

Central Coast

Local Planning Panel

Central Coast
Supplementary Local Planning Panel
Business Paper
28 February 2023



Meeting Notice

**The Supplementary Local Planning Panel
of Central Coast
will be held remotely - online,
Tuesday 28 February 2023 at 2.00 pm,
for the transaction of the business listed below:**

1 Procedural Items

1.1 Disclosures of Interest.....3

2 Planning Reports- Outside of Public Meeting

2.1 DA 60589/2020 - 129 Alan St Niagara Park - Supplementary Report and Legal
Advice - Dwelling House & Garage4

Kara Krason

Chairperson

Item No: 1.1
Title: Disclosures of Interest
Department: Governance

Central Coast
Local Planning Panel

18 October 2022 Supplementary Local Planning Panel

Reference: F2020/02502 - D14205789

The NSW Local Planning Panel Code of Conduct states that all panel members must sign a declaration of interest in relation to each matter on the agenda before or at the beginning of each meeting.

Recommendation

That Panel Members now confirm that they have signed a declaration of interest in relation to each matter on the agenda for this meeting and will take any management measures identified.

Item No: 2.1
Title: DA 60589/2020 - 129 Alan St Niagara Park -
Supplementary Report and Legal Advice - Dwelling
House & Garage
Department: Environment and Planning

Central Coast
Local Planning Panel

28 February 2023 Supplementary Local Planning Panel

Reference: DA/60589/2020 - D15546182
Author: Robert Eyre, Principal Development Planner South
Ailsa Prendergast, Section Manager Development Assessment South
Manager: Andrew Roach, Unit Manager, Development Assessment
Executive: Alice Howe, Director Environment and Planning

Summary

An application has been received for construction of a new dwelling house at Lot 14 DP 2480, 129 Alan Street, Niagara Park. The application was considered by the Local Planning Panel at its meeting of 16 December 2021. The matter was deferred at that meeting pending the submission of additional information, primarily in relation to legal matters pertaining to access (the land is accessed via a Right of Way (ROW)). The matter was again considered and deferred at the Panel meeting of 18 October 2022, for the receipt of additional information. The additional information, including further legal advice, has been obtained and the matter is referred back to the Panel for consideration. This report provides commentary in relation to the matters raised by the Panel. The application is recommended for approval.

The application is required to be referred to the Local Planning Panel for determination as the proposed development is classified as 'designated development' under *Interim Development Order No.122 - Gosford*.

Applicant	J Kechagias
Owner	J Whyte and C Whyte
Application No	DA60589/2020
Description of Land	Lot 14 DP2480 No. 129 Alan Street Niagara Park
Proposed Development	New dwelling house
Site Area	20,160m ²
Zoning	7(a) Conservation under IDO 122
Existing Use	Vacant
Employment Generation	No
Estimated Value	\$345,000.00

Recommendation

- 1 *That the Local Planning Panel grant consent to DA60589/2020 for the development of a dwelling house on lot 14 DP2480 No. 129 Alan Street, Niagara Park subject to the conditions detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979.***
- 2 *That Council advise relevant external authorities of the Panel's decision.***

Background

The application for a Dwelling House and associated Garage at 129 Alan Street, Niagara Park was initially considered by the Local Planning Panel at its meeting of 16 December 2021. A supplementary report was considered by the Panel on 18 October 2022. The previous reports, draft conditions, plans and related documents previously considered by the Local Planning Panel are separately provided.

At the meeting of 18 October 2022, the matter was deferred by the Panel with the following resolution

'That the Local Planning Panel further defer consideration of this matter for electronic determination, to seek the following:

- 1 Owners consent from 137 Alan Street (Lot 16 DP2480) Niagara Park or alternatively legal advice to confirm that owners consent is not required for the proposal which includes construction of new driveway access and associated drainage works, that cross the adjoining allotment (137 Alan Street), as outlined in submitted engineering plans.*
- 2 Legal advice to confirm whether the proposed new driveway access and associated drainage works included in the submitted engineering plans are required to be notified in accordance with Council's Development Control Plan and any other relevant planning legislation that satisfies matters in relation to the public interest.*
- 3 Legal advice to confirm whether formal amendment to the development application description to include 137 and 129 Alan Street Niagara Park is required, considering the proposal includes driveway and engineering works over 137 Alan Street, upon which the proposed dwelling house and garage rely.'*

This supplementary report is to provide additional information requested by the Panel.

Supplementary Report -Legal Advice.

Legal advice in relation to the access matters has been sourced from external legal counsel, Wilshire Webb Staunton Beatie Lawyers. The legal advice, dated 15 November 2022, is provided in full as Attachment 1.

Exempt and Complying Development.

The works required to upgrade the driveway over the ROW through the adjoining property are not classified as exempt or complying development due to the area of the driveway being greater than 150m².

The imposition of such a condition requiring the upgrade or the carrying out of work on the adjoining property is permitted in accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979*, which states in part:

'A condition of development consent may be imposed if:

(f) it requires the carrying out of works (whether or not being works on land to which the application relates) relating to any matter referred to in section 4.15(1) applicable to the development the subject of the consent,

Separate legal opinions have been received from both the applicant's solicitor and Council's solicitor that confirm that the consent of the owner of the land burdened by the ROW is not required in this case and the advertising of the application did not require to include the land burdened by the ROW.


Conclusion

The legal advice confirms the previous advice to the Panel relating to the construction of the driveway and associated works required in the engineering plans over 137 Alan Street (Lot 16 DP 2480) Niagara Park that:

- 1 The consent of the adjoining owner is not required for the works.
- 2 The works are not required to be notified.
- 3 Amendment to the application is not required.

The Panel can now determine the application in accordance with the reports and draft conditions provided and the recommendation above.

Attachments

1	Legal Advice Wilshire Webb Staunton Beatie  Lawyers - Dated 15 November 2022	Provided Under Separate Cover	D15452822
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