

**CITY OF CANTERBURY BANKSTOWN**

**MINUTES OF THE**

**CANTERBURY BANKSTOWN LOCAL PLANNING PANEL MEETING**

**HELD IN THE COUNCIL CHAMBERS  
BANKSTOWN**

**ON 4 JUNE 2018**

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**PANEL MEMBERS**

**PRESENT:** Mr Anthony Hudson - Chairperson  
Mr David Epstein - Expert Member  
Mr Stephen Kerr - Expert Member  
Ms Inaam Tabbaa - Community Representative Bass Hill  
Mr Ian Stromborg OAM - Community Representative Revesby  
Mr Karl Saleh - Community Representative Roselands

**STAFF IN**

**ATTENDANCE:** Ms Chauntelle Mitchell (Local Planning Panel Administration Officer)  
Mr Brad McPherson (Manager Governance, not present for the closed session)  
Mr Ian Woodward (Manager Development, not present for the closed session)  
Mr Stephen Arnold (Coordinator Planning - West, not present for the closed session)  
Mr Lia Chinnery (Coordinator Governance - Information and Committees, not present for the closed session)  
Mr Bob Steedman (Team Leader Planning - East, not present for the closed session)  
Ms Samantha Mitchell (Executive Planner, not present for the closed session)  
Ms Alice Pettini (Senior Planner, not present for the closed session)  
Mr Michael Bonnici (Cadet Town Planner, 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 the Canterbury Bankstown Local Planning Panel 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 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.

Prior to Item 2 the Chairman reported that Mr Ian Stromborg had advised the Chair in writing of a possible non-pecuniary conflict of interest arising from his time as a Councillor on Bankstown City Council when the Council considered the rezoning application for the site.

Mr Stromborg said that he did not believe that he had a non-pecuniary conflict of interest that precluded him from considering item 2 and the Chairman agreed with this position. It is to be noted that the applicant did not agree with this position.

## DECISION

### 1 8/24-26 MITCHELL STREET, CONDELL PARK: RECONSTRUCTION OF A FIRE DAMAGED TOWNHOUSE WITH THE ADDITION OF A NEW PERGOLA TO THE REAR

#### Site Visit

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

#### Public Addresses

The following people addressed the meeting in relation to this item:

- Mr Jimmy Tran of Silver Wolf Projects Pty Ltd (representing the applicant)

#### Panel Assessment

Ms Inaam Tabbaa was the community panel member present for the deliberation and voting for this matter.

The Panel agrees with the report and the recommendation. The Panel has considered the Clause 4.6 variation as described in the report and agrees with the variations in the circumstances. In addition to the observations made in the report regarding the clause 4.6 variation, the Panel notes the development was in existence when the Bankstown LEP 2015 was made and therefore was part of the prevailing low density character of the area. The proposal is therefore not inconsistent with the objectives of the controls.

The Panel notes that the building has already been demolished (except for the existing slab which the Panel assumes will be maintained). Condition 10 is amended to cover any previous demolition on site and any remaining ancillary demolition onsite.

#### CBLPP Determination

THAT Development Application DA-237/2018 be **APPROVED** in accordance with the Council staff report recommendation, subject to the following changes to the recommended conditions:

1. Amend condition 10 as follows:
  - a) Amend the first line by deleting the words "The demolition of all" and replacing with the words "Any remaining demolition of"
  - b) Amend subparagraph "i." by deleting the words "A precommencement inspection shall be" and replacing with the words "Where materials containing asbestos cement are to be removed from any previous or future demolition and this is to be".

**Vote: 4 – 0 in favour**

## DECISION

- 2      **56 PRESCOTT PARADE, 67, 67A, 80, 80A, 90 AND 100 AULD AVENUE, 123 AND 123A RALEIGH ROAD, AND 25 MARTIN CRESCENT, MILPERRA: INTEGRATED DEVELOPMENT - SUBDIVISION OF LAND INTO 242 RESIDENTIAL LOTS AND CONSOLIDATION OF THE REMAINING SITE INTO SIX LARGE LOTS INCLUDING PROPOSED ROAD ACCESS, PROVISION OF A PARK, AND ASSOCIATED BULK EARTHWORKS, ROAD CONSTRUCTION WORKS, TREE CLEARING, SOIL REMEDIATION WORKS, CONSTRUCTION AND INSTALLATION OF STORMWATER, SEWERAGE AND OTHER UTILITY SERVICES, WORKS TO THE INTERSECTION OF KEYS PARADE AND HENRY LAWSON DRIVE, AND PROVISION OF A WATERFRONT RESERVE IN ACCORDANCE WITH AN EXISTING VPA**

### **Site Visit**

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

### **Written Submission**

- Four written submissions were received for this matter.

### **Public Addresses**

The following people addressed the meeting in relation to this item:

- Mr Justin Doyle (Barrister representing applicant)  
The speaker tabled additional documents.
- Mr Dominic Fanning (Ecologist representing applicant)
- Ms Catriona Mackenzie (Arborist representing applicant)
- Mr Glenn Francis (Planner representing applicant)

### **Panel Assessment**

Mr Ian Stromborg was the community panel member present for the deliberation and voting for this matter.

The Panel carefully considered the report and the submissions made by the applicant and the applicant's representatives.

The request from the applicant was that the development application be deferred, generally on the basis that they required more time to address issues in the report which were asserted to be new issues or issues which had not been raised by the Council officers previously. With respect to that argument, the Panel does not agree. As noted by the applicant's representative, this matter has been ongoing for many years and the applicant is familiar with the issues which has been addressed from the time that the matter has been rezoned until now when the development application is being considered.

In June 2016 the Council requested extensive details of additional information to be provided about the application. Similarly when the previous associated earthworks development application was being considered in the Court, the Council raised lack of information contentions. In January this year, there was a further meeting with Council officers and the applicant indicated that further information would be provided to address many of the issues that are now raised in the report before the Panel (this is only a brief summary of requests for information).

Of particular concern to the Panel is the suggestion that the applicant was not aware of the requirements and details required to address Clause 6.11 of the LEP. This was a specific clause inserted by the Department at the time of rezoning to address a change from a proposed residential/environmental zone to a residential zone in the area under consideration by the Panel. In addition, these provisions of the LEP are supported by further provisions of the DCP. The Panel is of the view it will take some time for the applicant to address the matters raised in the report and the expected outcome would be a different proposal than what is currently before the Panel.

Briefly, a list of major concerns for the Panel include:

- a) the large amount of fill that is proposed to approximately three-quarters of the site on the western side;
- b) a proper justification for this fill has not been provided;
- c) the importation of the fill is not required in order to facilitate ground levels to satisfy riverine flooding impacts;
- d) the nature of the terrain provides no justification for the fill;
- e) the extent of the fill is inconsistent with various LEP and DCP controls;
- f) the extent to which the fill removes valuable storage from the stormwater catchment from riverine floodplains;
- g) the effect of the fill on the long term survival of trees;
- h) the purpose and impact of the proposed stormwater and bioretention basin located in a high risk riverine flood precinct;
- i) the extent to which the flooding is inconsistent with various LEP and DCP controls;
- j) extensive removal of trees within the site;
- k) failure to preserve trees in reserved plots;
- l) residential layout not responding to context and character of the site with respect to existing landform topography and natural features;
- m) subdivision not incorporating the provision of open space throughout;
- n) no information about how the remaining part of the site is proposed to be used and how this might integrate with the proposed subdivision.

The Panel is of the opinion that the application has got to the point that it should now be determined and the Panel is of the view that the application should be refused for the reasons set out in the report.

#### **CBLPP Determination**

THAT Development Application DA-675/2017 be **REFUSED** in accordance with the Council staff report recommendation and reasons for refusal.

**Vote: 4 – 0 in favour**

#### **DECISION**

- 3 31-33 ISABEL STREET, BELMORE: USE OF EXISTING GYMNASIUM FOR FUNCTIONS/SOCIAL EVENTS ASSOCIATED WITH THE GREEK ORTHODOX PARISH IN ADDITION TO THE CURRENT USAGE AS GYMNASIUM FOR THE ALL SAINTS SCHOOL**

#### **Site Visit**

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

#### **Written Submission**

A written submission was received for this matter.

## Public Addresses

The following people addressed the meeting in relation to this item:

- Mr Zisimos Markous (objector)  
Two documents were tabled by the speaker, but were retained by the speaker immediately after the public session.
- Mr John Hills (objector)  
The speaker tabled speaker notes which were prepared with the assistance of Mr Bruce Woolf, Solicitor.
- Mr Chris Kapsis and Father Apostolos Trifyllis (representing applicant)

## Panel Assessment

Mr Karl Saleh was the community panel member present for the deliberation and voting for this matter.

The Panel is generally supportive of the application as proposed, including a twelve month trial period.

The use of this resource by the Church, at times when the school is not using it seems like an appropriate use, subject to the impacts being controlled.

However Mr Hill read a statement about permissibility of the application part of which is set out below:

*“The report makes the point that the proposed use will be for church functions only and will not be used or leased for other private or commercial interests or for any non-church related activities. The proposed functions associated with the church include but are not limited to wakes, social functions associated with the church operations such as feast day celebrations, mothers’ and fathers’ day lunches and new year’s eve. In other words all functions proposed will be church related or associated social functions.*

*No religious worship by a congregation or religious group is proposed in the gymnasium. However under the definition, place of worship means a building or place used for the purpose of religious worship by a congregation or religious group although it can also have other uses as nominated. The gymnasium is not such a building or place.*

*It is understood that the gymnasium and the Greek Orthodox Parish Church are both erected on the same site. There is no doubt that the church is a Place of Public Worship being a building used for both religious worship by a congregation or religious group and also containing a hall for social events.*

*However the gymnasium is a building, the use of which is for educational purposes as part of the All Saints Grammar School.*

*The distinction seems to be accepted in the description set out in the proposed conditions of consent. Conditions 8 and 9 read as follows:*

- “8. The gymnasium must not be used simultaneously with the Place of Public Worship on the site.*
- 9. The gymnasium must not be used simultaneously for events associated with the All Saints Grammar School and the Place of Public Worship.”*

*This therefore raises the issue whether the use is permissible as a Place of Public Worship.”*

The definition of place of public worship is as follows:

***place of public worship*** means a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.

The point made by the submission is that the building or place that is being considered, is to be the place of religious worship.

While the “place” could be the single allotment of land on which both the gymnasium and the church is located, the difficulty in this case is that a complying development certificate has been issued specifically for the school gymnasium under the (former) provisions of the SEPP Infrastructure 2007 relating to ‘educational establishments’. The description of the development is

*“Construction of a Gymnasium/Games Hall building with associated amenity facilities and alterations to the rear of the existing church hall”*

Further, while the gymnasium and the church are on the same allotment it is clear that there are two separate areas of land being used for two separate uses. The church is used as a place of public worship whereas the gymnasium is used for the purposes of a school. The concern is that there are two separate buildings and two separate places.

The Panel is concerned that there may be an issue of permissibility in the circumstances of this case, and the Panel is of the opinion that legal advice be retained to resolve this issue.

The Council could obtain its own advice, or request that the applicant obtain advice.

In terms of the merit issues of the application, as noted above the Panel is supportive of the application (subject to the permissibility) and subject to addressing a number of issues discussed below.

The first matter is the Plan of Management. The Panel is of the opinion that a comprehensive Plan of Management should be prepared, prior to the issuing of any consent and the Panel agrees that the matters listed in the proposed condition 11 should now be incorporated into the final Plan of Management.

In addition to the matters listed in proposed condition 11, the following additional matters are to be addressed:

- a) Controlling any areas where smokers may congregate during events, and in particular any area is to be away from the rear of the site adjacent to number 36 Etala Street;
- b) The procedure where residents and the Council are notified of the details of any event, prior to that event occurring;
- c) Details of condition 31 to be included;
- d) Condition 33 should be incorporated into the Plan of Management that the Church keep details of events, including:
  1. Event name and type;
  2. Attendance (patrons and staff);
  3. Day, date and hours of the event;

4. Confirmation that the gymnasium was not used simultaneously with the Church/School;
  5. Details of any complaints received and confirmation of how each complaint was dealt with;
  6. Confirmation that the RMS wardens attended the event. List of their duties undertaken, time undertaken and findings;
  7. Confirmation of time the sound/PA system was switched off for the event;
  8. Confirmation that the doors were shut during the event.
- e) Details of reworded condition 35.

In addition, the Panel would like further advice on some of the conditions which address the noise impacts. The industrial noise policy refers to sleep disturbance issues after 10pm. Condition 22 refers to the Environmental Noise Control Manual (Sleep Disturbance). The Panel is unsure how this relates to the requirements set out in condition 16, and the Panel suggests that all the noise control issues be reviewed to ensure that appropriate controls are in place to address impacts while the premises are being occupied, and when the premises are being vacated. The Panel is of the opinion that the conditions should ensure the operation conforms with the Noise Control Manual Sleep Disturbance requirements given the location of the premises within a residential neighbourhood. Condition 36 to reworded to ensure it is clear that it relates to the kitchen ventilation.

Condition 35 could also be reworded so that it is clear that the facility is not be used by the Church under any circumstances, for any events other than the approved events.

**CBLPP Determination**

THAT Development Application DA-382/2015 be **DEFERRED** to enable legal advice be obtained regarding the permissibility issue as referred to in the panel assessment section, and the additional merit issues referred to in the panel assessment section to be addressed (subject to the resolution of the permissibility issues).

**Vote: 4 – 0 in favour**

The meeting closed at 8.35 p.m.