panel in relation to when the applicant was aware of breaches to the consent; release of the dilapidation report to the objector; clarification if the building line is closer to the boundary; whether the building as currently constructed is a non-complying building and issues regarding poor site maintenance.

Panel Assessment

The Panel generally agrees with the recommendation and the proposed conditions.

However, the Panel notes that this matter has arisen due to breaches of the consent by the applicant developer. The Panel notes that the Council has carefully considered any additional impacts. In relation to the overshadowing the Panel has been advised that any additional impacts from the height do not cause a breach of the solar access requirements.

Also, the outer edge of the development has not changed in terms of setback to the boundary to the neighbour's property. Some of the neighbour's complaints are matters relating to the ongoing construction. These are issues that Council's compliance section can address. Also, the existing conditions should address an edge treatment of the driveway into the basement car park to protect the neighbouring property.

In relation to the way this matter has arisen due to the non-compliance by the developer the Panel is of the opinion that this should be further investigated to determine whether any enforcement action (such as prosecution or penalty infringement notices) can be taken by the Council as a consequence of non-compliance with the approved development.

The fact that a Section 96 application is approved should not jeopardise any action for breaches that the Council may be able to take for the closed period prior to the issuing of the Section 96 modification.

The Panel also recommends that Council's compliance officer conduct a further inspection of the site in order to evaluate the adjoining neighbour's assertions of non-compliance.

A number of the matters raised by the resident are already addressed in a previous IHAP assessment and proposed conditions (and existing conditions) such as:

- a) privacy screening;
- b) provision of translucent glass.

The Panel notes that there is a recommendation for a condition regarding a building certificate. The Panel notes that a building certificate would be an appropriate certificate to be obtained by the applicant at the end of the construction. However, this should be an advisory note rather than a condition and proposed condition 6.14 should be relocated as an advisory note.

IHAP Determination

THAT Development Application DA-338/2014 be **MODIFIED** in accordance with the Council staff report recommendation, subject to the following change to the recommended conditions:

Delete condition 6.14 and renumber following points according. Insert advisory condition 3 as follows:

- "3. A building certificate application should be lodged and finalised prior to the issue of an occupation certificate"

Vote: 4 – 0 in favour

5 15-19 MUIR ROAD, CHULLORA: CONSTRUCTION OF A NEW WAREHOUSE AND DISTRIBUTION FACILITY

Site Visit

An inspection of the site was undertaken by the Panel and staff members prior to the public hearing.

Public Addresses

Mr Mark Linfoot (applicant)	<ul style="list-style-type: none">• Answered questions from the Panel in relation to drainage works and agreement with Sydney Water, reasoning for two lots and if seed collection referred to in the Vegetation Management Plan has commenced.
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Panel Assessment

The Panel agrees with the report and the recommendations.

The Panel understands that the Stage 1, 2 and 3 of the drainage works is planned to be carried out prior to the issue of the occupation certificate. However, by agreement with

Sydney Water in the event that Stage 3 has not been completed a Section 73 certificate can still be issued for the occupation certificate, subject to conditions that may be imposed by Sydney Water re bonds etc.

The Panel notes that in relation to the suggested collection of the local seeds as set out in the Vegetation Management Plan this could take place this coming spring to maximise implementation of the future planting.

IHAP Determination

THAT Development Application DA-7/2017 be **APPROVED** in accordance with the Council staff report recommendation, subject to the following change to the recommended conditions:

Insert new condition 70 as follows:

“70. Lots 21 and 374 to be consolidated into a single allotment.”

Vote: 4 – 0 in favour

The meeting closed at 8.28 p.m.