

Resolution of Local Planning Panel

8 June 2022

Item 3

Development Application: 17 Billyard Avenue, Elizabeth Bay - D/2021/1261

The Panel refused consent for Development Application Number D/2021/1261 for the reasons outlined below.

Reasons for Decision

The application was refused for the following reasons:

Lack of Clause 4.6 variation request for boarding room size non-compliance

- (A) The proposed development exceeds the maximum permitted boarding room size development standard, as two boarding rooms have a gross floor area of more than 25 square metres, excluding areas used for private kitchen and bathroom facilities.

There has been no written request submitted with the application to justify the boarding room size breach.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 30(1)(b) of the State Environmental Planning Policy (Affordable Rental Housing) 2009;
- (ii) Clause 4.6(1) of the Sydney Local Environmental Plan 2012, including the objectives at parts (a) and (b) of the clause; and
- (iii) Clause 4.6(3) of the Sydney Local Environmental Plan 2012.

Incompatibility with the character of the local area

- (B) The proposed development is not compatible with the character of the local area, or the Bays locality, as it:
- (i) does not respect the existing character and fine grain of the existing building and streetscape;
 - (ii) inserts an incompatible addition with minimal boundary setbacks into a narrow space behind a fine grain, low-rise contributory building;

- (iii) will negatively impact the streetscape to Billyard Avenue and the surrounding heritage conservation area;
- (iv) is inconsistent with the objectives of the maximum height of buildings development standard; and
- (v) presents unacceptable bulk, scale, and amenity impacts.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 29(2)(a) of the State Environmental Planning Policy (Affordable Rental Housing) 2009;
- (ii) Clause 30A of the State Environmental Planning Policy (Affordable Rental Housing) 2009;
- (iii) Clause 4.3(1) of the Sydney Local Environmental Plan 2012, including the objectives at parts (a), (b) and (c) of the clause;
- (iv) the aims at parts (a), (b) and (f) of Section 1.3 of the Sydney Development Control Plan 2012;
- (v) the locality statement in Section 2.4.6 of the Sydney Development Control Plan 2012, including the supporting principles at parts (a), (b), (c), (e), (j), (k) and (l) of the section; and
- (vi) the planning principle established in *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191.

Unacceptable impacts on the heritage significance of the heritage conservation area

- (C) The proposed development will have a detrimental effect on the heritage significance of the Elizabeth and Rushcutters Bays heritage conservation area, as:
 - (i) The form of the new rear addition cantilevers over the existing building and does not provide adequate side boundary setbacks, resulting in an unacceptable separation from, and inappropriate interface with the subject contributory building.
 - (ii) The new rear addition has a facade design, articulation and materiality which is incompatible with the subject contributory building and the surrounding heritage conservation area.
 - (iii) No conservation works are proposed to the subject contributory building.
 - (iv) Insufficient geotechnical and structural information has been submitted with the application to address excavation impacts associated with the development on the subject contributory building, the adjacent contributory building, and the adjacent sandstone cliff face.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aim at part (k) of the clause;

- (ii) Clause 5.10(1) of the Sydney Local Environmental Plan 2012, including the objectives at parts (a) and (b) of the clause;
- (iii) Clause 5.10(4) of the Sydney Local Environmental Plan 2012;
- (iv) Clause 6.21(4)(d)(iii) of the Sydney Local Environmental Plan 2012;
- (v) the aims at parts (b) and (f) of Section 1.3 of the Sydney DCP 2012;
- (vi) the principle at part (b) of Section 2.4.6 of the Sydney Development Control Plan 2012;
- (vii) the objectives at parts (a) and (b) of Section 3.9 of the Sydney Development Control Plan 2012;
- (viii) the provisions at Section 3.9.6(1) and (2) of the Sydney Development Control Plan 2012;
- (ix) the provisions at Section 3.9.7(3) and (4) of the Sydney Development Control Plan 2012;
- (x) the provision at Section 3.9.10(4) of the Sydney Development Control Plan 2012; and
- (xi) the provision at Section 3.9.13(1) of the Sydney Development Control Plan 2012.

Failure to exhibit design excellence

- (D) The proposed development does not exhibit design excellence, as it:
- (i) fails to deliver a high standard of architectural, urban and landscape design;
 - (ii) has a form and external appearance which will detract from the quality and amenity of the public domain;
 - (iii) provides an inappropriate contextual response to the streetscape to Billyard Avenue and the surrounding heritage conservation area;
 - (iv) detrimentally impacts on view corridors; and
 - (v) results in unacceptable environmental impacts.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aims at parts (h), (j), (k) and (l) of the clause;
- (ii) Clause 6.21(1) of the Sydney Local Environmental Plan 2012, including the objective of the clause;
- (iii) Clause 6.21(3) of the Sydney Local Environmental Plan 2012; and
- (iv) Clause 6.21(4) of the Sydney Local Environmental Plan 2012, including the matters for consideration at parts (a), (b), (c) and (d) of the clause.

Unacceptable amenity and view sharing impacts

- (E) The proposed development results in, and does not clearly detail and address impacts on the amenity of the occupants of surrounding properties in terms of:
- (i) inadequate building separation and setbacks between the proposed rear addition and surrounding buildings, and its height, bulk, scale, and materiality;
 - (ii) view sharing and view loss from the public domain and adjacent private properties, loss of outlook, visual and acoustic privacy, and overshadowing impacts; and
 - (iii) provision of sufficient information with the application relating to the amenity impacts identified above, and in relation to reflectivity and light spill impacts.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aims at parts (h) and (l) of the clause;
- (ii) Clause 6.21(4)(c) of the Sydney Local Environmental Plan 2012;
- (iii) Clause 6.21(4)(d)(vii) of the Sydney Local Environmental Plan 2012;
- (iv) the locality statement in Section 2.4.6 of the Sydney Development Control Plan 2012, including the supporting principles at parts (j), (k) and (l) of the section;
- (v) the objective at part (a) of Section 3.2.1 of the Sydney Development Control Plan 2012;
- (vi) the provisions at Section 3.2.1.2(1) and (2) of the Sydney Development Control Plan 2012;
- (vii) the objectives at parts (b) and (f) of Section 3.2.2 of the Sydney Development Control Plan 2012;
- (viii) the provisions at Section 3.2.2(1) and (3) of the Sydney Development Control Plan 2012;
- (ix) the objectives at Section 3.2.7(a) and (b) of the Sydney Development Control Plan 2012;
- (x) the provisions at Section 3.2.7(1) and (2) of the Sydney Development Control Plan 2012;
- (xi) the objective at part (b) of Section 4.4.1 of the Sydney Development Control Plan 2012;
- (xii) the provisions at Section 4.4.1.6(2) and (3) of the Sydney Development Control Plan 2012;
- (xiii) the planning principle established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140;
- (xiv) the planning principle established in *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSWLEC 1046; and

- (xv) the planning principle established in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082.

Unacceptable boarding house amenity

- (F) The proposed development results in substandard amenity for future residents, as it has not:
 - (i) adequately addressed matters required including provision of appropriate facilities and amenity for boarding house lodgers, including accessible car parking, storage, kitchenette, and laundry facilities; and
 - (ii) provided adequate measures to address, or sufficient information to permit the assessment of visual and acoustic privacy impacts.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 29(2)(c) of the State Environmental Planning Policy (Affordable Rental Housing) 2009;
- (ii) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aim at part (g) of the clause;
- (iii) Clause 6.21(4)(d)(ix) of the Sydney Local Environmental Plan 2012;
- (iv) the objective at part (e) of Section 3.11 of the Sydney Development Control Plan 2012;
- (v) the provisions at Section 3.11.9(1) and (3) of the Sydney Development Control Plan 2012;
- (vi) the objective at Section 4.4.1(a) of the Sydney Development Control Plan 2012;
- (vii) the provisions at part (a) and (f) of Section 4.4.1.2(1) of the Sydney Development Control Plan 2012;
- (viii) the provision at part (c) of Section 4.4.1.4(2) of the Sydney Development Control Plan 2012;
- (ix) the provisions at part (2)(a) and (3) of Section 4.4.1.5 of the Sydney Development Control Plan 2012; and
- (x) the provisions at Section 4.4.1.6(1) of the Sydney Development Control Plan 2012.

Unacceptable landscape design

- (G) The proposed development does not demonstrate:
 - (i) that 15 per cent canopy cover can be achieved at 10 years post completion;
 - (ii) the resilience, suitability and longevity of the proposed landscape design and green wall; and
 - (iii) that excellence and integration of landscape design has been achieved.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 6.21(4)(d)(xiii) of the Sydney Local Environmental Plan 2012;
- (ii) the aims at parts (b) and (g) of Section 1.3 of the Sydney Development Control Plan 2012;
- (iii) the principles at parts (e) and (j) of Section 2.4.6 of the Sydney Development Control Plan 2012;
- (iv) the objective at part (a) of Section 3.5.2 of the Sydney Development Control Plan 2012;
- (v) the provision at Section 3.5.2(2) of the Sydney Development Control Plan 2012;
and
- (vi) the relevant guidelines in the City of Sydney's 'Sydney Landscape Code Volume 2: All Development Except for Single Dwellings'.

Unacceptable parking, servicing and waste management provision

(H) The proposed development does not provide:

- (i) service vehicle parking;
- (ii) adequate waste storage areas; and
- (iii) sufficient detail on servicing of the site and waste collection.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) the aim at part (g) of Section 1.3 of the Sydney Development Control Plan 2012;
- (ii) the provision at Section 3.11.6(1) of the Sydney Development Control Plan 2012;
- (iii) the objectives at parts (b) and (c) of Section 3.14 of the Sydney Development Control Plan 2012;
- (iv) the provision at Section 3.14.1(1) of the Sydney Development Control Plan 2012;
- (v) the provision at Section 3.14.3(1) of the Sydney Development Control Plan 2012;
and
- (vi) the relevant provisions in the City of Sydney's 'Guidelines for Waste Management in New Developments 2018'.

Unacceptable likely impacts and site unsuitable for the development

(I) It has not been demonstrated that the proposed development has satisfactorily addressed:

- (i) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality. These include, but are not limited to, impacts relating to construction management; and

(ii) the suitability of the site for the development.

As such, the proposed development is therefore contrary to and fails to satisfy:

(i) Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979;
and

(ii) Section 4.15(1)(c) of the Environmental Planning and Assessment Act, 1979.

Not in the public interest

(J) It has not been demonstrated that the proposed development has satisfactorily addressed:

(i) the public interest.

As such, the proposed development is therefore contrary to and fails to satisfy:

(i) Section 4.15(1)(e) of the Environmental Planning and Assessment Act, 1979.

Carried unanimously.

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