

COUNCIL SUPPLEMENTARY REPORT

Panel Reference	2015SYE087
DA Number	DA2015/0597
LGA	Northern Beaches Council
Proposed Development	Demolition works, alterations and additions to existing buildings, construction of new school buildings and an increase in student numbers at Manly Vale Public School
Street Address	Lot 1768 Sunshine Street, Manly Vale
Applicant/Owner	Department of Education
Date of DA lodgement	30 June 2015
Number of Submissions	<p>Public Exhibition No. 3 (12/11/2016 to 13/12/2016)</p> <p>A. <u>12/11/2016 to 5/12/2016 (inclusive)</u></p> <p>14 submissions received consisting:</p> <ul style="list-style-type: none"> • 10 against. • 4 in support. <p>(Part A was considered in the Assessment Report and is not the subject of this Supplementary Report)</p> <p>B. <u>6/12/2016 to 13/12/2016 (inclusive)</u></p> <p>36 submissions received consisting:</p> <ul style="list-style-type: none"> • 32 against. • 4 in support. <p>(Part B forms the subject of this Supplementary Report)</p> <p>Therefore, in total 50 submissions were received during Public Exhibition No. 3 consisting:</p> <ul style="list-style-type: none"> • 42 against. • 8 in support.
Recommendation	Approval subject to concurrence and conditions
List of all documents submitted with this report for the Panel's consideration	List of additional submissions received under Public Exhibition No. 3
Report prepared by	David Kerr – Deputy General Manager Planning & Community
Report date	15 December 2016

PURPOSE OF THIS REPORT

To consider any additional submissions received during the remainder of Public Exhibition Period No. 3 (i.e. between 6 December 2016 to 13 December 2016 (inclusive)) in accordance with Council's recommendation Part C in the Assessment Report.

RELEVANT BACKGROUND

The Development Application was referred to the Sydney North Planning Panel on 5 December 2016 with the aim of the matter being heard at its meeting on 19 December 2016.

In the Assessment Report forwarded to the Panel, Council made a recommendation to approve the proposal subject to the conditions included under Appendix C of the Assessment Report and the following parts:

- A. *Written Concurrence from the NSW Office of Environment and Heritage is provided to Council and to the satisfaction of the Panel within 60 days from the date of the Panel meeting.*
- B. *If concurrence is not received within 60 days from the date of the Panel meeting and not to the satisfaction of the Panel, the proposal shall be reported back to the Sydney North Planning Panel for further consideration at the next available meeting.*
- C. *No additional issues of determinative weight being received in relation to the public exhibition of the proposal which ends on 13 December 2016.*

The following addresses the above-mentioned parts of the recommendation.

PART A & B – CONCURRENCE FROM NSW OFFICE OF ENVIRONMENT AND HERITAGE

The NSW Office of Environment and Heritage (OEH) is required to receive a copy of this Supplementary Report in order to finalise their consideration of the application and, if so inclined, to issue their concurrence.

Therefore, this Supplementary Report will be referred to the OEH at the same time as its referral to the Sydney North Planning Panel.

PART C - PUBLIC EXHIBITION AND ADDITIONAL MATTERS RAISED IN SUBMISSIONS

Background

On 28 October 2016 and 4 November 2016, Council received letters from the Environmental Defenders Office New South Wales (NSW EDO) which questioned the timeframe of Public Exhibition No. 2 being shorter than the 30 day requirement for Threatened Species Development.

In their letter, the NSW EDO noted:

"The Preliminary SIS exhibited in July and August 2015 was self-titled as 'preliminary', and by its own admission had not conducted required surveys or discussed mitigation measures.

The Preliminary SIS was non-compliant with a number of key assessment requirements under s. 100 of the Threatened Species Conservation Act 1995 and on any view could not be said to be substantially compliant with the description of a valid SIS in s. 100. On this basis, exhibition of the Preliminary SIS cannot constitute exhibition of the SIS."

The letter goes on to cite the Land and Environment Court decision of Pepper J. in *Barca v Wollondilly Shire Council [2014] NSWLEC 118* which holds that determination was rendered invalid where an EIS had been exhibited for 30 days and where two amended versions were exhibited later (each being for less than 30 days).

Although the clauses detailed in the letter related to Designated Development only, the principles contained within the Land and Environment Court decision of Pepper J. are considered to have merit in this particular matter. Therefore, Council decided to re-exhibit the Development Application on this basis only.

Public Exhibition No. 3

The amended application was publicly exhibited in accordance with the EPA Regulation 2000 and the Warringah Development Control Plan 2011.

The application was notified to 368 land owners and occupiers and those who made submissions under Public Exhibition No. 1 and No. 2 for a period of not less than 30 calendar days which commenced on 12 November 2016 and ended on 13 December 2016. Furthermore, an advertisement was placed in the Manly Daily on 12 November 2016 and two notices were placed upon the site.

At the time of completing the Assessment Report (i.e. 5 December 2016), 14 submissions had been received which consisted of the following:

- 10 against.
- 4 in support.

Issues raised against the proposal under Public Exhibition No. 3 were, as of 5 December 2016, generally the same as those raised under Public Exhibition Nos. 1 & 2 and have already been addressed. Therefore, no further discussion was undertaken with respect to issues already raised and discussed in the Assessment Report for Public Exhibition Nos. 1 & 2.

Consideration of submissions received between 6 December 2016 to 13 December 2016

Further to the submissions received up to 5 December 2016, 36 direct submissions were received during the remainder of the exhibition period (i.e. from 6 December 2016 to 13 December 2016 inclusive) which consist of the following:

- 32 against.
- 4 in support.

(Note: Council has been made aware of an on-line petition titled “*STOP Trashing Remnant Bushland - Build MVPS on the Existing Footprint*”. The petition, although submitted to the Hon, Mike Baird and not to Council, contains (at the time of completing this report) 1,639 on-line contributors against the proposal. However, as this petition was not submitted directly to Council, it has not been considered any further in this report or included in the submission count).

Therefore, the total direct submissions received by Council during Public Exhibition No. 3 (i.e. from 12 November 2016 to close-of-business on 13 December 2016) are 50 and consist of the following:

- 42 against.
- 8 in support.

Issues raised against the proposal under Public Exhibition No. 3 are generally the same as those raised under Public Exhibition No. 1 and 2 and have already been addressed. Therefore, no further discussion is undertaken with respect to any issues already raised and discussed in Public Exhibition No. 1 and 2.

The following identifies additional issues which have been raised within the remainder of Public Exhibition No. 3 (i.e. from 6 December 2016 to 13 December 2016 inclusive) and which were not raised in the previous two public exhibition periods:

- **Previous Design Options**

Submissions note that concept plans were prepared by the DoE which included design options for 2 to 3 storey buildings on or around the existing building footprint/location on the flat part of the site adjacent to the Gibbs Street carpark.

Notwithstanding any alternative design options considered by the DoE, Council can only assess the design presented in the subject development application.

As discussed in the Assessment Report, the DoE has been approached previously with regards to alternative design/site options. However, the DoE have advised Council that, beyond the amendments made, further re-design and/or relocation to another site is not under consideration.

This matter does not warrant the refusal of the application.

CONCLUSION

The application has completed its third public exhibition period on 13 December 2016.

During that period (i.e. from 12 November 2016 to 13 December 2016 inclusive) a total of 50 submissions were received of which 42 were against the proposal and 8 were in support of the proposal.

The issues raised in the submissions against the proposal were generally the same as those raised under Public Exhibition No. 1 and 2 and have already been addressed in the Assessment Report. Therefore, no further discussion is undertaken with respect to any issues already raised and discussed in Public Exhibition No. 1 and 2.

One issue was raised which was not specifically raised previously, namely regarding previous design options considered by the DoE for the development. However, regardless of any alternative design options considered by the DoE, Council can only assess the design presented in the subject development application. Therefore, this issue does not have any determinative weight and does not warrant the refusal of the application.

The online petition submitted to the office of the Hon, Mike Baird contains (at the time of completing this report) 1,639 on-line contributors against the proposal. However, as this petition was not submitted directly to Council, it has not been considered in this report or included in the submission count.

It is considered that Part C of Council's recommendation has been satisfied.

As a direct result of the application and the consideration of the matters detailed within this supplementary report it is recommended that the Sydney North Planning Panel, as the consent authority, approve the application subject to the "Recommendation" of this report.

RECOMMENDATION

THAT the Sydney North Planning Panel grant development consent to DA2015/0597 for demolition works, alterations and additions to existing buildings, construction of a new school building and an increase in student numbers at Manly Vale Public School at Lot 1768 Sunshine Street, Manly Vale subject to the conditions included under Appendix C of the Assessment Report and the following:

- A. Written Concurrence from the NSW Office of Environment and Heritage is provided to Council and to the satisfaction of the Panel within 60 days from the date of the Panel meeting.
- B. If concurrence is not received within 60 days from the date of the Panel meeting and not to the satisfaction of the Panel, the proposal shall be reported back to the Sydney North Planning Panel for further consideration at the next available meeting.