

Resolution of Local Planning Panel

16 March 2022

Item 3

Development Application: 422-424 Cleveland Street, Surry Hills - D/2020/993

The Panel:

- (A) upheld the variation requested to the height of buildings standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012;
- (B) upheld the variation requested to the motorcycle parking standard under State Environmental Planning Policy (Affordable Rental Housing) 2009 in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012; and
- (C) granted deferred commencement consent to Development Application No. D/2020/993 subject to the conditions set out in Attachments C and D to the subject report, subject to the following amendments to the conditions in Attachment C (additions shown in **bold italics**, deletions shown in ~~strike through~~):

(2) DESIGN MODIFICATIONS

The design of the building must be modified as follows:

- (a) An additional source of natural ventilation is to be provided for south facing boarding rooms on Level 4 to achieve both natural ventilation and acoustic levels as specified in the provided acoustic report prepared by Koikas Acoustics, Ref: 4147R20200506as422ClevelandStSurryHills_DA(5), Version 5, dated 07 September 2020.
- (b) Amend the manager's private open space and rooftop communal open space design to provide for urban canopy cover. Make allowance for structural slab to support 1m depth raised tree planter with 9m³ soil volume to support a new small sized tree 100L size at installation. Submit:
 - (i) Amended landscape plan and section with levels (SSL, RL, TW), location of drainage outlets, proposed tree species to demonstrate compliance with Sydney Landscape Code Volume 2

- (ii) Engineers report confirming structural capacity of building for proposed roof terrace loads.
- (c) Plans of **fixed** privacy louvres are to be provided at a scale of 1:50 with an increased depth and reduction to the number of louvres to improve outlook **and minimise privacy impacts to and from the building**.
- (d) Natural light and ventilation is to be provided to the 'common laundry' room located on Level 4.
- (e) Details of the fire hydrant booster assembly, mechanical plant, air intake and exhausts, and air vents for air conditioning to the hall are to be included on plans.

The modifications are to be submitted to and approved by Council's Area Planning Manager prior to the issue of a Construction Certificate.

(15) PLAN OF MANAGEMENT – HALL

- (a) Prior to the issue of any Occupation Certificate, the Plan of Management prepared by UKO Co-living and 107 Projects Incorporate Dated 16.06.2021 is to be updated to reflect the development as approved and submitted to Council's Area Planning Manager for approval. The Plan of Management is to include a more detailed list and schedule of activities and performances that may be undertaken within the hall on different days and times. **The Plan of Management is to include a restriction to the use of the entry / exit door to High Holborn Street from the hall after 9.00pm (apart from any required fire egress or disability access requirements).**
- (b) The use must always be operated / managed in accordance with the Plan of Management that has been approved by Council. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.

(24) HOURS OF OPERATION - CAFE

The hours of operation are regulated as follows:

- (a) The hours of operation must be restricted to between 7:00am and 11:00pm **10.00pm** Monday to Saturday, and 8:00pm ~~am~~ to 10:00pm Sundays.
- (b) ~~Notwithstanding (a) above, the use may operate between 7:00am and 12:00 midnight Monday to Saturday for a trial period of one year from the date 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~~
- (c) ~~Should the operator seek to continue the extended operating hours outlined in (b) 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 received and any views expressed by the Police.~~

- (d) Shopfront glazing to the café is to be closed after 6:00pm each day.

(25) HOURS OF OPERATION - HALL

The hours of operation are regulated as follows:

- (a) The hours of operation must be restricted to between 7:00am and **10.00pm** ~~11:00pm~~ Monday to Saturday, and 7:00am and 10:00pm Sundays.
- (b) Notwithstanding (a) above, the use may operate between 7:00am and 12:00 midnight ~~Monday to Saturday~~ ~~Monday to~~ **Friday and** Saturday for a trial period of one year from the date of the 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
- (c) Should the operator seek to continue the extended operating hours outlined in (b) 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 received and any views expressed by the Police.

(27) NOISE - ENTERTAINMENT

- (a) Amplified music & sound is to cease within the *hall* at 10:00pm in accordance with the Acoustic Report prepared by Koikas Acoustics, Ref: 4147R20200506as422ClevelandStSurryHills_DA(5), Version 5, dated 07 September 2020.
- (b) The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 5dB between the hours of 7.00am and 12.00 midnight when assessed at the boundary of any affected residence.
- (c) The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) between the hours of 12.00 midnight and 7.00am when assessed at the boundary of any affected residence.
- (d) Notwithstanding compliance with (a) and (b) above, noise from the use when assessed as an $L_{A10, 15 \text{ minute}}$ enters any residential use through an internal to internal transmission path is not to exceed the existing internal $L_{A90, 15 \text{ minute}}$ (from external sources excluding the use) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed within a habitable room at any affected residential use between the hours of 7am and 12midnight. Where the $L_{A10, 15 \text{ minute}}$ noise level is below the threshold of hearing, T_f at any Octave Band Centre Frequency as defined in Table 1 of International Standard ISO 226 : 2003- Normal Equal-Loudness-Level Contours then the value of T_f corresponding to that Octave Band Centre Frequency shall be used instead.

- (e) Notwithstanding compliance with (a), (b) and (c) above, the noise from the use must not be audible within any habitable room in any residential use between the hours of 12.00 midnight and 7.00am.
- (f) The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 3dB when assessed indoors at any affected commercial premises.

Note: The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use is as per the definition in the Australian Standard AS1055-1997 Acoustics – Description and measurement of environmental noise. The background noise level $L_{A90, 15 \text{ minute}}$ is to be determined in the absence of noise emitted by the use and be representative of the noise sensitive receiver. Background noise monitoring must be carried out in accordance with the long-term methodology in Fact Sheet B of the NPfI unless otherwise agreed by the City's Area Planning Manager.

(46) CONSTRUCTION TRAFFIC MANAGEMENT PLAN

- (a) A Construction Traffic Management Plan must be submitted to and approved by Council prior to any demolition works commencing or a Construction Certificate being issued. ***The Plan must consider restricting the size of construction vehicles utilising High Holborn Street and Goodlet Street to small rigid vehicles to minimise impacts on residential uses.***

Construction Traffic and Pedestrian Management Plans are to be prepared in accordance with Standard Requirements for Construction Traffic Management Plan on the City's website <http://www.cityofsydney.nsw.gov.au/business/business-responsibilities/traffic-management/construction-traffic-management-plans>

Reasons for Decision

The application was approved for the following reasons:

- (A) The proposal is consistent with the objectives of the B4 Mixed Use Zone.
- (B) The proposal generally satisfies the relevant controls relating to boarding houses.
- (C) The proposal subject to conditions satisfies the provisions of clause 6.21 of Sydney LEP 2012.
- (D) Based upon the materials presented to the Panel at the time of determining this application, the Panel is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the height of buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.2 of the Sydney LEP 2012;
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the B4 Mixed Use Zone and the height of buildings development standard;
 - (iii) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the motorcycle parking development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 30(1)(h) of the SEPP (Affordable Rental Housing) 2009; and
 - (iv) the proposal is in the public interest because it is consistent with the objectives of the B4 Mixed Use Zone and the motorcycle parking development standard.
- (E) Condition 2(c) was amended to address the privacy concerns of neighbouring residents.
- (F) Condition 15(c) was added to address the noise concerns of neighbouring residents.
- (G) Conditions 24 and 25 were amended to improve amenity for neighbouring residents.
- (H) Condition 27(a) was amended to correct a typographical error.
- (I) Condition 46(b) was added to incorporate provisions to minimise the impact of vehicle movements on neighbours.
- (J) The deferred commencement consent was issued to ensure that no built form overhang the church roof. The Panel took into account the concerns expressed by the DAPRS in its reconsideration of the application on 7 December 2021 that while the relationship between the new additions and existing structure has been improved in the amended plans, the overhang remains excessive, creating a poor relationship with the Kirk. The Panel notes that while that structure is not a heritage item, it is a contributory item in a heritage conservation area.

Carried unanimously.

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