

Relevant Information for Local Planning Panel

FILE: D/2018/1305 and D/2018/1451 **DATE:** 16 July 2019

TO: Local Planning Panel Members

FROM: Graham Jahn AM, Director City Planning, Development and Transport

SUBJECT: Information Relevant To Items 4 and 5 – Development Applications: 208-218 Riley Street Surry Hills – D/2018/1305 and D/2018/1451

Alternative recommendation

- (A) It is resolved that consent be granted to Development Application No. D/2018/1451 subject to the conditions set out in Attachment A to the subject report and the following amendment to Reason for Recommendation (B) (additions shown in ***bold italics***):
- (B) The development achieves a high standard of architectural design, materials and landscaping, contributing positively to the public domain with a contemporary and distinct choice of brick to reference the character of the surrounding area. The development will improve the presentation of the ground floor facade of the existing Cambridge Hotel and be complemented by public art, to be confirmed prior to the issue of a Construction Certificate. The development achieves the principles of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore ***exhibits*** design excellence ***in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012 and consent may be granted.***

Background

1. A submission has been received from a neighbouring resident in response to an invitation to the Local Planning Panel meeting, raising concerns with the assessment process and matters addressed within the planner's report. The concerns raised by the submitter are summarised and addressed under the headings below:
 - (a) The application was not notified in accordance with Schedule 1 of the Sydney Development Control Plan 2012 (SDCP) because the Quantity Surveyor's report was not exhibited for the full length of the exhibition period.

- (b) The decision to withhold public submissions from being viewed online by the general public based on Section 10A(2)(a) of the *Local Government Act 1993* (NSW) is without standing and prejudices the public.
- (c) The planner's report has not sufficiently summarised the concerns raised in submissions, particularly those matters under (d)-(g) below.
- (d) The development has not been properly assessed against the design excellence provisions (Clause 6.21) of the Sydney Local Environmental Plan 2012 (SLEP).
- (e) The development has not been properly assessed against the requirements of Section 4.1.3.1 of the SDCP with regards to overshadowing and has not demonstrated an effort to reduce overshadowing in accordance with Condition 10 of D/2016/1177, the concept approval.
- (f) Overlooking and loss of visual privacy have not been appropriately considered.
- (g) The acoustic report contains errors that misrepresent the existing background noise levels and impacts of the development on neighbouring properties.

Public notification failed to comply with Sch 1 to the Sydney DCP

2. The submitter's concerns with the exhibition of the application regards the decision by Council not to place the Quantity Surveyor's (QS) report online as part of the exhibition documents. This is Council's standard practice due to concerns raised previously that it details commercial in confidence information. While Schedule 1 of the SDCP states that "all documents lodged" with an application will be exhibited, other matters that are not generally included in the material which is publically exhibited include Part A of the Development Application form (which contains private contact details) and internal residential floor plans (where requested by the applicant).
3. In this instance, and after reviewing the matter, the QS report was made available online for members of the public to view in the last two days of the exhibition period. Submitters who made inquiries regarding the QS report, including the subject submitter, were advised that the exhibition and notification period would not be extended as the QS reports were not considered crucial to the concerns of the community. Notwithstanding, if submitters wished to comment on the matter after the end of the exhibition period (7 December 2018 to 18 January 2019), these concerns would be, and were, considered in the assessment of the application as is standard practice.
4. As discussed in the report the combined cost of the early works development application D/2018/1305 and detailed design development application D/2018/1451 are less than \$50 million, being the trigger for the application to be determined by the Central Sydney Planning Committee.
5. The purpose of a QS report is to determine the appropriate application fees, which are based on the estimated cost of works, and to ensure that the application is determined by the correct consent authority. In this case, the QS report accompanying D/2018/1451 was peer reviewed and found to be accurate. As such, Council staff are confident that the correct notification fees were charged and that the Local Planning Panel is the correct authority to determine the application.
6. Based on the above information, Council staff do not believe that the public was in any way prejudiced by the QS reports not being exhibited during the full extent of the exhibition period.

Misapplication of s 10A(2)(a) of the *Local Government Act 1993* (NSW)

7. Council staff acknowledge that the provisions of Section 10A(2)(a) of the Local Government Act 1993 do not apply to the Local Planning Panel, as the provision only regards Council meetings wholly containing Councillors. Notwithstanding, it is standard practice that submissions are not made public to maintain the confidentiality of submitters.
8. There is no requirement under the EP&A Act for submissions to be made available to the public during the assessment of the application, however, members of the public may apply to view submissions (with names, contact details and other personal information redacted) through making an application under the *Government Information (Public Access) Act 2009*.
9. All submissions are made available to the LPP members prior to the meeting for their consideration.

Failure to have regard to public submissions

10. The submitter raises concerns with the summary and response to submissions in the report particularly as to whether the assessment:
 - (a) Considered methodological defects within the Acoustic Report and Construction Management Plan.
 - (b) Considered the failure on the part of the proponent to address amenity, design excellence and the Visitor Accommodation Action Plan with regard to the impact on the amenity of south and east facing rooms within the existing Cambridge Hotel.
 - (c) Adequately considered the impact of overlooking from the proposed hotel on adjoining neighbours.
11. The assessing officer read each of the submissions received for both applications and have taken into account the matters raised in each. The matters raised, in particular by the subject submitter, were extensive and have been identified and summarised in a reasonable manner. Notwithstanding, the responses under the headings below provide further discussion on those matters. Furthermore, the Local Planning Panel have been provided with copies of all submissions received and can make their own assessment against the summary in the report.

NON-COMPLIANCE WITH SYDNEY LEP AND DCP

Design excellence

12. While a breakdown against each of the items listed in cl 6.21(4) has not been provided, the report appropriately summarises how the application demonstrates design excellence. The specific concern raised by the submitter in his letter regarding impacts to the amenity of hotel rooms within the existing Cambridge Hotel is not considered to be determinative. Council's planning controls do not require minimum amenity standards for hotel rooms. For example, a hotel room is not required under Council's controls to have a window. The specific relationship between the towers is discussed further with regard to Sections 4.2.4 and 4.2.5.1 of the SDCP.
13. The Visitor Accommodation Action Plan which the submitter has referenced does not have determinative weight and is not a matter for consideration under Section 4.15 of the EP&A Act.

14. For the reasons outlined in detail in the report, it is considered that the development exhibits design excellence, which is a precondition to the grant of consent under clause 6.21(3) of the Sydney Local Environmental Plan 2012. For clarity, it is recommended that (B) under Reasons for Recommendation on page 4 of the planner's report be updated as follows (additions shown in ***bold italics***):

(B) The development achieves a high standard of architectural design, materials and landscaping, contributing positively to the public domain with a contemporary and distinct choice of brick to reference the character of the surrounding area. The development will improve the presentation of the ground floor facade of the existing Cambridge Hotel and be complemented by public art, to be confirmed prior to the issue of a Construction Certificate. The development achieves the principles of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore ***exhibits design excellence in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012 and consent may be granted.***

Solar Access

15. The submitter is concerned that the assessment has not adequately considered Section 4.1.3.1 of the SDCP, which is discussed on page 31 of the planner's report for D/2018/1451.
16. Section 4.1.3.1 of the SDCP regards development for single dwellings, terraces and dual occupancies and is not relevant to the proposal. Section 4.2.3.1 of the SDCP is the correct control.
17. A concept development application was made pursuant to Section 83C of the EP&A Act 1979 (now Section 4.23) in lieu of a site specific development control plan as required under Clause 7.20 of the SLEP. Overshadowing was a significant consideration during the assessment of that application, resulting in the reduction in height of the building from 45 metres to 38 metres with a chamfered roof line. The building envelope (and therefore the parameters of any future detailed design application) with regards to overshadowing were found to be acceptable, notwithstanding non-compliance with Section 4.2.3.1 of the SDCP 2012. The assessment report for the original concept development application can be found at this [link](#).
18. The detailed design complies with the concept approval and will not cause any further overshadowing than was granted approval at the concept stage. While a further reduction in overshadowing was encouraged under condition 10(b) of the concept approval, the applicant has not proposed a development with any reduction. Notwithstanding, the development is consistent with the concept approval and satisfies the provisions of Section 4.24(2) of the EP&A Act 1979.

Visual privacy

19. The submitter is concerned that insufficient consideration has been given to the visual privacy of neighbouring properties, in particular to meet the requirements of condition 10(a) of the concept approval, which requires:

Detailed designs of the facade treatments, window designs, and/or screens to windows are required with the subsequent development application to ensure that visual privacy is maintained for residents of neighbouring buildings to the north, east and south.

20. The podium currently includes windows overlooking neighbouring properties on Lower Campbell Street, which will not be adversely exacerbated by the proposal. The tower is sufficiently setback from neighbouring properties (approximately 12 metres) and the layout of rooms and windows designed such that visual privacy will be adequately protected.

Acoustic privacy

21. The Acoustic Reports and Demolition and Excavation/Construction Noise and Vibration Management Plans accompanying the applications were reviewed by Council's Environmental Health officer and deemed suitable, notwithstanding the concerns regarding the methodology and typographical errors raised by the submitter.
22. With regard to undertaking community consultation, the plans provide a methodology in which neighbours will be informed of demolition, excavation and construction impacts prior to and during those works being undertaken. It is appropriate that this consultation is undertaken post consent to ensure that the timeframes and dates during which activities will be undertaken are better representative. In particular, the reports adequately address *NSW Noise Policy for Industry (NPI)* and in part 5.4 *EPA NSW Road Noise Policy*.
23. Notwithstanding the questions and concerns raised with specific methodological applications employed by the applicant's acoustic consultant, Council's Environmental Health officer is satisfied that an appropriate assessment was undertaken by the acoustic consultant and sufficient attenuation measures have been included in the report and supported by conditions of consent. The reference to Luddenham Road which is an error in the report is in reference to considering noise related to construction at night, which is not relevant to this application as no works are proposed at night.

Prepared by: David Zabell, Senior Planner

Approved



GRAHAM JAHN AM

Director City Planning, Development and
Transport