

CITY OF CANTERBURY BANKSTOWN

MINUTES OF THE

INDEPENDENT HEARING AND ASSESSMENT PANEL MEETING

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

ON 19 SEPTEMBER 2016

PRESENT: Mr Michael McMahon (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 (Group Manager Governance, not present for the closed session)
Mr George Gouvatsos (Manager Development Assessment, 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 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

1 364-374 CANTERBURY ROAD, CANTERBURY: USE OF GROUND FLOOR COMMERCIAL PREMISES AS CHILDCARE CENTRE, WITH ASSOCIATED LANDSCAPING AND PARKING

Site Visit

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

Panel Assessment

There were no objectors to this application. The Panel was addressed by Garry Chapman who gave a summary of the application to the Panel. He argued that three departures from the standards in the DCP were justified. The approved development includes a pair of six storey mixed use buildings comprising 95 residential units and ten (10) commercial premises with a large, centrally located communal space at ground level between the two buildings. The Panel noted that a separate application was submitted with an application made under Section 96(1A) of the Environmental Planning and Assessment Act 1979 to modify the Onslow building's commercial premises, the central open space and basement parking to satisfy the requirements of the proposed Early Childhood Education Care Centre (ECECC). The S96(1) application was granted consent under delegated authority on 9 September 2016.

In a residential zone the number of children is limited to 40 and this application anticipates up to 89. This departure was justified on the basis that there is access to the childcare centre via basement parking and a dedicated lift and the non-residential nature of the zoning.

The Panel is of the view that occupants of the building may well utilise the Childcare Centre and that would reduce traffic that would otherwise cause congestion on residential streets.

The Panel appreciated that some people will buy units in the development because of the existence of the childcare centre but not everyone would appreciate that situation. In these circumstances the Panel notes that section 149 (5) of the Environmental Planning and Assessment Act, 1979 provides: "A council may, in a planning certificate, include advice on such other relevant matters affecting the land of which it may be aware." The Panel has included that in condition 26 of the officer's report.

Public Addresses

Mr Garry Chapman (on behalf of the applicant)	<ul style="list-style-type: none">• Advised amendments have been made to the proposal in consultation with Council staff regarding the use of the space and amendment of garbage area.• Notes the following in regard to the proposed child care centre:<ul style="list-style-type: none">- Meets indoor and outdoor regulations;- Car park controls in place, including dedicated parking area;- Supported by an acoustic report and Plan of Management;- Awning acts as an acoustic barrier.• In relation to the location of centres within 400m of another centre, notes a demand study has been provided. Advised 400m is particularly relevant in residential areas; confirmed the proposed site is B5 and the proposed centre includes separate lift access and parking.• Responded to questions from the Panel in relation to if the Childcare centre meets the national standard, parking and matters raised by Children's services (standard of education, outdoor play areas and controls which deny natural ventilation).• Raised no objection to the condition proposed by the Panel in relation to amendment to complaint management procedures and regarding parking.
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IHAP Decision

THAT Development Application DA-629/2015 be **APPROVED** in accordance with the Council staff report recommendation, subject to the following changes to the recommended conditions:

1. Amend Condition 12 by inserting the following words after the last sentence:
“The Plan of Management be expanded and submitted to Council for approval prior to the issuing of a construction certificate, to include:
 - a. A complaint management system that: details the facility’s complaints policy and procedure for complaints management; contact details, the registration of complaints, how complaints will be dealt with; a framework for monitoring any complaint received/ identify the action taken to rectify the problem/ the outcome of the complaint and any further action required; and this information should be documented and made available to Council when requested. This complaint system should continue for a minimum of 12 months once operations commence and any online information related to the child care facility should provide details of the relevant contact person regarding the centre who can record and respond to any concerns that the public might have about the operation of the child care facility, including the lodging of a complaint.
 - b. The Behaviour of Childcare Centre Users - entering and leaving the premises, namely:
 - i. At all times the operation of the child care facility shall consider the amenity of the surrounding neighbourhood and Management and staff shall take all reasonable measures to ensure that any adverse impacts do not affect the surrounding neighbourhood;
 - ii. Staff should be trained (and children educated) to ensure that patrons understand that, when entering and leaving the premises and the vicinity, they do so in a quiet and reasonable way; and that management and staff take responsible steps to control the behaviour of the childcare centre users as they enter and leave the premises.
 - c. Management of Traffic and Parking:
 - i. Nearby owners should be provided with a contact number for registering any concerns regarding the operation of the child care facility, in terms of noise, traffic and parking issues;
 - ii. Management and staff need to actively manage the peak periods of dropping off and picking up, to minimise traffic impacts, including:
 - Encouraging parents to walk or ride with the children on dropping off and picking up;
 - Directing vehicles to available car parks;
 - Ensuring maximum parking period, targeted a minimum for drop-off and pick up;
 - Child safety and public safety is maintained.”
2. Amend Condition 26 by inserting the following words after the last sentence:
“All section 149(5) Certificates issued by the Council for this land should include advice that the approved development is mixed use which includes a Childcare Centre.”

Vote: 5 – 0 in favour

2 42-44 ALBERT STREET, BELMORE: ALTERATIONS TO LOWER GROUND FLOOR LEVEL OF EXISTING REGISTERED CLUB

Site Visit

An inspection of the site was undertaken by the Panel on 15 August 2016, a further site inspection was not conducted.

Panel Assessment

The Council has received a development application (DA-396/2015) seeking consent to make alterations and additions to an existing registered club. The alterations and additions consist of works to the lower ground floor to provide sufficient facilities to cater for members and guests, beyond the principal function space and members lounge within the Club's ground floor.

A Building Certificate Application (BC-64/2015) was lodged with Council on 10 September 2015 in an attempt to legitimise the unlawful works that have taken place at the premises. The unlawful works include certain unauthorised internal changes to the layout and a minor extension to the rear of the existing building, as follows:

- Large scale internal alterations and additions include the removal of internal walls and partitions that define a service provider's room, new cloak room, male, female and disabled access toilet facilities. The board room, new chair storage, existing storage area, existing kitchen and adjacent storage have all been removed from the associated plans in the proposed modification. A rear access doorway has also been omitted from the plans and replaced with a fire exit door.
- A 36.8 square metre extension to the South Western portion of the building, termed as a kitchen/back of house area of the building has also been added without consent.

Determination of the Building Certificate application has been held in abeyance pending the determination of the subject DA.

Unauthorised building work was observed by the Panel at a site inspection on 15 August 2016.

The unauthorised building work consists of alterations to the lower ground floor of the existing registered club building.

The subject development application seeks retrospective consent for the building work.

The building work has negligible adverse visual or amenity impact on the adjoining properties or the locality. However, building work already done cannot be approved in retrospect.

In regard to the unauthorised building work, refusal is resolved. It is further resolved that the development application be referred to the Manager Compliance to determine what action is appropriate.

Chairperson's Note

In *Jonah Pty Limited v Pittwater Council* [2006] NSWLEC 99 Prestons CJ said:

... No assumption should be made that the Council will be successful in establishing the unlawfulness of the past use or, if unlawfulness is established, that the Court would restrain that use.

37 The above conclusion that mere unlawfulness of past use is not a relevant factor does not mean, however, that past use – without any consideration of its unlawfulness – cannot ever be relevant.

38 For instance, past conduct (regardless of whether it is unlawful) may have given rise to unacceptable impacts, such as unacceptable acoustic impacts on adjoining properties. The experience of impacts of the past use could be relevant in evaluating, first, the likely impacts of a prospective use for which consent is sought of the same or similar character, extent, intensity and other features as the past use, secondly, the acceptability of the likely impacts and thirdly, if likely impacts are considered to be unacceptable, the appropriate measures that ought to be adopted to mitigate the likely impacts to an acceptable level. Past use would, therefore, be of relevance but it is for proper planning reasons, not because the past use happened to be unlawful. The unlawfulness of the past use is not relevant.

... the cumulative planning impact is a relevant matter to be considered, not because of any characteristic of the unlawfulness of such use.

...

27 In a subsequent judgment in *Ireland v Cessnock City Council* [1999] NSWLEC 250; dealing with the issue of whether a building certificate should be issued, Bignold J stated at 316 [38]:

“The proper approach to be taken to the available discretion will generally be that outlined in the judgment of King CJ of the South Australia Supreme Court in Kouflidis v Salisbury City Corporation (1982) 29 SASR 321; 49 LGERA 17, namely to leave to the criminal law, the punishment of the unlawful conduct involved in the erection of the building and to determine the present application on the merits, but taking care not to allow the wrongdoer to benefit from his wrongdoing”.

In the circumstances of this application, the Panel adjourned the hearing on 15 August 2016 to 19 September 2016 to enable the applicant to provide details of the way in which the “function centre” use as advertised on the Club’s website related to the use of the land as a “Registered Club”.

The Panel was not satisfied that the “function centre” use fits comfortably within the existing use rights of the “Registered Club” but that aspect was not before the Panel and the Panel confined itself to the “regularizing” of the application before it, which related to the lower level of the premises.

In these circumstances the Panel considered that the proper approach would be to let the Building Certificate Application referred to above be determined on the merits, and that the subject development application should be refused.

Public Addresses

Mr George Fotis (objector)	<ul style="list-style-type: none">• Reaffirmed comments made in his previous address to the Panel on 15 August 2016.• Notes neither a Construction nor Occupation Certificate has been obtained for unauthorised works, including air-conditioning and kitchen exhaust on roof.
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	<ul style="list-style-type: none"> • Is of the view the current use is an unlawful use of the premises.
Mrs Lori Bridge (objector)	<ul style="list-style-type: none"> • Represents neighbouring properties, including elderly residents, tenants and residents from non-English speaking backgrounds. • Advised her family's quality of life has been affected, including impacts on sleep and their social lives, primarily by noise generated by the club. • Is of the view the indoor and outdoor noise from the premises falls significantly above a background level. Noise disturbance includes low frequency base, traffic noise, offensive language and regular low frequency noise from fans.
Mr Damian Bridge (objector)	<ul style="list-style-type: none"> • Noted that the matter has been ongoing for two years. • Believes the Operations Manager is associated with Clarence House. Notes the Registered Clubs Act in reference to conduct of the club states consideration should be given to whether any arrangements relating to the club have resulted in another person or body taking the effective control of the club and its business. Notes when complaints have been made to the club the secretary has advised that they needed to consult with the operations manager. • Is of the view the club is poorly managed and there is little evidence of member functions. • Notes the Clarence House website describes the venue as a "wedding reception centre". • Advised the Office of Liquor, Gaming and Racing (OLGR) investigation is ongoing. • Notes noisy kitchen exhaust fans only operate during functions and questioned if lunch and dinner for members as purported by the club is available. • Answered questions from the Panel in relation to OLGR complaints.
Mrs Toula Timonidis (objector)	<ul style="list-style-type: none"> • Has resided at her property near the subject site for 23 years. Had no issues with the original club. • Advised her quality of life has been affected due to noise from the club. She currently closes doors and windows and put on her own music to mitigate noise from the subject property, is concerned what strategies she could employ during summer. • Answered questions from the Panel in relation to impacts prior to the currently catering arrangements.
Ms Angela Voukelatos (supporter)	<ul style="list-style-type: none"> • Her property is adjacent to the subject property, has resided in the property for almost 30 years. • Advised in the past the club has been used for discos, christenings, weddings and concerts; events sometimes ran until 3am. Does not see there any difference to events now, other than security is now present. • When inside her home she has heard drums at approximately 8pm, confirmed there is noise but not ongoing. • Answered questions from the Panel in relation to the day events occurred, the frequency of events and the proximity of her home to the club.

<p>Mr Dimitri Nikiforos (supporter)</p>	<ul style="list-style-type: none"> • Represents employees of the Club. • Advised since the new caterers have commenced there has been no change to operations, only a change to the caterers and refurbishment works. • In relation to the operations of the club, noted the club was not like a RSL or bowling club. • Answered questions from the Panel in relation to the number of employees and difference in operations from the previous caterers to current caterers. The Panel also posed questions in relation to refurbishment and noise from events; the speaker was unable to provide a response.
<p>Mr Andy Lattouf (on behalf of the applicant)</p>	<ul style="list-style-type: none"> • Advised a record of noise complaints were submitted direct to Council from NSW Police. • Advised the catering arm had nothing to do with the operations of the club. Décor was revamped due to low patronage. • In relation to the Clubs Act, noted OLGR advised the club to catering floor space ratio could not be dictated. • Disputes claims from previous speaker that he is inaccessible in relation to complaints. • Answered questions from the Panel including: <ul style="list-style-type: none"> - Club Licence under the Liquor Act: Applicants representative tabled record from Independent Liquor and Gaming Authority dated 20 November 2015. - Activities of a normal week at the club: Advised the club is closed Monday and Tuesday, open 10.30/11 to 5.30/6pm from Wednesday to Friday, a luncheon is served from 11.30am to 3.30pm on those days. - Changes to activities in the last 2 years: Noted initial marketing for function centre was incorrect. Confirmed activities are for members and guests, social events held regularly, such as games during the week and events relating to Church services on Sundays. - Purpose and use of alterations on the ground floor: Advised this area can be used by club members and their guests while a private function is running, is also used for board meetings and social activities such as games. - Complaints management: Advised complaints are dealt with individually. • The applicant's representative tabled submissions and a petition in support for the Lemnos Club.
<p>Mrs Anastasia Sentas (on behalf of the applicant)</p>	<ul style="list-style-type: none"> • She has been a Board Member since 1994. • Detailed events held by the club in the 80s and 90s including disco events for 3-4 years noting finishing times up to 4am, Thursday night member social nights and BBQ events held on Sundays. • Detailed recent and coming events held at the club, including Agios Sozo's day, ladies committee events and ANZAC day. Advised the club has always held christenings and 21st parties. • Answered questions raised by the Panel in relation to frequency of Board Meetings, proposed improvements to reduce impact of the club to neighbours and frequency of functions.

Mr Marc Rahme (on behalf of the applicant)	<ul style="list-style-type: none"> Queried if the Panel had received further information submitted on 9 September 2016.
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IHAP Decision

THAT

1. The building work related to the lower ground floor of the existing registered club building under Development Application DA-396/2015 be **REFUSED**, as the building work is unauthorised.
2. No action be taken to remedy the unauthorised building work subject to the lodgement within 28 days of this determination, of a Building Certificate Application under Section 149B of the EP&A Act 1979 and the subsequent issue of a Building Certificate. This does not prevent the Manager Compliance taking further action as deemed appropriate.
3. The matter be referred to the Manager Compliance to determine, in accordance with the Council's current policy, what action is appropriate.

Vote: 5 – 0 in favour

3 37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS

Site Visit

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

Panel Assessment

The Applicant gave late notice to the Council that there would be no representative on behalf of the Applicant at the time of determination of the application and they requested an adjournment of this matter. With such late notice the Panel decided to proceed with hearing from neighbours to see whether there is support for the Applicant's application. As it transpired, there was opposition to the application and that raised the possibility of the Applicant's rights being adversely affected.

There is a principle of natural justice that a person has a right to be heard before a decision is made and in those circumstances the Panel adjourned this item to the next meeting of IHAP.

Public Addresses

Ms Maria Di Francesco (objector)	<ul style="list-style-type: none"> Her property is 70m from the subject site. Advised this matter has been ongoing for eight years. Has concerns regarding excessive attendance at the Mosque. Notes the applicant and his representative in their address to IHAP in October 2010 advised that worshippers will not drive to the prayer hall and Friday sessions will attract 40 people on Fridays. <ul style="list-style-type: none"> - She advised regular non-compliance has occurred every Friday for eight years. Questions surveillance, noting worshipers have been photographed praying in the front yard of the Mosque. - Has concerns regarding traffic generation and illegal parking, is of the view patrons are not locals walking to the Mosque.
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	<ul style="list-style-type: none"> • Notes previous use as a Christian prayer hall was in operation three days a week. • Stated Council previously advised an impact statement would be required to allow more patrons, however this has never eventuated. • Answered questions from the Panel in regard to her view on increase in operating hours to 9:30pm during daylight savings, time period patrons congregate after session times and the operation of the complaints hotline.
Mr Kien Mac (objector)	<ul style="list-style-type: none"> • Notes the image in the officers report depicts Ludgate Street on a Thursday, not Friday which is the peak time and the image of the signage at the front of the Mosque is out of date. • Notes this matter has been ongoing for eight years. Does not support any amendments to increase in hours of use. • Notes acknowledgement the majority of patrons drive to the Mosque, believes actions taken to curb illegal parking and U turns by worshipers at the Belemba Avenue intersection have not been addressed. • Notes acknowledgment the Mosque is in constant breach of quantity of patrons and parking. Does not believe the Management Plan will result in a reduction of patrons • Notes the original site was used for a few hours over three days per week, incremental changes have resulted in seven days of operation per week. • Is of the view a DCP for Places of Worship would help to provide clarity. • Residents are seeking a fair balance. • Answered questions from the Panel in relation to traffic markers located on Ridgewell Street and if anyone resided on the subject site.
Mr Mark Birkinshaw (objector)	<ul style="list-style-type: none"> • Speaking on behalf of the Ludgate Street Residents Action Group to restore the basic neighbourhood amenity. • Notes the Prayer Hall has been renamed to Roselands Mosque. • Advised during events and long celebrations such as Ramadan, the Mosque operates like a Friday surge event every day of the week, without any limits. • In relation to traffic, does not agree with volume capacity ratio rather than local area generation of movements, noting the street is not an arterial road. Believes the actual ratio of parking is 1:1, being one car space per patron. • Is of the view this application is a significant ratcheting increase on what was approved. Does not believe the site is suitable or in the public interest to remain. • Does not support the amendment of daylight savings hours from 7-8pm to 8.30-9.30pm, believes it is too late for a residential community and notes 7-8pm should become 8-9pm for daylight savings hours, not an end time of 9.30pm. • Is of the view increasing Friday prayer from 30min to an hour will exacerbate current issues of traffic, parking and other negative behaviours and believes two separate overlapping sessions will take place during the Friday midday prayer. • Does not believe removing cars from the rear carpark will be

	<p>beneficial, as it is hardly used in comparison to street parking.</p> <ul style="list-style-type: none"> • Believes more monitoring is not warranted and requests CCTV is provided by the applicant and worshipers sign in to identify if they reside locally. • Believes Council has not been successful in enforcement actions and the applicant has breached all conditions: noise, parking, traffic capacity and notes prayer takes place in the external front yard. • Requests neighbours' concerns and applicant's breaches of planning law are immediately dealt with by ceasing the development consent.
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IHAP Decision

THAT Development Application DA-486/2008/C be **DEFERRED** to allow further representations to be made by the applicant in this matter at a future meeting.

Vote: 5 – 0 in favour

The meeting closed at 9.41 p.m.