

CANTERBURY-BANKSTOWN COUNCIL

MINUTES OF THE

INDEPENDENT HEARING AND ASSESSMENT PANEL MEETING

**HELD IN THE FUNCTION ROOM
CAMPSIE CUSTOMER SERVICE CENTRE**

ON 4 JULY 2016

PRESENT: Mr Michael McMahon (Law) - Chairperson
Dr David Rollinson (Town Planning)
Ms Jan Murrell (Environmental Science)
Ms Stacey Miers (Social Science)
Ms Noni Ruker (Urban Design/Architecture)

STAFF IN

ATTENDANCE: Ms Pina Rossi (Administration Officer)
Mr Brad McPherson (Group Manager Governance, not present for the closed session)
Mr Andrew Hargreaves (Team Leader - Development Assessment Operations, 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 report and 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.

Dr David Rollinson declared a non-pecuniary conflict of interest in item 2, stating the nature of the interest as being he knows the owner. Dr Rollinson took not part in deliberations or the determination of item 2, leaving the meeting during those times.

DELEGATION

By Minute No. 8, dated 24 May 2016 the Council delegated to the Independent Hearing and Assessment Panel the Council's power to determine certain development applications.

DETERMINATION

1. 29 PEMBROKE AVENUE, EARLWOOD: DEMOLITION, CONSTRUCTION OF TWO STOREY DWELLING WITH ATTIC, DETACHED GARAGE, INGROUND SWIMMING POOL AND FRONT FENCE

Site Visit

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

Panel Assessment

The Panel noted that Pembroke Avenue changes to Nicoll Avenue at the 'S' bend. The adjoining house to the east of the subject site has been built around the 'S' bend corner on Nicoll Avenue, however, the garage is located closer to the Pembroke Avenue and intersects the bend that divides the two streets.

The proposed house has been stepped so that it lines up with the neighbouring garage, producing a stepped façade design. The Panel considered the non-complying front setback and considered the deletion of front pop-out section of the proposed dwelling would compromise the stepped façade design.

Public Addresses

Anthony Charbel (applicant)	<ul style="list-style-type: none">• Answered questions from the Panel in relation to:<ul style="list-style-type: none">– Alfresco area and use– Fence and gate materials.• Agreed to provision of canopy tree at front of dwelling.
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IHAP Decision

THAT Development Application DA-40/2016 be **APPROVED** in accordance with the Council staff report recommendation, subject to the following changes to the recommended condition.

1. The addition of the word "native" in front the words canopy trees in condition 32.

Vote: 5 – 0 in favour

2. 1 WARD AVENUE, CANTERBURY: ALTERATIONS AND ADDITIONS TO SEMI-DETACHED DWELLING

Site Visit

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

Panel Assessment

The Panel, excluding Dr Rollinson, considered the non-complying rear setback. A reduction in the width of the rear verandah would allow for an increased landscaped area and tree on the western side of the site. It was also considered a tree should be added to the front of the dwelling.

Public Addresses

Liam Hawke (owner)	<ul style="list-style-type: none">• Answered questions from the Panel in relation to:<ul style="list-style-type: none">– rear setback– rear verandah– landscaping.• Agreed to reduction in verandah width from 7m to 5m to provide for additional landscaped area and tree at front of dwelling.
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IHAP Decision

THAT Development Application DA-109/2016 be **APPROVED** in accordance with the Council staff report recommendation, subject to the following changes to the recommended conditions:

1. Addition of following condition
 - 5.1 The rear verandah width being reduced from 7.4m to 5 metres to allow for additional landscape area.
 - 5.2 A native tree achieving a minimum height of 4-5 metres at maturity to be planted in the rear yard.
 - 5.3 A native flowering gum achieving a maximum height of 4-5 metres at maturity to be planted in the front yard.

Vote: 4 – 0 in favour (excluding Dr Rollinson)

3. 99 CROYDON STREET, LAKEMBA: ALTERATIONS/ADDITIONS TO DWELLING AND USE OF OUTBUILDING AS SECONDARY DWELLING

Site Visit

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

Panel Assessment

In relation to the existing unauthorised outbuilding in the middle of the site, the Panel considers that a condition should be included for a deferred commencement to prevent this outbuilding from being used as separate dwelling or domicile in the future.

The Panel noted a lack of adequate drainage for the secondary dwelling and considered the officers recommendation for a stormwater conditions to be incorporated as part of the deferred commencement approval.

An assessment by the Panel of the stairs and pathway access to the secondary dwelling, considered it to be unsafe. There was also a lack of detail to assess future access issue. In light of this the Panel is requiring that a landscape plan be submitted showing the access pathway and related landscaping to be included in the deferred commencement approval.

The Panel considered the temporary screens attached to the top of the boundary fence and recommended removal.

The Panel also considered that the previous unlawful erection of the building should be disregarded in the assessment of this application. The reasoning behind that is the judgment by Bignold J in the Land and Environment Court case *Ireland v Cessnock City Council [1999] NSWLEC 153*.

If other people would seek to use the circumstances here as a precedent it should be noted that the same judge in *Willoughby City Council v Dasco Design and Construction P/L & Anor [2000] NSWLEC 257* held that even using section 96 to modify a consent does not have a retrospective effect to prevent criminal proceedings being undertaken. The court can order demolition of illegally constructed structures and can impose fines exceeding One Million Dollars.

Public Addresses

There was no public address for this item.

IHAP Decision

THAT Development Application DA-616/2015 be determined by the granting of a deferred commencement consent and on certain matters being satisfied the development can then proceed in accordance with the Council staff report recommendation, as follows:

- A. Development Application DA-616/2015, be approved as a **DEFERRED COMMENCEMENT** Consent under section 80(3) of the Environmental Planning and Assessment Act 1979. This consent is not to operate until the Applicant satisfies the Council, within 12 months of the date of this consent that:
 1. The existing outbuilding is only occupied in conjunction with the main dwelling and not used as a separate dwelling or domicile in future. This requires that there be no kitchen facilities installed.
 2. The submission of a landscape plan to identify useable open space for both the primary and secondary dwelling and to show plantings as well as a site and access pathway between the street entrance and the secondary dwelling stairs that is in compliance with the Building Code of Australia.
 3. In relation to stormwater and drainage:
 - 3.1. A stormwater drainage design prepared by a qualified practicing Civil Engineer must be submitted for Council's approval.
 - 3.2. The submitted stormwater drainage design must be generally in accordance with the plans, specifications and details received by Council on 2nd October 2015; drawing number 140720, 140721 and 140722, prepared by PAZ Engineering.

- 3.3. Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) to the kerb and gutter of Croydon Street.
- 3.4. The pump system is to be designed in accordance with Section 8 'Pumped Systems' of the AS/NZS 3500.3 and Council's DCP 2012, Part 6.4.
- 3.5. The pump system volume provided is to be maintained, however it is to be provided underground as per Council's DCP 2012, Part 6.4.

(Deletion of the stormwater conditions incorporated in above deferred commencement point, from the stormwater conditions in the report's recommendation i.e. 12, 13, 14, 15, 16 and renumbering of remaining conditions).

- B. The following conditions of consent will be included in the development consent issued by Council after the applicant provides information sufficient to satisfy Council in relation to the deferred commencement conditions above.

(inclusion of Council officer's recommended conditions)

- The addition of following condition:
 - 1.1A The temporary screens attached to the top of boundary fence shall be removed when the windows are closed up.

Vote: 5 – 0 in favour

The meeting closed at 6.40 p.m.