

ITEM 5. DEVELOPMENT APPLICATION: 161 CASTLEREAGH STREET SYDNEY**FILE NO: D/2012/402****DEVELOPMENT APPLICATION NO: D/2012/402****SUMMARY****Date of Submission:** 20 March 2012**Applicant:** Stephen Garden, Lend Lease**Architect:** BVN Architecture

Summary: The application seeks consent for the first use and internal fit-out works to Levels 26 to 37 (inclusive) to accommodate an office for a major corporate and commercial law firm. The proposed hours are 8am to 8pm, Monday to Friday. The works involve construction of new partition walls, joinery and core walls/doors, new inter-tenancy stairs and goods lift, installation of electrical and data fittings/fixtures, and new surfacing and finishes throughout. The external building design, amenities and building access approved as part of the base build will not be altered.

The estimated cost of the development is \$53,804,850. This exceeds the threshold (\$50 million) for DAs able to be determined by Council officers under delegation. Accordingly, the application is being reported to the Central Sydney Planning Committee for determination.

The proposal complies with the provisions of Sydney LEP 2005 and the relevant DCPs and is acceptable in that:

- it is a permitted use;
- the floor space ratio, height and car parking arrangements approved in 2007 as part of the base building works are not increased;
- there is no adverse impacts on the heritage listed Legion House and other heritage items in the vicinity of the site;
- the design integrity of the approved building is not diminished;
- there is no unreasonable impact on the use and enjoyment of adjoining land.

Summary Recommendation: The development application is recommended for approval, subject to conditions.

Development Controls:

The following planning controls may apply.

- (i) Sydney Local Environmental Plan (LEP) 2005
- (ii) Central Sydney Development Control Plan 1996
- (iii) City of Sydney Notification of Planning and Development Applications DCP 2005
- (iv) City of Sydney Access Development Control Plan 2004
- (v) City of Sydney Heritage Development Control Plan 2006

Development Contributions:

- (vi) Central Sydney Contributions (Amendment) Plan 2002

Attachments:

A - Selected Drawings

RECOMMENDATION

It is resolved that consent be granted subject to the following conditions:

SCHEDULE 1A**Approved Development/Design Modifications/Covenants and Contributions/Use and Operation**

Note: Some conditions in Schedule 1A are to be satisfied prior to issue of a Construction Certificate and some are to be satisfied prior to issue of Occupation Certificate, where indicated.

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2012/402 dated 20 March 2012 and Statement of Environmental Effects prepared by McKenzie Group Consulting dated 15 March 2012 and the following drawings:

Drawing Number	Architect	Date
ARC-BVN-23260 Issue 21	BVN Architecture	30 September 2011
ARC-BVN-23270 Issue 21	BVN Architecture	30 September 2011
ARC-BVN-23280 Issue 21	BVN Architecture	30 September 2011
ARC-BVN-23290 Issue 21	BVN Architecture	30 September 2011
ARC-BVN-23300 Issue 21	BVN Architecture	30 September 2011
ARC-BVN-23310 Issue 21	BVN Architecture	30 September 2011
ARC-BVN-23320 Issue 21	BVN Architecture	30 September 2011
ARC-BVN-23330 Issue 21	BVN Architecture	30 September 2011
ARC-BVN-23340 Issue 21	BVN Architecture	30 September 2011
ARC-BVN-23350 Issue 21	BVN Architecture	30 September 2011
ARC-BVN-23360 Issue 21	BVN Architecture	30 September 2011
ARC-BVN-23370 Issue 21	BVN Architecture	30 September 2011

and as amended by the conditions of this consent:

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

(2) SECTION 61 CONTRIBUTIONS PAYABLE - REGISTERED QUANTITY SURVEYOR'S DETAILED COST REPORT - SUBMITTED AND VERIFIED PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

(3) HOURS OF OPERATION - MINOR DEVELOPMENT

The hours of operation are restricted to between 8.00am and 8.00pm Monday to Friday.

(4) PARTITION WALLS

SCHEDULE 1B

Prior to Construction Certificate/Commencement of Work/Health and Building

Note: Prior to the issue of the Construction Certificate, sufficient information must be forwarded to the certifying authority (whether Council or a private accredited certifier) illustrating compliance with the relevant requirements of the Building Code of Australia (and a copy forwarded to Council where Council is not the certifying authority). If Council is to be the certifying authority, please contact the Building Unit to discuss the requirements prior to submission of the application for construction certificate.

(5) ANNUAL FIRE SAFETY STATEMENT FORM

(6) BCA - NEW BUILDINGS WORKS - CLASS 2-9 BUILDINGS

- (a) Pursuant to Clause 98 of the Environmental Planning and Assessment Regulation 2000, the proposed building work must comply with the Building Code of Australia (BCA) including:
- (i) Fire resistance and stability - Part C1;
 - (ii) Compartmentation and separation - Part C2;
 - (iii) Provision for escape (access and egress) - Part D1;
 - (iv) Access for people with disabilities - Part D3;
 - (v) Fire fighting equipment - Part E1;
 - (vi) Lift installation - Part E3;
 - (vii) Emergency lighting, exit signs and warning systems - Part E4;
 - (viii) Sanitary and other facilities - Part F2;
 - (ix) Energy Efficiency - Air-conditioning and ventilation systems - Part J5;
 - (x) Energy Efficiency - Artificial lighting and power - Part J6;

- (b) If compliance with the deemed-to-satisfy provisions of the BCA and the matters listed in clause (a) above cannot be achieved, an alternative building solution in accordance with Part A0 of the BCA must be prepared by a suitably qualified and accredited person and be submitted to the Certifying Authority illustrating how the relevant performance requirements of the BCA are to be satisfied. Prior to a Construction Certificate being issued, the Certifying Authority must ensure that the building complies with the Building Code of Australia.
- (c) The BCA matters identified in (a) above are not an exhaustive list of conditions to verify compliance or non-compliance with the BCA. Any design amendments required to achieve compliance with the BCA must be submitted to Council. Significant amendments may require an application under Section 96 of the Act to be lodged with Council to amend this consent.

Note: The provisions of Clause 94 of the Environmental Planning and Assessment Regulation 2000 have been considered in the assessment of the proposed development.

- (7) COMPLIANCE WITH BUILDING CODE OF AUSTRALIA**
- (8) SPRINKLER & SMOKE DETECTION SYSTEM**
- (9) STRUCTURAL CERTIFICATION FOR DESIGN - BCA (ALL BUILDING CLASSES)**
- (10) FIRE HOSE REELS NOT TO BE OBSTRUCTED**
- (11) GLAZING - COMPLIANCE WITH AUSTRALIAN STANDARD**
- (12) STRUCTURAL CERTIFICATION FOR EXISTING BUILDING - STORAGE COMPACTUS**
- (13) CONTINUED PERFORMANCE OF MECHANICAL VENTILATION**
- (14) MECHANICAL VENTILATION**
- (15) INSTALLATION OF DUAL-FLUSH TOILETS**
- (16) INSTALLATION OF WATER EFFICIENT TAPS**
- (17) INSTALLATION OF WATER EFFICIENT URINALS**
- (18) INTERNAL LIGHTING SYSTEM**
- (19) WASTE AND RECYCLING MANAGEMENT - MINOR**

SCHEDULE 1C

During Construction/Prior to Occupation/Completion

- (20) HOURS OF WORK AND NOISE – CBD**
- (21) OCCUPATION CERTIFICATE TO BE SUBMITTED**

(22) LOADING AND UNLOADING DURING CONSTRUCTION

The following requirements apply:

- (a) All loading and unloading associated with construction activity must be accommodated on site.
- (b) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.

(23) NO OBSTRUCTION OF PUBLIC WAY**SCHEDULE 2**

The prescribed conditions in accordance with Clause 98 of the Environmental Planning and Assessment Regulation 2000 apply to the development.

BACKGROUND

The Site and Surrounding Development

1. The site is irregular in shape with frontages to Pitt Street and Castlereagh Street. The site includes a heritage listed building (Legion House) along the Castlereagh Street frontage. A new commercial tower with basement parking and ground floor retail is currently under construction.
2. Surrounding developments are predominantly commercial and retail in nature.
3. Photographs of the site and a location plan are provided below.



Photos 1 and 2 – Pitt St and Castlereagh St views of tower under construction



Figure 1 – Location Plan

History of Development Applications Relevant to this Site

4. On 6 December 2007, the Central Sydney Planning Committee (CSPC) granted development consent (Development Application D/2007/1792) for the erection of a 43 storey commercial building, with ground and basement level retail, a mid-block link from Castlereagh Street to Pitt Street, basement parking, retention and restoration of heritage listed Legion House, demolition of all other buildings, and site amalgamation. Condition 11 of this consent states:

“SEPARATE DEVELOPMENT APPLICATION FOR ALL RETAIL USES AND FIT OUT OF ST JAMES ETHICS CENTRE

- (a) *A separate development application must be submitted at the appropriate time for the specific use of all retail/restaurant/café uses proposed within the podium, adjoining pedestrian links and Legion House.*
- (b) *A separate development application is also required for the fit out of the St James Ethics Centre and associated facilities within Legion House.*

Note: *A separate development application is not required for use of the commercial office space.”*

5. While the above application has been modified a number of times (Amendments A to I), these modifications do not have any direct relevance to the application the subject of this report.

6. There are other DA consents for building name signs (for ANZ Bank) and the fitout and use of an ANZ ground floor retail tenancy. These other applications do not have any direct relevance to the application the subject of this report.

PROPOSAL

7. The application seeks consent for the first use and internal fit-out works to Levels 26 to 37 (inclusive) to accommodate an office for a major corporate and commercial law firm. The proposed hours are 8am to 8pm, Monday to Friday. The works involve construction of new partition walls, joinery and core walls/doors, new inter-tenancy stairs and goods lift, installation of electrical and data fittings/fixtures, and new surfacing and finishes throughout. The external building design, amenities and building access approved as part of the base build will not be altered. Selected drawings may be found at **Attachment A**.

IMPLICATIONS OF THE PROPOSAL

Section 79C Evaluation

8. An assessment of the proposal under Section 79C of the Environmental Planning and Assessment Act 1979 has been made, including the following:

Section 79C(1)(a) Environmental Planning Instruments, DCPs and Draft Instruments

State Environment Planning Policies (SEPPs)

9. The proposed development is not subject to any relevant State Environmental Planning Policies.

Sydney LEP 2005

10. The proposed first use and internal fitout of Levels 26 to 37 (inclusive) is acceptable as:
 - (a) it is a permitted use in the City Centre zone;
 - (b) the floor space ratio, height and car parking arrangements approved in 2007 as part of the base building works are not increased as a result of the proposal;
 - (c) there is no adverse impacts on the heritage listed Legion House and other heritage items in the vicinity;
 - (d) the design integrity of the approved building is not diminished; and
 - (e) the site is not located within a nominated 'Special Area'.

Draft Sydney LEP 2011

11. The exhibition of the Draft Sydney LEP 2011 has now been completed. Council have adopted the Draft LEP and have referred the document to the Department of Planning for adoption. The provisions of the Draft LEP have been taken into consideration in the assessment of the proposal.

12. The site is located within the B8 Metropolitan Centre zone. The proposal is permissible.
13. The proposal does not result in an increase in the approved floor space ratio, building height or car parking arrangements.
14. Part of the site is a draft heritage item. The site is also within the vicinity of other draft heritage items. The proposal will not adversely impact on the significance of the draft heritage items.

Central Sydney DCP 1996

15. The proposal satisfies the relevant objectives and provisions of the DCP.

City of Sydney Access DCP 2004

16. The proposal satisfies the relevant objectives and provisions of the DCP.

City of Sydney Heritage DCP 2006

17. The proposal satisfies the relevant objectives and provisions of the DCP.

Issues

18. The issues identified in the above instruments/policies as non-complying or requiring further discussion are discussed in detail below:

Why a DA?

19. The original DA consent approved the construction of a commercial office tower (amongst other things). As noted earlier, Condition 11 of the original consent does not require separate DA consent for the commercial office use of the tower. However, as the approved floor plans for Levels 26 to 37 (inclusive) is for an open plan office with no partitioning etc, separate DA consent is required for the internal fitout of the space.
20. While internal building alterations may be complying development (Part 5 General Commercial and Industrial Code, Subdivision 1 Building alterations (internal)) under State Environmental Planning Policy (Exempt and Complying Development Code) 2008, the fact that part of the site includes a heritage listed item, prevents the issuing of a complying development certificate.

Why the DA must be considered by the CSPC?

21. Under the provisions of the City of Sydney Act 1988, the CSPC is the consent authority for 'major development'.
22. Clause 31 of the Act states that:

“major development’ means development carried out or proposed to be carried out on land within or partly within the City of Sydney, being:

- (a) *development the estimated cost of which exceeds 50 million dollars, or*

- (b) *development the subject of a development application which, if unconditional consent were to be granted to the application, would not comply with an environmental planning instrument that applies to the land concerned, or*
 - (c) *development the subject of a development application, or development of a specified class, that the Minister administering Part 4 of the Planning Act has requested the Planning Committee to deal with.”*
23. The estimated development cost of the DA is \$53,804,850, which is above the threshold in sub-clause (a). Sub-clause (b) and (c) have no relevance to the application at hand.
24. On 24 June 2004, the CSPC considered a report “*Delegation to Council – Development Applications involving variation to a development standard and costing less than \$50m*”. Amongst other things, the report stated that:
- “6. *Since the City of Sydney has expanded to include areas other than the CBD, there has been occasion where small development applications have been required to be determined by the Central Sydney Planning Committee. These applications are typically of local significance only, and have been as small as applications for single dwelling houses and town house developments in breach of numerical development standards, which under the City of Sydney Act is defined as “major development”.*
 - 7. *It is not considered in the drafting of the City of Sydney Act, that it was intended that the role of the CSPC would extend to deliberation and determination of such small development applications. Further, it is not considered that such applications are an appropriate use of the time and resources of the CSPC.*
 - 8. *The proposal is to delegate all applications for development consent under 50 million dollars to the City of Sydney Council, whether or not such a proposal complies with an Environmental Planning Instrument. However, pre-existing delegations (e.g. to staff for buildings three storeys and under) are not proposed to be altered.”*
25. The CSPC subsequently resolved that:
- “(A) *the CSPC delegate authority to the Council of the City of Sydney, pursuant to Section 40(2) of the City of Sydney Act 1988, to exercise CSPC’s functions with respect to all applications for development consent where the estimated cost of development does not exceed \$50,000,000, including those applications which do not comply with an environmental planning instrument that applies to the land concerned;*
 - (B) *the delegation made by this resolution excludes those applications or classes of applications which are the subject of pre-existing delegations; and*
 - (C) *a report be submitted to the CSPC every six months to keep track of matters dealt with by Council under this delegation, and to identify trends that may be of interest to the CSPC.”*
26. The DA the subject of this report does not meet the above delegation. Accordingly, the CSPC is the consent authority for the application.

Section 79C(1)(b) Other Impacts of the Development

27. Besides the matters discussed in the balance of this report, there are no other impacts of the development.

Section 79C(1)(c) Suitability of the site for the development

28. The site is considered to be suitable for the development.

Section 79C(1)(e) Public Interest

29. The proposal is considered to be in the public interest.

POLICY IMPLICATIONS

30. Not applicable to this report.

FINANCIAL IMPLICATIONS/SECTION 61 CONTRIBUTIONS

31. The cost of the development is in excess of \$200,000 and is therefore subject to a development levy pursuant to the Central Sydney (Section 61) Contributions Plan 2002. An appropriate condition has been included in the recommendation of this report.

PUBLIC CONSULTATION**Section 79C(1)(d)****EXTERNAL REFERRALS**

32. The City of Sydney Notification of Planning and Development Applications DCP 2005 identify four categories of development. *“Any DA where value of works exceeds \$50m”* is a Category D development which would require the proposal to be advertised and notified for 28 day. The DCP also states that the decision in respect of what category a particular development is for shall be made at the discretion of the consent authority.
33. However, it is noted that under the provisions of Clause 19(4) of Sydney LEP 2005, notification and advertisement is not required if the application is of a minor nature and will not detrimentally affect the use and enjoyment of adjoining land.
34. In the hierarchy of planning instruments, a LEP is ‘higher’ than a DCP. Accordingly, given the minor nature of the application and the fact that there will be no detrimental affect on the use and enjoyment of adjoining land, notification and advertisement is not required.

Integrated Development

35. The proposal is not Integrated Development.

INTERNAL REFERRALS

36. The application was referred to Council’s Specialist Surveyor and Building Services Unit. No objection to the proposed development was raised, subject to the imposition of appropriate conditions.

37. Appropriate conditions have been included in the recommendation of this report to reflect these requirements.

RELEVANT LEGISLATION

38. The Environmental Planning and Assessment Act 1979.

CRITICAL DATES / TIME FRAMES

39. There are no critical dates.

CONCLUSION

40. The proposal complies with the provisions of Sydney LEP 2005 and the relevant DCPs and is acceptable in that:
- (a) it is a permitted use;
 - (b) the floor space ratio, height and car parking arrangements approved in 2007 as part of the base building works are not increased;
 - (c) there is no adverse impacts on the heritage listed Legion House and other heritage items in the vicinity of the site;
 - (d) the design integrity of the approved building is not diminished; and
 - (e) there is no unreasonable impact on the use and enjoyment of adjoining land.
41. Accordingly, the application is recommended to be approved subject to conditions.

GRAHAM JAHN

Director City Planning, Development and Transport

(Michael Soo, Senior Area Planning Manager)