

CITY OF CANTERBURY BANKSTOWN

MINUTES OF THE

CANTERBURY BANKSTOWN LOCAL PLANNING PANEL MEETING

**HELD IN THE COUNCIL CHAMBERS
BANKSTOWN**

ON MONDAY 8 OCTOBER, 2018

PANEL MEMBERS

PRESENT: Mr Anthony Hudson - Chairperson
Mr Grant Christmas - Expert Member
Ms Helen Deegan - Expert Member
Ms Inaam Tabbaa - Community Representative Bass Hill
Ms Kayee Griffin - Community Representative Canterbury
Mr Ian Stromborg OAM - Community Representative Revesby

STAFF IN

ATTENDANCE: Ms Maryann Haylock (Local Planning Panel Administration Officer)
Ms Lia Chinnery (Coordinator Governance, not present for the closed session)
Mr Stephen Arnold (Coordinator Planning - West, not present for the closed session)
Mr George Gouvatsos (Coordinator Planning East, not present for the closed session)
Mr Michael Bonnici (Cadet Town Planner, not present for the closed session)
Ms Jasmine Hamed (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. All clause 4.10 Code of Conduct declaration forms were submitted.

CONFIRMATION OF MINUTES OF PREVIOUS MEETING

THAT the minutes of the Canterbury Bankstown Local Planning Panel Meeting held on 3 September, 2018 be confirmed.

DECISION

1 154 HECTOR STREET, CHESTER HILL: CONVERSION OF EXISTING UNAUTHORISED OUTBUILDING TO A SECONDARY DWELLING.

Site Visit

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

Public Addresses

There was no public address for this item.

Panel Assessment and Reasons

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

The Panel notes that secondary dwellings are permissible with consent under the Bankstown LEP 2015 ("**the LEP**") and under SEPP (Affordable Rental Housing) 2009 ("**the SEPP**").

The Panel is unsure whether the application has been made under the LEP or the SEPP and the Panel is concerned about the proper assessment framework for secondary dwellings.

If the application is assessed under the LEP the proposal cannot be approved because the floor area of the secondary dwelling is greater than 60sqm. Under clause 5.4(9) of the LEP a secondary dwelling must not exceed 60sqm (or 10% of the total floor area of the principal dwelling) and this development standard cannot be varied by using clause 4.6 of the LEP (clause 4.6(8)(c)).

Further, under clause 4.3(2B)(a) of the LEP the maximum wall height for a secondary dwelling is 3m.

The proposal seeks to vary this wall height by .4m (a variation of 13%) giving a wall height of 3.4m.

No clause 4.6 variation has been submitted for this development standard.

This means that the proposal is prohibited under the LEP.

If the application is assessed under the SEPP the application fails because there is also a 60 square metre requirement under clause 22(3)(b). No clause 4.6 variation has been submitted to vary this development standard (noting that clause 4.6 of the LEP relates to variations to the LEP and any other planning instruments)

In addition the Panel is of the opinion that there are also merit grounds to support a refusal of the application whether it is being assessed under the LEP or the SEPP.

These matters: are-

- a) the site is considered unsuitable for the proposed development in that it would result in excessive site coverage and inadequate private open space, and
- b) there is inadequate direct solar access to living areas, and poor amenity (rooms sizes) for the bedrooms in the dwelling.

Also the Panel notes that the plans are inadequate because the layout does not reflect what is onsite and what seems to be proposed in the application (for example; there is a window on the Eastern elevation of the store room, a door is shown from the storeroom to the hallway and the door of bedroom 2 is incorrectly located).

As noted above the Panel is concerned about the proper assessment framework for secondary dwellings. The Panel is unclear as to the inter-relationship between the LEP and the SEPP and whether Schedule 1 of the SEPP is relevant to determining a development application as opposed to a CDC.

While the Panel's current view is that the application should be refused, for consistency in decision-making (noting there are two other secondary dwelling applications on this agenda) the Panel is deferring this application so that legal advice can be obtained to clarify the assessment framework for secondary dwellings.

CBLPP Determination

THAT Development Application DA-655/2018 be DEFERRED pending further advice about the proper assessment framework for secondary dwellings.

Vote: 4 – 0 in favour

DECISION

2 54 RIVERVIEW ROAD, EARLWOOD: CONSTRUCTION OF A GRANNY FLAT AT THE REAR OF THE EXISTING DWELLING.

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 dated 4 October, 2018 was received for this matter.

Public Addresses

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

- Mr John Beckinsale (representing applicant/Architect)
- Mrs Jennifer Beynon (Owner)

Panel Assessment

Ms Kayee Griffin was the community panel member present for the deliberation and voting for this matter.

The site is zoned R4 High Density Residential under the Canterbury Local Environmental Plan 2012 ("the LEP") and secondary dwellings are prohibited in this zone.

This means that the development application is made under SEPP (Affordable Rental Housing) 2009 ("the SEPP")

The Report to the Panel states:

"This matter is reported to Council's Local Planning Panel as the application seeks to vary a development standard by more than 10%. The proposal results in a 55% variation to the rear setback".

The rear development standard in question is clause 10 of Schedule 1 of the SEPP (Setbacks from rear boundaries), and in particular clause 10(2)(a) the effect of which requires a rear setback for the building of 6m. The proposed setback is 2.7m. The difficulty for the Panel is that Schedule 1 of the SEPP relates to clause 23 of the SEPP which is the complying development clause. Clause 23 enables a CDC to be issued for a secondary dwelling so long as all the development standards referred to in clause 23 are complied with including the requirements of Schedule 1 which is picked up in clause 23(1)(g).

The only other reference to Schedule 1 in the SEPP is in clause 21 which is in the following terms:

This Division applies to development, on land to which this Division applies, for the purposes of a secondary dwelling and ancillary development (within the meaning of Schedule 1).

In the Panel's opinion the reference to Schedule 1 in this clause is merely a reference to determining what ancillary development is for the purposes of clause 21. In other words the definition of 'ancillary dwelling' in Schedule 1 is the relevant definition for interpreting clause 21.

This means that this clause does not reference Schedule 1 in a consideration of a secondary dwelling development application.

Further, clause 23 is specific to an application for a CDC.

In short, it seems to the Panel that Schedule 1 is not relevant to a development application for a secondary dwelling (as opposed to a complying development certificate application).

If there is no variation to a development standard, the Panel does not have jurisdiction to determine this application because it does not fall within clause 3 of Schedule 2 of the Minister's s9.1 direction dated 23 February 2018 which is the direction that determines what development applications are to be determined by a Local Planning Panel.

It seems to the Panel that the development application under the SEPP is controlled by clauses 19, 20, 21 and 22 only.

The Panel also notes that the report has also assessed the application having regard to Canterbury DCP 2012.

By way of comment, if the Panel did have jurisdiction, the Panel would have agreed to the application being approved subject to the conditions proposed together with an additional condition about the mulberry tree on the adjoining property to the south No.52 Riverview Road. A condition could be imposed requiring an arborist to prepare a report to assess the condition of the tree and the impacts of the proposed development on the tree and provide recommendations as to how the tree should be addressed to preserve the tree in conjunction with the development.

Further, proposed conditions 7 and 8 could be merged to form one condition as requested by the applicant.

As noted in item 1 the Panel is unclear about the proper assessment framework for a secondary dwelling. This includes clarification about the rear setback issue referred to above. The Panel is requesting legal advice to clarify these matters.

If the legal advice is that the rear setback control in Schedule 1 of the SEPP is a relevant consideration then the application can be referred back to the Panel for the final determination.

If the rear setback control is not relevant then the application would be determined by the Council officers.

CBLPP Determination

- 1) THAT Development Application DA-270/2018 be DEFERRED pending further advice about the proper assessment framework for secondary dwellings.
- 2) If the rear setback control referred to in the Panel's report is not a relevant matter for consideration then the application can be determined by the Council officers.
- 3) If the rear setback control is a relevant consideration then the application should be referred back to the Panel for final determination.

Vote: 4 – 0 in favour

DECISION

3 25 DRAVET STREET, PADSTOW: EXISTING GARAGE AS A SECONDARY AND CONSTRUCTION OF A DETACHED CARPORT.

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:

- Baidaa Mohamad (Owner/Applicant)

Panel Assessment

Mr Ian Stromborg was the Community Panel member present for the deliberation and voting for this matter.

The Panel is unsure whether the application has been made under the Bankstown LEP 2015 ("the LEP") or the SEPP (Affordable Rental Housing) 2009 ("the SEPP") and the Panel is concerned about the proper assessment framework for secondary dwellings.

This Development Application has been assessed under both the LEP and the SEPP

Secondary dwellings are permissible under both parts.

If the Panel assumes that Development Application is being assessed under the LEP then, in the Panel's opinion the application can be approved with the clause 4.6 variation to clause 4.3 (2B)(a) to the 3m height limit.

The Panel also agrees with the assessment under the Bankstown DCP.

This means that the application could be determined under the LEP by way of approval subject to conditions.

Turning to the SEPP, if the application was to be determined under the SEPP then the application cannot be determined by the Panel because there is no particular trigger under Schedule 2 of the Minister's Local Planning Panels Direction at 23 February 2018.

However, by way of comment, if the Panel was able to assess the application under this SEPP then for the reasons given above the Panel would be supportive of the application.

As noted above the Panel is concerned about the proper assessment framework for secondary dwellings and in the Panel's opinion this application should be deferred to enable the Council to obtain legal advice about how these types of secondary dwellings should be assessed.

CBLPP Determination

THAT Development Application DA-437-2018 be **DEFERRED** pending consideration of further advice about the proper assessment for secondary dwellings.

Vote: 4 – 0 in favour

The meeting closed at 7.40 p.m.

Declaration of Interest

MEETING DATE	8/10/18.
Agenda Item/Panel reference number	1

In relation to this matter, I declare that I have:

no known conflict of interest ☒

an actual¹ ☐, potential² ☐ or reasonably perceived³ ☐ conflict of interest as detailed below:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Signature

Date

Name

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Declaration of Interest

MEETING DATE	8/10/18
Agenda Item/Panel reference number	2

In relation to this matter, I declare that I have:

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Date

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Planning Panels

Declaration of Interest

MEETING DATE	8/10/18
Agenda Item/Panel reference number	3

In relation to this matter, I declare that I have:

no known conflict of interest ☒

an actual¹ ☐, potential² ☐ or reasonably perceived³ ☐ conflict of interest as detailed below:

Signature

Date

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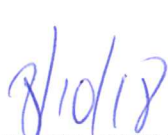
Declaration of Interest


MEETING DATE	8/10/18
Agenda Item/Panel reference number	1-154 Hester St Chester Hill

In relation to this matter, I declare that I have:

no known conflict of interest ☒

an actual¹ ☐, potential² ☐ or reasonably perceived³ ☐ conflict of interest as detailed below:

Signature  Date 

Name 

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Declaration of Interest

MEETING DATE	8/10/18
Agenda Item/Panel reference number	2 - 54 Riverview Rd Earlwood

In relation to this matter, I declare that I have:

no known conflict of interest ☒

an actual¹ ☐, potential² ☐ or reasonably perceived³ ☐ conflict of interest as detailed below:

Signature

Date

Name

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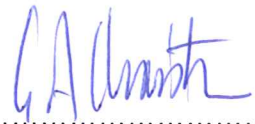
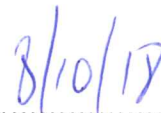
Declaration of Interest

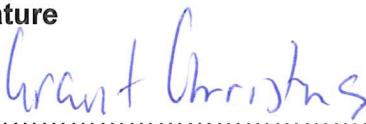
MEETING DATE	8/10/18
Agenda Item/Panel reference number	3-25 Asset & Realisation

In relation to this matter, I declare that I have:

no known conflict of interest ☒

an actual¹ ☐, potential² ☐ or reasonably perceived³ ☐ conflict of interest as detailed below:

Signature  Date 



Name

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Declaration of Interest

MEETING DATE	8/10/18
Agenda Item/Panel reference number	Item 1 - 154 Hector St Chester Hill

In relation to this matter, I declare that I have:

no known conflict of interest ☒

an actual¹ ☐, potential² ☐ or reasonably perceived³ ☐ conflict of interest as detailed below:

[illegible]

Signature

Date _____

Name

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MEETING DATE	8/10/18
Agenda Item/Panel reference number	2. 54 Riverview Rd Earlwood

no known conflict of interest ☒

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H. Deegan.

Signature

8/10/18

Helen Deegan

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Planning Panels

Declaration of Interest

MEETING DATE	8/10/18
Agenda Item/Panel reference number	3.25 Dravet St Podstow

In relation to this matter, I declare that I have:

no known conflict of interest ☒

an actual¹ ☐, potential² ☐ or reasonably perceived³ ☐ conflict of interest as detailed below:

Signature

H. Deegan

Date

8/10/18

Name

Helen Deegan

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Declaration of Interest

MEETING DATE	08.10.2018.
Agenda Item/Panel reference number	154 HECTOR ST, CHESTER HILL

In relation to this matter, I declare that I have:

no known conflict of interest ☒

an actual¹ ☐, potential² ☐ or reasonably perceived³ ☐ conflict of interest as detailed below:

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Signature: Joan Sebastian Date: 08.10.18

NAME TABBA

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Declaration of Interest


MEETING DATE	8 October 2018
Agenda Item/Panel reference number	ITEM 2 DA/382/2015

In relation to this matter, I declare that I have:

no known conflict of interest ☒

an actual¹ ☐, potential² ☐ or reasonably perceived³ ☐ conflict of interest as detailed below:

[illegible]


Signature

Signature

8 October 2018
Date

Date _____

Name KAYEE GRIFFIN

Name

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Declaration of Interest

MEETING DATE	8/10/2018
Agenda Item/Panel reference number	Three

In relation to this matter, I declare that I have:

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T Stromborg 8/10/2018
Signature Date

TAN STROMBORG
Name

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