

CUMBERLAND COUNCIL

*
To JRPP

Director's Report
Planning and Environment
Department

1 13 - 21 John Street, LIDCOMBE

DA-24/2014 GF: **

SUMMARY

Applicant	Sydney Project Group Pty Ltd
Owner	Sydney Project Group Pty Ltd and Cumberland Council
Application No.	DA-24/2014
Description of Land	Lot 1 DP 233926, Lots 1, 2 & 3 DP 608751, 13 - 21 John Street, LIDCOMBE
Proposed Development	Demolition of existing structures and construction of 2 buildings, one 11 storeys and the other 10 storeys including a 2,300 m² supermarket located at the ground floor 103 residential apartments and basement car parking for 240 cars, including replacement public car parking.
Site Area	3,188.77 m ²
Zoning	Zone B4 - Mixed Use Zone B4 - Mixed Use Zone B4 - Mixed Use Zone B4 - Mixed Use
Disclosure of political donations and gifts	Nil disclosure
Issues	<ul style="list-style-type: none">• Owners Consent

Recommendation

That Development Application No. DA-24/2014 for Demolition of existing structures and construction of 2 buildings, one 11 storeys and the other 10 storey including a 2,300 m² supermarket located at the ground floor 103 residential apartments and basement car parking for 240 cars, including replacement public car parking, landscaping and associated stormwater works on land at 13 - 21 John Street, LIDCOMBE cannot be approved as Council has not given its owner's consent to the development application in accordance with the provisions of Clause 49 of the Environmental Planning and Assessment Regulation 2000. It does not intend to give its owner's consent.

Further Council notes that the owners of the land at 15 John Street, Lidcombe (Lot 3 DP 608751) which forms part of the land subject to the development application are Ahmad Salim Mouhajar and Ghazwas Mouhajar, and that these persons have also not provided owners' consent to the development application.

In those circumstances, there is no power to approve the development application, and it should be determined in accordance with the law.

Consultations and History

The West Sydney Joint Regional Panel (Planning Panel) considered the subject development application at a public meeting on 23 June 2016 and deferred a decision to seek legal advice on whether valid land owners consent is in place.

The Planning Panel received legal advice on this matter, and considers that there is insufficient evidence to confirm that land owners consent required for the application has been provided. Land owners consent is required for a DA pursuant to Clauses 49 and 50 of the Environmental Planning and Assessment Regulation 2000.

The Planning Panel requested that evidence of consent to the application from all landowners is provided to the Planning Panel Secretariat within 21 days from 8 August 2016.

The matter was referred to Council's Solicitors, Storey and Gough, who advised by letter dated 7 September 2016 that the contract for the sale of councils land at 13 John Street, Lidcombe to Sydney Constructions and Developments Pty Ltd, has been rescinded and council does not intend to sell the land to the applicant. This land is part of the land subject to the development application. Storey and Gough have advised that they are instructed that Council will not be providing owner's consent to the development application before the JRPP. Therefore, the application does not comply with Clauses 49 and 50 of the EP & A Act Regulation.

49 Persons who can make development applications

(1) A development application may be made:

- (a) by the owner of the land to which the development application relates, or*
- (b) by any other person, with the consent in writing of the owner of that land.*

Site and Locality Description

The subject site consists of four separate allotments identified as Lot 1 DP 233926, Lots 1, 2 & 3 DP 608751, 13 - 21 John Street, LIDCOMBE. The total site area is approximately 3,188.77 m². The subject site's primary frontage is with John Street with a secondary frontage with Mary Street. (See Figure 1) Lot 1 DP 233926, is a public carpark and is owned by Cumberland Council.

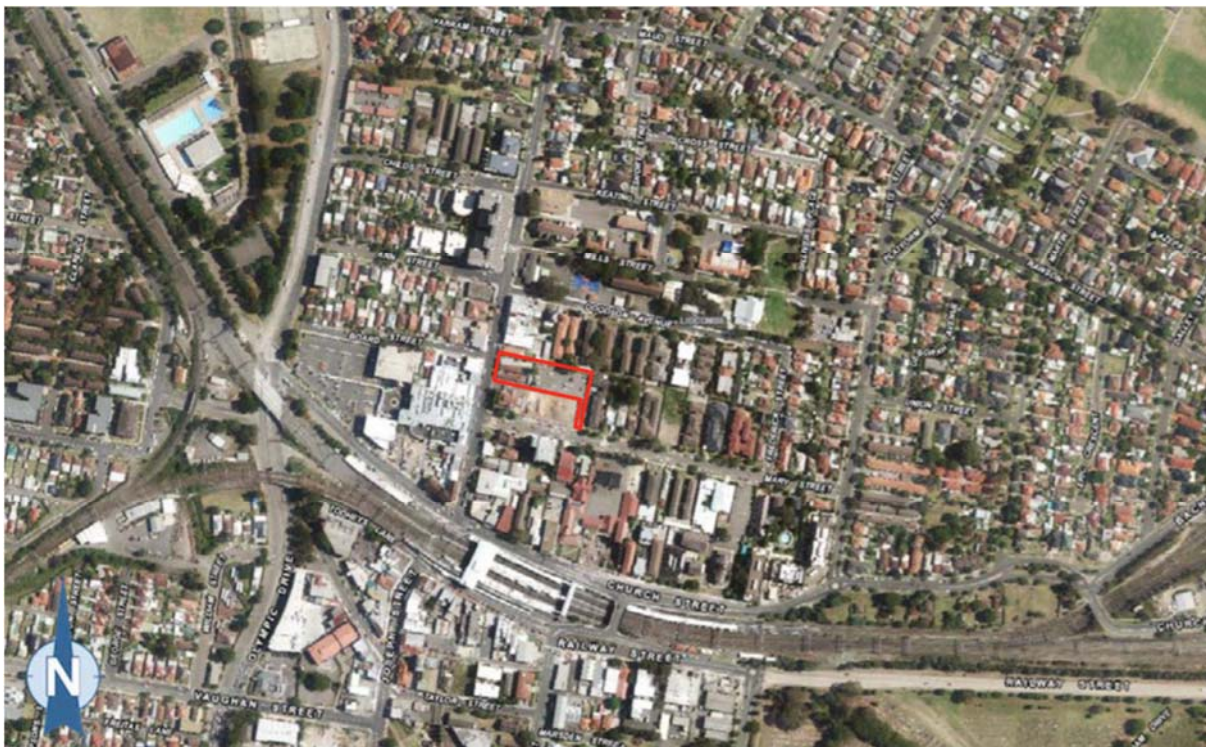


Figure 1 Aerial view of site
(Source: NSW Land and Property Information, 2016)

Description of Proposed Development

Council has received a development application for the demolition of existing structures and construction of 2 buildings, one 11 storeys and the other 10 storeys including a supermarket located at the ground floor, 103 residential apartments and basement car parking for 240 cars, including replacement public car parking.

The supermarket comprises a ground floor retail and back of house component - 2,251 m²; basement supermarket storage - 71 m²; basement supermarket waste room - 34 m²; and supermarket loading dock - 266 m² resulting in a total 2,622 m².

Conclusion

Council has not given its owner's consent to the development application in accordance with the provisions of Clause 49 of the Environmental Planning and Assessment Regulation 2000. It does not intend to give its owner's consent.

Further the owners of the land at 15 John Street, Lidcombe (Lot 3 DP 608751) are Ahmad Salim Mouhajar and Ghazwas Mouhajar, and that these persons have also not provided owners' consent to the development application.

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