

CITY OF CANTERBURY BANKSTOWN

MINUTES OF THE

INDEPENDENT HEARING AND ASSESSMENT PANEL MEETING

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

ON 3 APRIL 2017

PRESENT: Ms Jan Murrell (Planning/Environment) - Chairperson
Mr Michael File (Planning)
Dr Ian Garrard (Environment)
Mr Christopher Wilson (Planning)

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, not present for the closed session)
Mr George Gouvatsos (Coordinator Planning - East, not present for the closed session)
Ms Venetin Aghostin Sangar (Planning Consultant, not present for the closed session)
Mr Peter Wells (Planning Consultant, not present for the closed session)

THE CHAIRPERSON DECLARED THE MEETING OPEN AT 6.05 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 prior to 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 29 ANDERSON STREET, BELMORE: DEMOLITION OF EXISTING DWELLING HOUSE AND CONSTRUCTION OF A TWO STOREY BOARDING HOUSE CONSISTING OF 18 BOARDING ROOMS

Site Visit

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

Public Addresses

Ms Nina Cascio (objector)	<ul style="list-style-type: none">• Resides in property adjacent to subject development.• Raised concerns in regard to:<ul style="list-style-type: none">- Occupants: Is of the view the number of lodgers should be reduced. Questions how the caretaker will comply with regulations.- Privacy: Believes sliding doors and courtyards on the northern side should be deleted and north facing windows should be translucent to provide privacy.- Fencing: Unsure of the height and materiality of fencing proposed.- Parking: Does not believe parking is adequate.- Stormwater: Advised any issues regarding Stormwater should be fixed and adjoining property owners should not be liable for any costs.- Construction/Demolition conditions: Concerned the applicant will not comply with demolition conditions.• Unsure of the definition of a boarding house, notes some rooms are referred to as 'studio' or 'units'.• Is of the view a more appropriate use for this site is four townhouses.• Answered questions raised by the Panel in relation to queries raised in original submission and ground level of adjoining properties in relation to subject site.• Tabled copy of previous submissions and address to Panel.
Ms Barbara Coorey (objector)	<ul style="list-style-type: none">• Addressing the Panel on behalf of herself and her mother.• Is of the view objectors have not been afforded procedural fairness, in relation to amendments and changes to plans believes notification has been in contradiction to Council's notification policy.• Does not support deferred commencement approval, notes adjacent neighbours have not seen final plans.• Believes the proposed development does not have the characteristics of a boarding house in relation to balconies, courtyards and communal space. Is of the view double doors to the ground floor courtyard and the north side courtyards should be deleted and the number of lodgers is excessive for the subject site.• Footprint: is of the view there is no justification for variations to the setback and is concerned this will set a precedent.• Amenity: Concerned regarding impacts from courtyards and

	<p>that occupants may become tenants.</p> <ul style="list-style-type: none"> • Roof: Is of the view roof design has an industrial appearance, believes construction of the roof should be terracotta tiles. • Licencing: Is concerned the premises could be used as something other than a Boarding House in the future.
Mr Michael Wilson (objector)	<ul style="list-style-type: none"> • Resides two houses from the proposed development. • Noted until receiving notice of the IHAP meeting, 575 days elapsed since objectors had contact from Council regarding this application. • Is of the view 17 boarding rooms is excessive for the site; notes there is no restriction on who will live there. • Agreed with previous speakers concerns regarding the building footprint. • Raised concerns regarding parking, noted street parking is already difficult. • Believes a notice on site to indicate the land was the subject of an application for a Boarding House would have resulted in more submissions.
Ms Vasoula Vasil (objector)	<ul style="list-style-type: none"> • Agrees with the comments of previous speakers. • Has not had the opportunity to review amended plans. • Reiterated concerns contained in their original submission regarding the definition of a boarding house; lodgers residing for three months or more; uncertainty about type of people who will reside at the premises; insufficient parking on site and the design being more akin to studio apartments. • Is of the view the communal living area is too small and raised concern regarding noise disturbance from courtyards. • Has concern the units will be strata titled in the future.
Ms Anne Nolan (applicant's representative) and Mr Gary Chapman (Planner on behalf of the applicant)	<ul style="list-style-type: none"> • The applicant's representative noted Anderson Street had a range of dwelling types. Believes there is a need for boarding houses as outlined in the Greater Sydney Commission report. Noted the subject site is close to public transport. Confirmed the applicant agrees with proposed conditions. • In relation to points raised by objectors: <ul style="list-style-type: none"> - Confirmed the premises would have a full time manager; - Noted a two storey development is permissible; - Proposed development meets parking criteria for entry and egress; - In relation to noise, notes no visitors are permitted on the premises after 10pm. • Planner on behalf of the applicant noted the proposed development complied with height and FSR and raised no objection to deferred conditions. • Confirmed proposed development is a Boarding House under the Affordable Housing SEPP; is of the view provision of a kitchen and bathroom to units provides better amenity. Added the proposal meets requirements for parking under the Affordable Rental Housing SEPP. • Raised no objection to Panel's suggested conditions as follows: <ul style="list-style-type: none"> - Increase fence height to adjoining properties;

	<ul style="list-style-type: none"> - Provide amended Plan of Management to provide additional detail; - Amend time period to satisfy the deferred commencement consent conditions, from a period of two years to a period of six months; - Delete one boarding house room and reconfigure communal space to the opposite side. • Answered questions by the Panel in relation to deferred commencement conditions, roof design and the accountability of boarding house manager.
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Panel Assessment

The Panel endorses the officer's recommendation and attached conditions in the report and determines that approval be granted to the development application for a boarding house, subject to further additional conditions to give effect to the following requirements.

An amended Plan of Management is to form part of the deferred commencement conditions. This is to ensure the operation of the boarding house is managed to maintain the residential amenity of the area including community consultation to address future community concerns that may arise.

As such the Plan of Management is to provide for a community consultation committee to be established by the owner/ manager for neighbours who wish to participate. An ongoing 'complaints register' is to be maintained and held on premises and made available for Council inspection. This register must identify the date, time and nature of the complaint and what action taken to resolve the issue in a timely manner. The manager's mobile telephone number is to be provided to residents. The Plan of Management is also to be amended to require the manager to live on-site. The Plan of Management is to provide for 'house rules' to be clearly displayed in each room, and in the manager's office. This is to include reasonable hours of operation for use of the communal and outdoor open space.

In discussion with the Panel the applicant agreed to not only delete a boarding house room to allow a larger functional communal space but also to relocate this to the opposite side to allow greater amenity for the room and adjoining communal open space. This achieves greater amenity for the occupants given the more northerly aspect.

The Panel notes the concerns of the submitters in respect of the sliding doors and side courtyards. In this regard the Panel considers the 3 metre setback is satisfactory having regard to the amended Plan of Management provisions to respond to amenity issues raised by neighbours with the onsite manager.

Furthermore, the Panel notes that the building complies with the 0.5:1 FSR and the building height. The Panel also notes the applicant has agreed to construct a tiled roof at the front of the property, to be in character with the streetscape.

Concern was raised about the 3 metre setback from the rear boundary and the length of the building. The Panel notes that a 3 metre setback applies to a multi-unit housing zone. Furthermore this is also consistent with the townhouse development at the rear of the subject site. In the Panel's determination the 3 metre rear setback will not create unreasonable impacts. With respect to the building length the Panel considers the building will sit comfortably on the subject site given its size and dimensions of the site.

With respect to concern that the premises not be changed from the classification of a boarding house, the Panel notes that there is a condition requiring a Section 88 instrument on the title to ensure it continues to operate as a boarding house and not be strata titled.

On the question of the concerns of the submitters about the number of amendments and changes to the plans, the Panel notes, these changes were made by the applicant at the request of Council officers to ameliorate amenity and environmental impacts, having regard to submissions from neighbours. It is regrettable that the process has been protracted, however in the circumstances this has allowed for a better outcome.

The Panel has determined that in the deferred commencement condition that the two year period is excessive and this is to be changed to six months for the applicant to submit to Council amended plans and an amended Plan of Management.

With respect to condition 2 of the deferred commencement, the words “and the impacts of the following changes” is to be deleted. The reason for this is the Panel has determined the amendments outlined above will reduce the impacts and a further environmental assessment is not required.

The Panel has made other minor amendments to the conditions in the interests of consistency and clarification.

The above changes required as part of this determination will form part of the ‘*deferred commencement*’ conditions. As such these matters must be addressed and included in amended plans to be submitted to and approved by the Council prior to the consent operating. An additional paragraph at the end of Part A in the deferred commencement is to be imposed as follows: “*that the above amended plans and requirements must be submitted to Council and approved prior to the consent operating in Part B conditions of consent.*”

The Panel’s decision to approve, subject to conditions, the boarding house on the site known as 29 Anderson Street Belmore is unanimous.

IHAP Determination

THAT Development Application DA-279/2015 be **APPROVED** in accordance with the Council staff report recommendation, subject to the following changes to the recommended conditions:

1. Amend condition A of the deferred commencement to replace the words “two (2) years” with the words “6 months” in the first sentence.
2. Amend condition 2 of the deferred commencement by removing the words “and the impacts of the following changes” in the first sentence.
3. Insert a new deferred commencement condition A 2 h) as follows:
“A 2 h) That the above amended plans and requirements must be submitted to Council and approved prior to the consent operating in part B”.
4. Insert new deferred commencement condition 3 as follows:
“3. An amended ‘Plan of Management’ is to be submitted to Council. The Boarding House will be operated in accordance with the approved Plan of Management at all times. The applicant/operator of the Boarding House shall as part of the Plan of Management, provide the Council and adjoining properties with a telephone contact number which can be used for registering complaints. The applicant/operator of the Boarding House will monitor the number and nature of any complaints and will formally register all complaints received and any action taken to rectify the problems in the

'Complaints Registration Log'. The Log will be made available to Council when requested. The Plan of Management shall provide requirements for the operational management of the boarding house to maintain reasonable residential amenity of the area and include, but not limited to, the following:

- establishing house rules;
- maintaining residential amenity, including:
 - Establishment of a Community Consultation Committee;
 - Complaints register to be held on premises and available for Council inspection which identifies the time and nature of the complaint and the response to such a complaint in a timely manner.
- Onsite Managers phone number available and displayed;
- The Management Plan is to provide for house rules to be clearly identified in each room, and in the manager's office:
 - Noise so as to be in compliance with the requirements of the Protection of the Environment Operations Act (POEO Act) in regarding to residential noise criteria;
 - The use and time of external areas;
 - The use of stereos and like equipment;
 - The parking of vehicles;
 - Cleaning schedules for the common areas of the premises;
 - Waste disposal management;
 - A notice at the entrance to the building showing the number of approved boarding house rooms; the name and contact mobile phone number of the boarding house manager, together with office hours available for consultation.

The premises are to be managed and operated in accordance with the Plan of Management to be submitted and approved by Council prior to the occupation certification. Any variation to the Plan of Management may only be made with the written consent of Council.

The following matters to also be considered and included, as appropriate or required by Council:

- Registration with the Department of Fair Trading;
- Boarding House – Standard Occupancy Agreement;
- The maximum number of persons permitted to reside in the boarding house at any one time;
- The owner and/or their representative such as a building manager or agent is not permitted to advertise or organise for short term; accommodation or share accommodation or the like in the building
- The owner must provide evidence to Council on a yearly basis (January) that the Boarding House has gained a tax exemption for low-cost housing from the State Government.

5. Insert new Condition 7A regarding fencing as follows:

"7A A fence of at least 1.8 to 2.1metres in height should be erected on the boundary with the adjoining residential dwelling. This should be at the full cost of the proponent and the choice of material should be decided in consultation with the adjoining owner and ultimately decided by Council."

6. Insert new condition 61A as follows:

"61A Provision of two canopy trees to be planted in the front and rear of the property, and three street trees being:

- Street Tree: The street trees to be provided on the nature strip adjoining the property are to be 75litre pot size *Callistemon viminalis* (common name Weeping bottlebrush) or *Tristaniopsis laurina* (common name Water Gum);
 - Canopy Tree: Proposed new property trees to the development are to be 75litre pot size *Elaeocarpus reticulatus* (common name Blueberry Ash) or *Melaleuca decora* (common name White Feather Honey Myrtle) to the rear setback and *Angophora costata* (common name Smooth barked Apple) or *Eucalyptus haemastoma* (common name Scribbly Gum) to the front setback; or
 - otherwise to the Council Landscape officer's requirements, so as to contribute to the landscape amenity of both the site and the neighbourhood."
7. Delete condition 17 as it is a duplicate and renumber subsequent conditions accordingly.
 8. Amend condition 2 of the deferred commencement conditions by replacing condition d) e) and f) with the following:
 - "d) The plans shall be amended for the ground floor rear portion to have the effect of deleting one boarding room to allow for a larger communal room and this shall be relocated to the more northerly aspect with the communal open space adjoining.
 - e) Condition 8 of the conditions of approval shall be recalculated by Council in accordance with the Section 94 Development Contributions Plan to reflect the monetary figure applicable to the maximum number of boarders being 33.
 - f) The plans shall be amended to show a tile roof for the front section of the roof prior to the issue of a construction certificate."
 9. Amend condition 24.4 by replacing the number '32' with the number '33'.

Vote: 4 – 0 in favour

2 9-11 WEYLAND STREET, PUNCHBOWL: DEMOLISH EXISTING STRUCTURES, CONSOLIDATION OF BOTH LOTS INTO ONE AND CONSTRUCTION OF A SIX-STOREY MIXED USE DEVELOPMENT COMPRISING 42 APARTMENTS, TWO COMMERCIAL TENANCIES, 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 Conrad Johnson (applicant's representative/ Architect), Mr Philip Bull (Planner on behalf of the applicant) and Mr Napoleon Perdis (owner)</p>	<ul style="list-style-type: none"> • Owner of the subject site asks the Panel to take into account what is approved in Weyland Street and assess the proposed development on its own merit. • Notes a number of amendments have been made in consultation with Council officers; is happy to accept the officer's recommendation. • Advised the Architect and Planner were in attendance to answer any questions from the Panel. • Notes matter is lodged with the Land and Environment Court. • Answered questions by the Panel in relation to variances from
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	<p>the minimum Apartment Design Guidelines, building separation, alternative design solutions, roof top garden screening, proposed conditions, Clause 4.6 height variation, rear setback 33% departure at the fifth and sixth storey, benefit provided by the design and alignment with adjacent properties.</p> <ul style="list-style-type: none"> • Tabled copy of Clause 4.6 Variation Request dated 27 October 2016.
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Panel Assessment

Background

This matter was deferred from the previous IHAP dated 6 February 2017. The Panel at that time was of the opinion that the deficiencies in the application would lead to a refusal of the application. However, the Panel on 6 February 2017 determined that the applicant should be given the opportunity to address a number of concerns, including that the proposal did not meet the minimum amenity requirements of the Apartment Design Guidelines, and adequate justification was not provided.

Panel Findings

The Panel has determined that the application does not warrant approval.

The Panel notes that no additional information was forthcoming from the applicant to justify and address the concerns previously raised and no amendments have been made to address these issues.

At the public meeting the Panel gave the applicant and his representatives the opportunity to further explain why the significant variances from the minimum Apartment Design Guide should be allowed with regard to what the environmental benefits are of the proposed design.

The applicant sought to rely on existing approvals in the street. However, apart from the fact this application must be determined on its own merits, the Panel notes that the footprint of the two separate building components on the subject site exceed the footprint of the apartment buildings approved at No. 13-15 Weyland Street. The adjoining approval provides for a significantly greater separation distance between the two building components, some additional 2 metres glass line to glass line for levels ground to 3, and levels 4 and 5 an additional 3 metres.

The Panel in its determination of the application does not have the benefit of specific DCP controls for the site. Nonetheless, the Panel's assessment and findings are not made in a vacuum and most relevant to the Panel's consideration are the provisions of the 'Apartment Design Guide' (ADG), to be taken into consideration in accordance with clause 28(2)(c) of SEPP 65.

The Panel is not persuaded that the proposal will provide appropriate separation distances between the two building components to provide satisfactory amenity for future occupants. In particular, the Panel notes that the minimum requirements of the ADG are not met by the proposed development. Indeed there are significant percentage departures as identified in the table of the report of Council.

Of even greater concern to the Panel is the fact that the separation distances between the two components of the residential flat building are well below the minimum guidelines,

being in the vicinity of between 25-40% below. This fundamental issue in the Panel's determination is not overcome by the design, and the objectives of visual and aural privacy, solar access to communal open space at ground level and density of dwellings are not met.

There are other significant departures of the ADG that the plans fail to meet in both a quantitative and qualitative way. For example the communal and public open space requirements of 25% for the site. This departure is partly compensated for by the fact that the applicant has proposed a rooftop open space area, however, the concrete structure is in excess of the 18 metre height limit. With respect to the deep soil zones no area is proposed whereas the guidelines provide for a minimum of 7%.

In relation to the height control in the Canterbury Local Environmental Plan the Panel notes that the height variation is some 16.6% (towards the rear) above the LEP standard and the proposed roof top terrace concrete cover is 2.85 metres above the specified 18 metre height. In the opinion of the Panel the applicant has failed to justify the variation and the design does not provide a better outcome. The clause 4.6 submission fails to satisfy the environmental benefits of the scheme to justify the variation.

In this circumstance the development application seeking the height exceedance some 16% above the standard, is without merit and the cl4.6 variation is not justified. The proposal fails to demonstrate that a better outcome is achieved by varying the standard.

The Panel considers that the significant departures from the minimum amenity standards in the ADG results in the residential amenity of the proposed units being below the minimum that would be achieved if designed to generally satisfy the guidelines, of particular concern is the lack of acceptable separation distances. The applicant submitted that the rationale for this design is that other developments in the street have been approved (not constructed) of similar built form. The Panel does not accept that the precedent effect is relevant to the assessment of minimum amenity standards, in particular it is noted that the approved adjacent developments satisfy height requirements and the departure from the separation distance guidelines are not as great as proposed in this application.

Apart from the other design principles in terms of context the Panel does not accept that the proposed development with the magnitude of exceedances would warrant an approval. The Panel is of the opinion that a building with a reduced footprint and greater satisfaction of the separation distances of the two buildings, would not only sit more comfortably in the streetscape but would provide for greater residential amenity for occupants. A more appropriately designed development would also have the benefit of addressing other issues such as a lack of direct sunlight in midwinter to the communal open space at ground level, a lack of deep soil planting and the size and functionality and viability of the front commercial area which has a limited floor to ceiling height as well as limited dimensions.

While not a reason for refusal the Panel notes by way of comment that a number of BCA non-compliances may require not insignificant changes to the plans.

IHAP Determination

THAT Development Application DA-632/2015 be **REFUSED** for the following reasons:

1. The Applicant's Clause 4.6 submission to vary the maximum height of 18 metres as contained in the Canterbury local Environmental plan 2012 is not well founded and there are insufficient environmental planning grounds to justify contravening the development standard.
2. The applicant has failed to demonstrate that the residential amenity objectives of the Apartment Design Guide as referred to in SEPP 65 would be met. In particular

the design of the proposed development does not provide adequate spatial separation distances between units to achieve an acceptable level of amenity for future occupants.

Vote: 4 – 0 in favour

The meeting closed at 9.38 p.m.