

**CITY OF CANTERBURY BANKSTOWN**

**MINUTES OF THE**

**INDEPENDENT HEARING AND ASSESSMENT PANEL MEETING**

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

**ON 17 OCTOBER 2016**

---

**PRESENT:** Mr Anthony Hudson (Law) - Chairperson  
Mr Lloyd Graham (Town Planning)  
Ms Stacey Miers (Social Science)  
Dr Ian Garrard (Environmental Science)  
Mr Roger Hedstrom (Urban Design/Architecture)

**STAFF IN**

**ATTENDANCE:** Ms Chauntelle Mitchell (Administration Officer - IHAP)  
Mr Brad McPherson (Manager Governance, not present for the closed session)  
Mr Ian Woodward (Manager Development Services, not present for the closed session)  
Mr George Gouvatsos (Not present for the closed session)

---

**THE CHAIRPERSON DECLARED THE MEETING OPEN AT 6.20 PM.**

**INTRODUCTION**

The Chairperson welcomed all those present and explained the functions of IHAP and that the Panel would be considering the reports 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.

**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 31-31A PERRY STREET, CAMPSIE: DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A THREE STOREY PLUS ATTIC INFILL AFFORDABLE RENTAL HOUSING DEVELOPMENT WITH BASEMENT LEVEL PARKING**

**Site Visit**

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

---

## **Panel Assessment**

The Panel has reviewed the application and inspected the site.

The Panel notes that this matter is currently before the Land and Environment Court and it has been submitted to the Panel to seek authorisation for the Council to enter into a Section 34 agreement for the amended plans and the proposed conditions. The reason that it is before the Panel is because the Council previously refused the application and the Council officers indicate there is no delegation to enter into the Section 34 agreement.

The Panel notes also that the Council is represented by external planning consultants who are satisfied with the amended plans.

The Panel agrees that the application warrants approval, subject to the proposed conditions with some minor changes to the wording of various conditions. Also the Panel notes that the Council staff in conjunction with the legal representations will make the necessary amendments to the conditions including appropriate amendments to proposed conditions 67 to 74 (particularly 74) for the purposes of a Section 34 agreement.

## **Public Addresses**

There was no public address for this item.

## **IHAP Decision**

THAT

1. The Director Planning is authorised (in conjunction with Council's Solicitors) to enter into a Section 34 agreement to agree to Development Application DA-617/2014 being approved generally in accordance with the conditions in the report with amendments referred to in items 2 and 3 (including authority to amend any conditions as necessary on the advice of Council's experts and legal representatives).
2. The following proposed conditions be amended:
  - a) Condition 5.7 be amended as follows:

The proposed solid privacy screens be changed to *solid louvre privacy screens*, by inserting the word "louvre" after the word 'solid' in the first sentence.
  - b) Insert new condition 5.11 as follows:

"5.11 The bin holding room around unit G02 be double skinned cavity brick work and the floor of this room be a separate slab separated from the slab of the surrounding unit by a construction joint, to address structure borne noise impacts."
  - c) Condition 59 be amended to read as follows:

"59. In compliance with Clause 17(1)(a) of State Environmental Planning Policy, prior to the issuing of the occupation certificate, a restriction is to be registered on the title of the property on which the development is to be carried out, under section 88E of the Conveyancing Act 1919, requiring that the units G02, 103, 104 must be used solely for the purposes of affordable housing for a period of 10 years, from the date of the issue of the occupation certificate."
  - d) Condition 60 be amended to read as follows:

"60. The affordable rental housing units are to be managed by a registered community housing provider and must be rented at a rate that is 20% below the market value in accordance with Clauses 6 of State Environmental Planning Policy (Affordable Rental Housing) 2009. Prior to an occupation certificate being issued the owner will provide Canterbury Bankstown Council with written evidence from the

nominated registered Community Housing Organisation who will be responsible for the management of the dedicated affordable housing component at 31/31A Perry Street, Campsie.”

3. Council seek Section 97B costs in accordance with any recommendations by Council’s legal representatives.

**Vote: 5 – 0 in favour**

## **2 37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS**

### **Site Visit**

As an inspection of the site was undertaken by the Panel on 19 September 2016, a further site inspection was not conducted.

### **Panel Assessment**

The Panel has considered the report and is of the opinion the application should not be approved as recommended.

The use originally started as a small scale operation and the applicant’s representations indicated that the use has in effect been successful, beyond a small local use to a wider use.

The worshipers who attend at the site are driving and not walking and there are more attending than was originally planned. The observations of Council between June 2015 and November 2015, as referred to by the applicant, indicate that a large number of worshipers are attending the Friday prayer session. This appears to be the main issue in terms of the operation of the site and is inconsistent with Condition 15 of the current consent, namely:

*“15. All activity being conducted so that it causes no interference to the existing and future amenity of adjoining occupations and the neighbourhood in general.”*

The Panel is not satisfied that the applicant has been able to demonstrate that the management can operate the site to avoid impacts on the locality from the Friday prayer session. A more concerning issue is whether the continued operation of the use will expand to exacerbate an already problematic situation; particularly in terms of the Friday prayer session, leading to a concern whether this operation can in fact operate successfully at this site.

The applicant has not provided any detailed traffic studies. Also, the Panel does not have before it an up to date floor plan and the applicant’s representative indicated that it is difficult to control the number of worshipers wanting to attend the site; particularly at the Friday prayer session. For example the applicant indicated it was necessary to exclude the “sisters” from the mosque in an attempt to comply with the current conditions, together with the expansion of the male prayer room into the female prayer room.

Similarly, the noise study (dated 3 September 2015) provided does not address the noise levels generated by cars using the surrounding local streets but focussed solely on the closest residential receiver.

The impacts are indicative of the increasing magnitude and popularity of this particular use on this site. However, at the same time, it is indicative of a consideration of the extent of use that can operate on this site.

Nevertheless the Panel is of the opinion that a further “trial” period can be allowed with an hour for Friday prayers from 12.00noon to 1.00pm AEST (1.00pm to 2.00pm daylight saving time), but without any increase or change in the night time prayer and education sessions.

The maximum number of permitted worshipers is not changing (this was not part of the current application). The main issue is whether the use is appropriate as a permanent use on this site given that there is little room for expansion. The issue then is whether there can be a successful low key use on the site.

Therefore, during this final “trial” period the applicant will need to demonstrate that:

- a) the number of worshipers can be controlled without overflow impacts (for example, praying in the park or outside the mosque),
- b) there are no or very low impacts from the use over representative periods, and this is to be demonstrated by proper noise and parking surveys by expert consultants over the representative periods.

Any noise impact assessment should address (though not restricted to), the noise goals set in the Renzo Tonin Noise study, 7 November 2014. These address noise from traffic and the mitigation measures to minimise interference to the existing and future amenity of adjoining occupations and the neighbourhood in general.

Any further application in the future should be supported by a current floor plan, an updated plan of management, details from the complaints register and the expert evidence referred to above. Also, survey information should be provided of the number of worshipers attending at the site on Fridays and representative samples at the other times of the number of worshipers or attendees on the site.

IHAP is of the further opinion that impacted residents should utilise the compliance register and management system available to it so that an accurate record of the frequency and nature of complaints can be determined over the “trial” period.

This information can then be properly considered to determine whether the current use is appropriate as a permanent use on this site.

**Public Addresses**

<p>Mr Ahmad Kamaledine (representing applicant)</p>	<ul style="list-style-type: none"> <li>• Appreciates the opportunity to have a trial period to obtain data and demographics of the area and have a better picture of likely usage of the mosque.</li> <li>• Is of the view that the mosque has complied with all of Council’s consent requirements. Noted a complaints hotline has been established, installation of a bike rack, no celebrations have been held at the mosque and there has been no call to prayer.</li> <li>• He believes 27 out of the 28 prayer sessions have complied with the conditions of the consent, notes Friday is still a challenge. The applicant’s representative acknowledges they are unable to comply with the maximum number of patrons of 60 for the Friday prayer session. Has dealt with this issue by denying entry. Advised it will be hard to comply as it was likely the number of attendees for this session will exceed 100, with 150 attendees in the holiday period.</li> <li>• In reference to observations of Council, noted the number of</li> </ul>
---	---

	<p>people attending ranged from 66 to 150 people. Advised the maximum numbers on 3 July 2015 and 10 July 2015 fell during the school holidays.</p> <ul style="list-style-type: none"> <li>• In relation to complaints, is of the view many claims were unsubstantiated. Advised the mosque continues to promote the hotline but has no complaints registered, noting complaints are made direct to Council. He advised when issues arise with Council the mosque organisation cooperates with Council to resolve issues.</li> <li>• Answered questions from the Panel in relation to the original development application, ability to comply with the limit to number of worshipers for Friday prayers, proposed hours of operation and traffic impacts.</li> </ul>
Ms Maria Di Francesco (objector)	<ul style="list-style-type: none"> <li>• Has concerns regarding safety in relation to parking. Advised worshipers park on the corner of intersections such as Ludgate Street and Belemba Avenue.</li> <li>• Is of the view an increase in the number of patrons will result in bigger amenity impacts.</li> <li>• Believes the location is inappropriate for the current use, noted since its inception the mosque has impacted a number of residents.</li> <li>• Notes there is no train station, bus stop or taxi rank close to the site and believes as a result most worshipers drive to the mosque.</li> <li>• Answered questions from the Panel in regard to the operation of the complaints hotline, prayer session turnaround and her view on proposed night time operating hours.</li> </ul>

#### **IHAP Decision**

THAT Development Consent DA-486/2008 be further **MODIFIED** as follows:

A. Condition 6 be modified to read as follows:

“6(a) This approval is limited to a period of 12 months from 21 October 2016, after which time any use of the premises whatsoever will require a Section 96 modification or a further development consent of the Council. In this regard an appropriate application is to be made to Council for consideration within three months of 21 October 2017, supported by appropriate information. If an application is submitted with appropriate documentation within this time (and requests for further information are addressed in the time limits imposed by the Council) the use may continue in accordance with this consent until the application is finally determined by the Council or the NSW Land and Environment Court on appeal (but in relation to the appeal, only if the appeal is lodged within 14 days of the Council’s determination).

(b) During the “trial” period:

i) The noise levels generated by cars using the rear carpark, cars parking on the surrounding local streets, and prayer services and education sessions inside the building shall be monitored at the nearest residential premises so that the measured noise levels can be compared with the LAeq, 15min and LA1, 1min noise goals set in the Renzo Tonin & Associates acoustic report dated 17 November 2014. Prior to carrying out the noise measurements, a Measurement Methodology shall be submitted to Council for approval and the

measurements must be carried out in accordance with the approved Methodology;

- ii) A Complaints Hotline shall be maintained by the Proponent to be active during the twelve month “trial” period so that comments and complaints can be received. All complaints shall be recorded (including the name and contact details of the complainant and the reason for the complaint) and the complaint shall be investigated. Every complaint received and the conclusion of the investigation of that complaint shall be recorded (and made available to Council on request);
  - iii) The management of the mosque is to keep a record of the strategies used to control Friday Prayer attendance beyond the maximum approved capacity and record the number of weekly attendees for Friday Prayer during the “trial” period;
  - iv) The rear car park shall be limited in its weekly use to Friday, Saturday and Sunday only and also the evening prayer and education sessions seven days a week. Outside these times the rear car park is not to be used;
  - v) The use of a “call to prayer” or other outside noise-generating activity is prohibited on the premises;
  - vi) A bicycle rack accommodating a minimum of three bicycles shall be provided at a suitable location on the site;
  - vii) The use is to be operated in accordance with the updated plan of management referred to in 6(c) below.
- (c) The plan of management (submitted in accordance with condition 9) is to be updated and submitted to the Council by 30 November 2016. The updated plan of management is to include proposed methods of controlling worshiper numbers, impacts generally and to include all relevant matters in modified conditions 6 and 8 and any other use conditions in this consent.”

B. Condition 8 be modified to read as follows:

“8. The approved hours of operation and the approved activities during the twelve month “trial” period on the site are to be confined as follows:

(a) **Non Daylight Savings Times**

Day	Time	Activity	Maximum No. of Persons
Sunday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Monday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Tuesday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Wednesday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40

Thursday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Friday	12 noon to 1.00pm	Prayer	60
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Saturday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40

b) **Daylight Saving Times**

Day	Time	Activity	Maximum No. of Persons
Sunday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Monday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Tuesday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Wednesday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Thursday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Friday	1.00pm to 2.00pm	Prayer	60
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Saturday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40

C. Delete advisory item 38.

**Vote: 5 – 0 in favour**

The meeting closed at 8.42 p.m.