

## Resolution of Local Planning Panel

**5 April 2023**

### Item 3

#### **Development Application: 191-195, 197-199 and 201 Oxford Street, Darlinghurst - D/2022/327**

The Panel refused consent for Development Application No. D/2022/327 for the reasons outlined below.

#### **Reasons for Decision**

The application was refused for the following reasons:

#### ***Inappropriate building height and inadequate Clause 4.6 variation request***

- (A) The applicant's written request has not demonstrated that compliance with the Height of Buildings development standard in clause 4.3 of the Sydney Local Environmental Plan 2012 is unreasonable or unnecessary in the circumstances of the case, or that there are sufficient environmental planning grounds to justify contravening the development standard. Accordingly, development consent cannot be granted.

The non-compliance with the Height of Buildings development standard undermines the operation of the site-specific controls for the Oxford Street Creative and Cultural Precinct which came into effect in December 2022 to encourage redevelopment by providing additional height and floor space, and to ensure that the additional height and floor space reflects the desired character of the area. The proposed 6 storey height fails to respect the existing pattern of stepped heights along Oxford Street and Flinders Street and the proposed increased setbacks to Oxford Street and Taylor Square do not adequately mitigate the adverse impacts to the streetscape associated with the height exceedance. The claim that no significant view loss is anticipated is not supported by any view analysis.

The proposed development is contrary to and fails to satisfy:

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aims at parts (b), (d), and (i);
- (ii) Clause 4.6(1) of the Sydney Local Environmental Plan 2012, including the objectives at parts (a) and (b);
- (iii) Clause 4.6(3) of the Sydney Local Environmental Plan 2012;

- (iv) Clause 6.60D(1) of the Sydney Local Environmental Plan 2012, including the objectives at parts (a), (b), and (c); and
- (v) Section 5.11 of the Sydney Development Control Plan 2012, including the objectives and provisions of sections 5.11.3 and 5.11.5.1, 5.11.5.2 and 5.11.5.3.

***Failure to exhibit design excellence***

- (B) The proposed development fails to demonstrate design excellence, and as a consequence pursuant to clause 6.21C(1) of the Sydney Local Environmental Plan 2012 consent cannot be granted.

As supported by the advice provided by the Design Advisory Panel on its assessment of the built form and architectural language of the proposed development in the context of the Precinct-specific controls, the proposal:

- (i) fails to deliver an architectural and urban design outcome that is appropriate for the location;
- (ii) has a form and external appearance that will detract from the quality and amenity of the public domain;
- (iii) detrimentally impacts on the view corridor of Oxford Street and results in unreasonable view loss impact to neighbouring private property to the south;
- (iv) fails to adequately respect the heritage fabric of the retained corner building or provide appropriate awning and shopfront design that is appropriate for the Oxford Street conservation area;
- (v) does not support the delivery of the desired future character of the Oxford Street Cultural and Creative Precinct; and
- (vi) fails to integrate high-quality landscape design.

The proposed development is 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), and (k);
- (ii) Clause 6.21(1) of the Sydney Local Environmental Plan 2012, including the objective of the clause; and
- (iii) Clause 6.21C(2) of the Sydney Local Environmental Plan 2012, including the matters for consideration at parts (a), (b), (c) and (d).

***Site unsuitable for the development***

- (C) The application fails to demonstrate:
  - (i) that the land can be made suitable for the purpose of the proposed development, as required by clause 4.6(1) of State Environmental Planning Policy (Resilience and Hazards) 2021; and
  - (ii) that flood risks have been fully detailed and managed, as required by clause 5.21(2) of Sydney Local Environmental Plan 2012.

The proposed development is contrary to and fails to satisfy:

- (i) Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*;
- (ii) Section 4.6 (Remediation of Land) of the State Environmental Planning Policy (Resilience and Hazards) 2021;
- (iii) Section 3.17 of Sydney Development Control Plan 2012, including the objective at part (a) and the provision at part (1);
- (iv) Clause 5.21 of Sydney Local Environmental Plan 2012;
- (v) Section 3.7 of the Sydney Development Control Plan 2012, including the objectives at parts (d), (e) and (f) and the provisions in section 3.7.1 parts (1), (2) (3) and (4); and
- (vi) the City of Sydney Interim Floodplain Management Policy.

Pursuant to clause 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021, and clause 5.21(2) of Sydney Local Environmental Plan 2012, development consent cannot be granted.

***Unacceptable impacts on significance of the heritage conservation area***

(D) The proposed development fails to:

- (i) establish, and respond to, a set of heritage principles that are specific to the subject buildings;
- (ii) provide an adequate structural impact statement that includes a methodology to retain and maintain existing building fabric;
- (iii) respect and respond to the fine-grain nature, urban character, detailing and design of traditional shopfronts;
- (iv) retain the existing window opening on the Taylor Square elevation of the corner building and the surviving pressed metal ceilings within the existing awnings;
- (v) reinstate the awning with a design appropriate for the style of the building and using appropriate materials and finishes; and
- (vi) remove inappropriate elements, that is, the existing billboard, which, as discussed at paragraphs 13-19 of the Assessment Report, appears not to have development consent and may not benefit from existing use rights.

The proposed development is contrary to and fails to satisfy:

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aim at part (k);
- (ii) Clause 5.10(1) of the Sydney Local Environmental Plan 2012, including the objectives at parts (a) and (b);
- (iii) Clause 5.10(4) of the Sydney Local Environmental Plan 2012;
- (iv) 6.21C(2)(d)(iii) of the Sydney Local Environmental Plan 2012;

- (v) Section 3.9 of the Sydney Development Control Plan 2012, including the objectives at parts (a) and (b), and the provisions at sections 3.9.6(1) and 3.9.7(1)-(4);
- (vi) Section 5.11.1 of the Sydney Development Control Plan 2012, including the principles at parts (6), (8), (9), and (16);
- (vii) Section 5.11.4 of the Sydney Development Control Plan 2012, including the objectives at parts (a), (b), (c), (d), (e) and (g), and the provisions at sections 5.11.4.1, 5.11.4.2 and 5.11.3; and
- (viii) Section 5.11.5.4 of the Sydney Development Control Plan 2012, including the objective at part (c).

***Unacceptable landscape design***

- (E) The proposed development does not demonstrate:
- (i) that 15 per cent canopy cover can be achieved at 10 years post-completion; and
  - (ii) that excellence and integration of landscape design has been achieved.

The proposed development is contrary to and fails to satisfy:

- (i) Clause 6.21C(2)(d)(xiii) of the Sydney Local Environmental Plan 2012;
- (ii) Section 3.5.2 of the Sydney Development Control Plan 2012, including the objective at part (a) and the provision at part (2); and
- (iii) the relevant guidelines in the City of Sydney's 'Sydney Landscape Code volume 2: All Development Except for Single Dwellings'.

***Incompatibility with the locality***

- (F) The proposed development is incompatible with the desired character of the Oxford Street Darlinghurst locality and the Oxford Street Cultural and Creative Precinct as the proposed development fails to:
- (i) respond to and complement the existing contributory buildings, including their existing pattern of stepped building heights;
  - (ii) reinforce the fine-grain pattern of ground floor tenancies and provide new shopfronts that take cues from traditional shopfronts;
  - (iii) establish nor is guided by an agreed set of heritage principles specific for the existing buildings; and
  - (iv) support the realisation of the Precinct strategies, including the provision of a strong visual and physical edge to define and enhance the quality of Taylor Square, and to provide new cultural and creative floor space that is designed to meet appropriate operational requirements and support the Precinct's LGBTQIA+ cultural identity.

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

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aim at part (j);
- (ii) Clause 6.60D(1) of the Sydney Local Environmental Plan 2012, including the objectives at parts (a) and (b);
- (iii) the locality statement in section 2.4.10 of the Sydney Development Control Plan, including the supporting principles at parts (a), (b), (d), (e), and (f); and
- (iv) the locality statement in section 5.11.1 of the Sydney Development Control Plan, including the supporting principles at parts (1), (7), (8), (10) and (12).

***Unacceptable likely impacts and inadequate information***

(G) The proposed development fails to:

- (i) clearly identify the nature, capacity, operating hours, and operational management of each of the premises;
- (ii) provide an adequate acoustic report to demonstrate compliance with the relevant noise criteria considering the cumulative impact of all the mechanical equipment, operation, and patrons of all of the premises;
- (iii) provide an adequate Plan of Management to outline robust operational management practices to minimise adverse impacts on the amenity of sensitive land uses; and
- (iv) include in the Plan of Management a set of Diversity and Inclusion principles and guidelines, and a commitment to ongoing staff training.

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

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aim at part (h);
- (ii) Section 3.15 of the Sydney Development Control Plan 2012, including the objectives at parts (a), (b), (c), (h), (k), (l) and (o), and the provisions at sections 3.15.3, 3.15.4 and 3.15.5;
- (iii) Section 5.11.2 of the Sydney Development Control Plan 2012, including the objectives at parts (d) and (i), and the provision at part (10); and
- (iv) Schedule 3 of the Sydney Development Control Plan 2012.

***Unacceptable servicing and waste management provision***

(H) The proposed development does not demonstrate:

- (i) adequate waste storage area; and
- (ii) sufficient detail on servicing of the site and waste collection.

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

- (i) Section 5.11.8 of the Sydney Development Control Plan 2012, including the objectives at parts (a) and (b), and the provisions at parts (1), (2), and (3);
- (ii) Section 3.14 of the Sydney Development Control Plan 2012, including the objective at part (c) and the provisions at sections 3.14.1(1) and 3.14.3(1);
- (iii) Section 4.2.6 of the Sydney Development Control Plan 2012, including the objectives at parts (b) and (c) and the provisions at sections 4.2.6.1, 4.6.3.3 and 4.2.6.4; and
- (iv) the relevant guidelines in the City of Sydney's 'Guidelines for Waste Management in New Developments 2018'.

***Lack of public art provision***

- (I) The application fails to include the provision of public art as part of the proposed development.

As such, the proposed development fails to satisfy:

- (i) Section 3.1.5 of the Sydney Development Control Plan 2012, including the objectives at parts (a) and (c);
- (ii) the City of Sydney Public Art Policy; and
- (iii) the City of Sydney Interim Guidelines for Public Art in Private Developments.

***Not in the public interest***

- (J) Having regard the matters above, the Panel is not satisfied that approval of the proposed development is in the public interest: section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.

Carried unanimously.

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