

CITY OF CANTERBURY BANKSTOWN

MINUTES OF THE

INDEPENDENT HEARING AND ASSESSMENT PANEL MEETING

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

ON 15 AUGUST 2016

PRESENT: Mr Lloyd Graham (Town Planning) - Chairperson
Mr Michael McMahon (Law)
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 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 reports and recommendations 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. 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 and staff members prior to the public hearing.

Panel Assessment

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.

The planning report outlines a concern that the premises are not being used for the purposes of a registered club. This is a question amongst others that the Panel needs clarified.

The Panel is also aware of a number of complaints that have been made in the past, and which were confirmed at the meeting by Mr G Fotis and Mrs L Bridge, regarding the use of the premises and the impacts to adjoining residential properties. Investigations by Council officers indicate that the site is being used as a function centre, and that the proposed works do not demonstrate that the legitimate use of the premises as a registered club would continue as the dominant use.

In order to investigate this and other claims fully, and having regard to statements made by Mr Latouf for the applicant that a representative from the Board of the Club was unable to be present at the meeting, the IHAP believes that, in the interests of procedural fairness, the Board be given the opportunity to respond to the Council report and its recommendations for refusal of development application DA-396/2015 at the IHAP meeting on 19 September 2016.

As part of its further deliberations the Panel will seek advice from the Board of the Club on the 19 September 2016 addressing at least the following:

- (1) Evidence that the Club continues to hold a club licence under the Liquor Act 2007.
- (2) A detailed explanation of the Club's activities during a normal week Monday to Sunday (closed Mondays and Tuesdays, serving of meals and alcohol on other days, activities, etc).
- (3) Any changes in the current Club's activities (as per (2) above) over the past two years.
- (4) The purposes of and use of alterations (already completed) on the lower ground floor and now the subject of DA-396/2015.
- (5) An explanation of the use of the premises as a 'function centre' as advertised on the Club's website in terms of frequency and availability to the general public or to Club members only.
- (6) A comparison between the normal activities of the registered Club and the 'function centre' in order for the Panel to be satisfied whether or not the 'function centre' is reasonably ancillary to the registered club or whether it is an independent use. The Court of Appeal in *Foodbarn Pty Ltd v Solicitor-General* 32 LGRA 157 said "*Where part of premises is used for a purpose subordinate to the purpose inspiring the use of another part it is legitimate to disregard the former and treat the dominant purpose as that for which the whole is being used. However where the whole of the premises is used for two or more purposes, none of which subserves the other, it is irrelevant to inquire which is dominant. If any one purpose operates in an independent way it is immaterial that it may be over-shadowed by others in terms of income generated, space occupied or ratio of staff engaged.*".
- (7) An explanation as to how the Club deals with resident complaints over noise, etc, having regard to the intent of dealing with such matters as outlined in its Operational Plan received by Council on the 11 December 2015.

- (8) Any proposed improvement to the clubs operation or complaint handling procedure to reduce the impact of the club to its neighbours.
- (9) Such other matters that the Club wishes to draw to the attention of the Panel.

Public Addresses

<p>Mr George Fotis (objector)</p>	<ul style="list-style-type: none"> • His property adjoins the subject property and he represents neighbours in the wider area. • Does not dispute the building benefits from existing use rights. Is of the view the proposed development has failed to demonstrate the use of the premises as a registered club. Believes the use of the property for the past 2.5 years as a function centre is unlawful; notes in accordance with regulations, an existing use cannot be changed from one non-conforming use to another. • Notes the proposed development is surrounded by a number of residential properties, which have been impacted by noise from the subject site. • Suggests the Panel adopt the officer's recommendation, with an amendment that the Building Certificate application is also refused and the matter is referred to compliance to immediately cease operation of the function centre and revert back to a club. • Answered questions from the Panel in relation to changes to existing use, operation hours and access, previous activities at the club, Office of Liquor, Gaming and Racing investigations and when he had last been inside the premises.
<p>Mrs Lori Bridge (objector)</p>	<ul style="list-style-type: none"> • Her property adjoins the subject property. • Agrees with the officer's recommendation. • Advised her family's quality of life has been affected since the use of the club has changed. • Advised principal impacts to her family relate to sound:- <ul style="list-style-type: none"> - Persistent and invasive thumping noise/loud base noise from premises; - Consistent noise from exhaust kitchen at the back of the premises; - Traffic noise resulting from the carpark; - Offensive language by staff members prior to their shift. • Notes occasionally patrons park on Adelaide Street. • Believes there has been a failure of the club to adequately address complaints. • Answered questions from the Panel in relation to invitations to the premises extended from the club to neighbours, operation and hours and access, activities conducted of a club nature and membership.
<p>Mr Andy Latouf (for applicant)</p>	<ul style="list-style-type: none"> • Requested the matter be deferred by the Panel, advised notice of the meeting was not received as a number of board members are overseas. • Advised works at the club concluded in December 2014; the first function was in January 2015. The Office of Liquor, Gaming and Racing has attended an event at the Club as part of their investigations. • Is of the view every effort has been made to communicate with

	<p>neighbouring properties regarding the operation of the club.</p> <ul style="list-style-type: none"> • Answered questions raised by the Panel in relation to club activities, access to the club for members, noise impacts on neighbouring properties, management plan and club management structure.
--	---

IHAP Decision

THAT Development Application DA-396/2015 be **DEFERRED** to allow further representations to be made by the applicant in this matter on 19 September 2016.

Vote: 5 – 0 in favour

2. 17 DUNCAN STREET, PUNCHBOWL: CONSTRUCTION OF GRANNY FLAT AT REAR OF SITE AND SEPARATE STORE ROOM

Site Visit

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

Panel Assessment

This proposal seeks consent for the construction of a secondary dwelling at the rear of the site. The proposed secondary dwelling will have a gross floor area of 59.77m², comprising two bedrooms, one bathroom and an open plan living and kitchen area and verandah.

The Panel visited the site and has assessed the situation in this way. The proposed secondary dwelling complies with required setback controls and is considered to maintain adequate amenity for occupants of the subject site and adjoining properties. Accordingly the Panel agrees with the planning report that the site is capable of accommodating the proposed secondary dwelling, and so the proposal is supported. However, the Panel believes that the large Eucalypt close to the southern side boundary needs to be retained. This tree is halfway between the front and the rear boundaries.

Public Addresses

There was no public address for this item.

IHAP Decision

THAT Development Application DA-617/2015 be **APPROVED** in accordance with the Council staff report recommendation, subject to the following change to the recommended conditions:

Amend condition 17, by adding the following words at the end of the sentence:

“, except the large Eucalypt close to the southern side boundary, halfway between the front and the rear boundaries, which is to be retained”

Vote: 5 – 0 in favour

3. 13-15 WEYLAND STREET, PUNCHBOWL: DEMOLITION AND CONSTRUCTION OF A SIX-STOREY MIXED USE DEVELOPMENT

Site Visit

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

Panel Assessment

The development application has been received for the demolition of existing dwellings and outbuildings, consolidation of both lots and construction of a new six storey mixed use development consisting of 29 residential units, two commercial tenancies at ground floor level, a two level basement and associated landscaping.

In its consideration of this matter, the Panel was aware that a six storey development has been approved on the adjoining property on 17-19 Weyland Street, and that this development also consisted of 29 units. As a consequence there has been an attempt here to marry the two developments together so that they appear as side by side coordinated developments. Also there are three other development applications, all of them six storey mixed unit developments, which are currently under assessment on Weyland Street. In the view of the Panel it is clear that the character of the area is changing significantly; particularly on the northern side of the street under the B5 Business Development zone and that regard must be had to ensuring that any negative effects on residential properties to the south (such as overshadowing) are minimised.

The Panel is prepared to support the planning officer's report in this matter, subject to a number of changes to the conditions.

Public Addresses

Garry Chapman (for applicant)	<ul style="list-style-type: none">• Agrees with the officer's recommendation. Notes the proposed development was designed to fit into the adjoining development at 17-19 Weyland Street.• Advised amended plans submitted to meet requirements of the Apartment Design Guide, including solar access and cross ventilation; revised plans include a roof terrace which results in a variation to the 18m building height control.• Answered questions raised by the Panel in relation to<ul style="list-style-type: none">- Amendment of design to provide natural light to lift lobby on floor 1, 2 and 3: Applicants representative advised the design as proposed is consistent with the adjoining building;- Issues of non-compliance including scale, deep soil, visual privacy, side and rear setbacks.• Raised no objection to Panel's suggested conditions as follows:<ul style="list-style-type: none">- Modulate and architecturally detail eastern elevation end wall;- Redesign awning to accommodate large eucalypt and include design element to define entry;- Reduce length of communal roof terrace and return planter boxes;- Delete splay privacy screen and replace windows to these rooms with highlight windows.
----------------------------------	---

IHAP Decision

THAT Development Application DA-263/2015 be **APPROVED** in accordance with the Council staff report recommendation, subject to the following changes to the recommended conditions:

1. Insert additional conditions as follows:

- “5.5 Modulate and architecturally detail (including selected external materials and finishes) to ensure a good presentation of the blank area of the eastern elevation where it is exposed to view from the public domain.
- 5.6 Reduce the length of communal roof terrace so that it is set back from the east and west boundaries by 5.5m, and return the planter boxes along the resulting east and west sides of the terrace.
- 5.7 Amend plans so that natural light is provided into the lift lobby on the first, second and third floor levels.
- 5.8 Delete splay privacy screen on the first, second and third floor levels and replace windows to these bedrooms with highlight windows, similar to bedrooms with a planned highlight window.”
- 2. Amend condition 6 by inserting the word “awnings,” after the word “fences,” in the first sentence.
- 3. Amend condition 39 to read as follows:
 - “39 The street awning is to be redesigned:
 - a) to the approval of the consulting Arborist so that it does not impact on the existing street tree *Corymbia maculata* (common name Spotted gum) nominated to be retained.
 - b) to include a building element in the awning to increase and improve the definition of the main pedestrian entry to the development.

The amended awning design is to be submitted to the Council or certifier prior to the issue of the Construction Certificate.”

Vote: 5 – 0 in favour

The meeting closed at 8.18 p.m.