



DATE OF DETERMINATION	Wednesday 7 December 2016
PANEL MEMBERS	John Roseth (Chair), Sue Francis, , Paul Stein, Steve Kennedy
APOLOGIES	None
DECLARATIONS OF INTEREST	Louise Camenzuli declared a non-pecuniary conflict of interest as a colleague from her firm provided legal advice to the proponent on this application.

Public meeting held at Manly Council Chambers on Wednesday 7 December 2016, opened at 1.00 pm and closed at 5.00 pm.

MATTER DETERMINED (AS DESCRIBED IN SCHEDULE 1)

2015SYE127 – Northern Beaches – DA2015/0901 at 39 Frenchs Forest Road East Frenchs Forest

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined to refuse the development application as described in Schedule 1 pursuant to section 80 of the *Environmental Planning and Assessment Act 1979*.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

The decision was unanimous.

REASONS FOR THE DECISION

The reasons for the decision of the Panel were:





The assessment report advises the Panel that the proposal is not permissible and that therefore the Panel cannot lawfully approve it. The report also advises that, if the proposal were permissible, the only merit issues in dispute would be the hours of opening and signage, which could be controlled by a condition of consent.

The applicant contends that it is open to the Panel to conclude that the proposal is permissible under existing use rights. The Panel finds it difficult to choose between these two conflicting positions, although it is inclined to favour the position put forward by the Council, namely that existing use rights do not exist in respect of the bottle shop and motel accommodation as independent and distinct uses. The Panel considers that the matter would best be resolved by the Land and Environment Court.

Given that no important merit issues exist, if, on appeal, the Court were to find contrary to the Council's position in relation to permissibility, the parties could come to an agreement about the merit issues as part of the Court action.

CONDITIONS

Not applicable as application refused.

PANEL MEMBERS	
 John Roseth (Chair)	 Sue Francis
 Paul Stein	 Steve Kennedy

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2015SYE127 – Northern Beaches – DA12015/0901
2	PROPOSED DEVELOPMENT	Demolition works, alterations and additions to licensed premises (hotel), construction of hotel accommodation and retail premises.
3	STREET ADDRESS	39 Frenchs Forest Road East, Frenchs Forest
4	APPLICANT: OWNER:	ALH Group Property Holdings Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Capital Investment Value >\$20 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy No. 55 (Remediation of Land) ○ State Environmental Planning Policy No. 64 – Advertising & Signage ○ State Environmental Planning Policy (Infrastructure) ○ Warringah Local Environmental Plan 2011 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Manly Development Control Plan 2013 (Amendment 8) • Planning agreements: Nil • Regulations: • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality. • The suitability of the site for the development. • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> and <i>Environmental Planning and Assessment Regulation 2000</i>. • The public interest, including the principles of ecologically sustainable development.
7	MATERIAL CONSIDERED BY THE PANEL	Council Assessment Report: 25 November 2016 Written submissions during public exhibition: 71 Verbal submissions at the panel meeting: <ul style="list-style-type: none"> • On behalf of the applicant – Richard Lancaster • On behalf of council – Anthony Hudson
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	Briefing Meetings: 2 November & 7 December 2016 Site Inspection: 7 December 2016
9	COUNCIL RECOMMENDATION	Approve
10	DRAFT CONDITIONS	As per council assessment report