

## Relevant Information for Local Planning Panel

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**FILE:** D/2024/615 **DATE:** 6 November 2024

**TO:** Local Planning Panel Members

**FROM:** Andrew Thomas, Executive Manager, Planning and Development

**SUBJECT:** Information Relevant To Item 6 – Development Application: 132-134 Shepherd Street, Darlington – D/2024/615

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### Alternative Recommendation

It is resolved that consent be granted to Development Application D/2024/615, subject to the conditions detailed in Attachment A to the subject report to the Local Planning Panel on 6 November 2024, subject to the following amendments (additions shown in **bold italics**, deletions shown in ~~strikethrough~~):

### BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

*Intentionally left blank.*

### OCCUPATION AND ONGOING USE

#### (4) BICYCLE PARKING AND END OF TRIP FACILITIES

- (a) The minimum number of bicycle parking spaces and end of trip facilities to be provided within the site boundary for the development must comply with the table below.

Bicycle Parking Type	Number	Requirements
Non-residential visitor	3	Spaces must be Class 3 bicycle rails

Bicycle Parking Type	Number	Requirements
End of Trip Facility Type	Number	
Showers with change area	1	
Personal lockers	3	

All bicycle parking spaces and end of trip facility must be provided on private land. The public domain cannot be used to satisfy this condition.

- (b) The layout, design and security of bicycle facilities must comply with the minimum requirements of Australian Standard AS 2890.3 Parking Facilities Part 3: Bicycle Parking Facilities. The details must be submitted to and approved by the **Area Planning Coordinator / Manager** Registered Certifier ~~confirming~~ prior to **the community facility being reopened for public use** ~~issue of the Occupation Certificate being issued.~~

#### Reason

To ensure the allocation of bicycle parking onsite that is in accordance with Australian Standards and the Council's DCP.

#### (5) PLAN OF MANAGEMENT

- (a) The Plan of Management dated 8 October 2024 must be amended:
- (i) to be consistent with the conditions of this consent D/2024/615, including those pertaining to hours of operation and waste management and collection;
  - (ii) to implement noise reduction measures recommended in the acoustic report titled Operational Noise Emission Assessment, reference: 6498R001.LM.240905, dated 5 September 2024, prepared by Acoustic Dynamics that require:
    1. an acoustic engineer to be engaged to calibrate any speakers that are installed; and
    2. for air-conditioning equipment to be serviced regularly to maintain low levels of mechanical services noise;
  - (iii) the amended Plan of Management must be submitted to and approved by Council's Area Planning Coordinator / Manager prior to **the community facility being reopened for public use** ~~commencement of the use or issue of an Occupation Certificate whichever is the earlier.~~

- (b) The use must always be operated / managed in accordance with the Plan of Management, approved in accordance with the process specified at (a) above. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.

**Reason**

To ensure all parties are aware of the approved supporting documentation that applies to the development.

## **~~OCCUPATION AND ONGOING USE~~**

### **(6) ~~OCCUPATION CERTIFICATE TO BE SUBMITTED~~**

~~An Occupation Certificate must be obtained from the Principal Certifier and a copy submitted to Council prior to commencement of occupation or use of the whole or any part of the building.~~

**Reason**

~~To ensure the site is authorised for occupation.~~

### **(7) HOURS OF OPERATION - SENSITIVE USES**

The hours of operation are regulated as follows:

Indoors hours of operation

- (a) The hours of operation of the indoor areas of the premise must be restricted to between 7.00am and 10.00pm, Monday to Sunday.

Outdoors hours of operation

- (b) The hours of operation of the outdoor areas of the premise must be restricted to between 7.00am and 8.00pm, Monday to Sunday.
- (c) Notwithstanding (b) above, the outdoors use may operate between 8.00pm and 10.00pm for a trial period of 1 year from the ***community facility being reopened for public use*** ~~date of issue of the Occupation Certificate~~. Council's Health and Building Unit is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to [liquor@cityofsydney.nsw.gov.au](mailto:liquor@cityofsydney.nsw.gov.au)
- (d) Should the operator seek to continue the extended operating hours outlined in (c) above, an application must be lodged with Council not less than 30 days before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints and any views expressed by the Police.

**Reason**

To ensure the premises operates within the approved hours of operation

## **Background**

### The applicant's submission

On 31 October 2024, the applicant made a written submission to Council officers requesting that condition (6) OCCUPATION CERTIFICATE TO BE SUBMITTED be deleted from the list of conditions recommended for imposition on any consent granted.

The Applicant states that the requested deletion of the condition is justified because:

- section 6.9 (1)(b) of the *Environmental Planning and Assessment Act 1979* (the Act) specifies that an occupation certificate is required for the commencement of a change of building use for the whole or any part of an existing
- the Act specifies that a change of building use means a change of use of a building from a use that the Building Code of Australia (BCA) recognises as one class of building to a use that the BCA recognises as a different class of building
- the Statement of Environmental Effects submitted with the subject application states that the existing and proposed uses for the building are both 'community centre' (BCA class 9b) and that no change is proposed to the class of building
- as the proposal does not result in a change of building use an occupation certificate is not required under s6.9 of the Act.

### Assessment

The applicant's submission is supported.

The alternative recommendation provided above:

- deletes condition (6) OCCUPATION CERTIFICATE TO BE SUBMITTED from the list of conditions recommended for imposition on any consent granted
- amends other recommended conditions to remove any references to an occupation certificate.

Prepared by: Ben Chamie, Area Planning Coordinator

## **Attachments**

**Attachment A.** Applicant's submission

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Approved

AJT

**ANDREW THOMAS**

Executive Manager Planning and  
Development

# **Attachment A**

**Applicant's submission**

[REDACTED]

[REDACTED]

[REDACTED]

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**From:** Matthew Taylor <MTaylor@cityofsydney.nsw.gov.au>  
**Sent:** Thursday, 31 October 2024 4:10 PM  
**To:** Secretariat <Secretariat@cityofsydney.nsw.gov.au>  
**Subject:** Development Application 132-134 Shepherd Street Darlington D/2024/615 - Local Planning Panel 6 November 2024

To the Local Planning Panel

The applicant (Council of the City of Sydney) requests that recommended condition of consent (6) be removed from the development consent for 132-134 Shepherd Street Darlington D/2024/615:

**(6) OCCUPATION CERTIFICATE TO BE SUBMITTED**

An Occupation Certificate must be obtained from the Principal Certifier and a copy submitted to Council prior to commencement of occupation or use of the whole or any part of the building.

**Reason**

To ensure the site is authorised for occupation.

The development application seeks consent for the continued use of existing premises and does not seek consent for any construction works.

Section 6.9 of the Environmental Planning and Assessment Act 1979 (EP&A Act) requires an occupation certificate for the commencement of a *change of building use* for the whole or any part of an existing building.

"*change of building use*" is defined in the EP&A Act as a change of the use of a building from a use as a class of building recognised by the Building Code of Australia (BCA) to a use as a different class of building recognised by the BCA.

'Section 4.3.5 Building Compliance' of the Statement of Environmental Effects submitted with the development application states that the existing and proposed uses for the building are both 'community centre' (BCA class 9b), and that no change is proposed to the class of building. We therefore believe that in this case an Occupation Certificate is not required by the EP&A Act.

The development application principally seeks to formalise management arrangements pertaining to hours of operation, noise and waste. The procedures relating to these operational matters are already included in the Plan of Management submitted with the development application. It will be difficult for a Principal Certifier to confirm prior to occupation or use of the building that the conditions relating to the operational matters have been met beyond confirming that they are included in the Plan of Management.

Regards

Matthew Taylor (he/him)  
Development Manager  
Development & Strategy

**CITY OF SYDNEY** 

Telephone: [+612 9265 9963](tel:+61292659963)



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The City of Sydney acknowledges the Gadigal of the Eora nation as the Traditional Custodians of our local area.