

Resolution of Local Planning Panel

1 November 2023

Item 3

Development Application: 349 Liverpool Street, Darlinghurst - D/2022/831

The Panel refused consent for Development Application Number D/2022/831 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 written Clause 4.6 variation request has not adequately demonstrated that compliance with the 'height of building' development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening the development standard.

Furthermore, the proposal exceeds the maximum height in storeys and street frontage height in storeys and does not reinforce the existing or future neighbourhood character of the locality.

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

- (a) the following provisions of the Sydney Local Environmental Plan 2012:
- (i) Clause 1.2(2), including the aims at (h), (j) and (k);
 - (ii) Clause 4.3(1), including the objectives at (a), (b), (c) and (d);
 - (iii) Clause 4.3(2);
 - (iv) Clause 4.6(1), including the objectives at (a) and (b); and
 - (v) Clause 4.6(3) and (4);
- (b) Schedule 1 of the of the State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, including principles 1, 2 and 9; and

- (c) the following provisions of the Sydney Development Control Plan 2012:
 - (i) Section 1.3 including the aims at (a) and (b);
 - (ii) Section 2.4.12 including the principles at (a) and (b); and
 - (iii) Section 4.2.1.1 including the objective at (a) and provisions at (1), (2), (3) and (5).

Failure to exhibit design excellence

- (B) The proposed development does not exhibit design excellence, as it:
 - (a) fails to deliver a high standard of architectural design appropriate for the location and does not provide sufficient detail of the proposed materiality;
 - (b) has a form and external appearance that will detract from the quality and amenity of the public domain;
 - (c) provides an inappropriate contextual response to the streetscape to Liverpool Street, Darley Place and the surrounding heritage conservation area;
 - (d) detrimentally impacts views from neighbouring private properties; and
 - (e) fails to integrate high-quality landscape design.

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

- (a) the following provisions of the Sydney Local Environmental Plan 2012:
 - (i) Clause 1.2(2) including the aims at parts (h), (j), and (k);
 - (ii) Clause 6.21 including the objective of the clause; and
 - (iii) Clause 6.21C(2) including the matters for consideration at parts (a), (b), (c) and (d);
- (b) Schedule 1 of the of the State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, including principles 1, 2, 5 and 9;
- (c) Objectives 4M-1, 4X-1 and 4X-3 of the Apartment Design Guide, including the relevant design guidance; and
- (d) the following provisions of the Sydney Development Control Plan 2012:
 - (i) Section 2.4.12 including the principles at (a) and (b); and
 - (ii) Section 3.2.2 including the objective at (b).

Unacceptable impacts on significance of adjoining and nearby heritage items and the surrounding heritage conservation area

- (C) The proposed development will have a detrimental effect on the heritage significance of adjoining and nearby heritage items and the Oxford Street and Victoria Street heritage conservation area, as:

- (a) The height of the proposal results in unacceptable impacts on the significance of the heritage item at 1 Darley Place, Darlinghurst, the contributory building at 355-357 Liverpool Street, Darlinghurst, and results in an uncomfortable fit in the streetscape adjacent to the heritage item at 347 Liverpool Street, Darlinghurst.
- (b) The proposed excavation will likely result in archaeological impacts and a historical archaeological impact assessment and research design report has not been provided.
- (c) No structural information, detailed geotechnical information or safe construction methodology has been provided, nor has any investigation been made into the location of the footings of the adjoining buildings.
- (d) The proposed excavation for a basement has no setback from the eastern and western boundaries of the site, and the risk of damage or undermining of adjoining buildings in the absence of this information is significant.
- (e) The proposed height and building expression compete with the prominence of the adjoining heritage item at 347 Liverpool Street, Darlinghurst, and is inconsistent with the other existing development in the streetscape to Liverpool Street and Darley Place.
- (f) The proposed materials schedule is insufficiently detailed and no details of the materials, design and details of the services on the Liverpool Street frontage have been provided.
- (g) The silhouettes of the original terraces that existed on the site before the existing residential flat building was constructed are highly visible from the public domain along Liverpool Street and are significant. The proposal blocks views so that it will not be appreciated in the round.

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

- (a) the following provisions of the Sydney Local Environmental Plan 2012:
 - (i) Clause 1.2(2) including the aim at part (k);
 - (ii) Clause 5.10(1) including the objectives at parts (a), (b) and (c) of the clause;
 - (iii) Clause 5.10(4); and
 - (iv) Clause 6.21C(2)(d)(iii); and
- (b) the following provisions of the Sydney Development Control Plan 2012:
 - (i) Section 1.3 including the aims at (a), (b) and (f);
 - (ii) Section 2.4.12 including the principles at (a) and (b);
 - (iii) Section 3.9 including the objectives at (a) and (b);
 - (iv) Section 3.9.5 including the objective at (a) and the provisions at (3) and (4);
 - (v) Section 3.9.6 including the provisions at (1) and (2);

- (vi) Section 3.9.9 including the provision at (1);
- (vii) Section 3.9.10 including the provision at (4); and
- (viii) Section 3.9.13 including the provisions at (1) and (2).

Unacceptable amenity impacts to surrounding properties

- (D) 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:
- (a) inadequate building separation and setbacks between the proposed development and surrounding buildings, and its height, bulk, scale and massing;
 - (b) view sharing and view loss from adjacent private properties, loss of outlook, visual and acoustic privacy, and overshadowing impacts; and
 - (c) provision of sufficient information with the application relating to the amenity impacts identified above.

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

- (a) Schedule 1 of the of the State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, including principles 2 and 6;
- (b) Objectives 3B-2, 3F-1, 3F-2, and 4H-1 of the Apartment Design Guide, including the relevant design criteria and design guidance;
- (c) the following provisions of the Sydney Local Environmental Plan 2012:
 - (i) Clause 1.2(2) including the aims at parts (h) and (l); and
 - (ii) Clause 6.21C(2) including the matters for consideration at (c) and (d)(vii);
- (d) the following provisions of the Sydney Development Control Plan 2012:
 - (i) Section 4.2.3 including the objective at (a); and
 - (ii) Section 4.2.3.10 including the provision at (2); and
- (e) the planning principle established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.

Unacceptable residential flat building design

- (E) The proposed design of the residential flat building makes unsatisfactory provision for, or does not clearly demonstrate:
- (a) adequate sustainability measures, including appropriate sun shading and operability to the northern facade and updated BASIX and NatHERS certification;
 - (b) adequate area, design quality and amenity of communal open spaces;
 - (c) appropriate private open space locations;
 - (d) an acceptable level of visual privacy can be achieved for residential apartments;

- (e) acoustic privacy and natural ventilation can be achieved concurrently, and that the proposed location of the lift core directly to bedrooms is appropriate;
- (f) appropriately designed waste management and storage facilities; and
- (g) appropriately located bicycle parking facilities.

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

- (a) Section 27 of the Environmental Planning and Assessment Regulation, 2021 relating to the submission of BASIX information;
- (b) Schedule 1 of the State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, including principles 4, 6, and 8;
- (c) Objectives 3C-1, 3D-1, 3D-2, 4A-3, 4B-1, 4B-3, 4E-2, 4H-1, 4L-2, 4N-2, 4N-3, 4U-2, 4U-3, 4W-1 and 4W-2 of the Apartment Design Guide, including the relevant design criteria and design guidance;
- (d) Section 6 of the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- (e) Clause 6.21C(2)(d)(vii) and (viii) of the Sydney Local Environmental Plan 2012; and
- (f) the following provisions of the Sydney Development Control Plan 2012:
 - (i) Section 3.11 including the objective at (b) and (d);
 - (ii) Section 3.11.3 including the provision at (4);
 - (iii) Section 3.11.13 including the provisions at (1) and (2);
 - (iv) Section 3.14 including the objective at (c);
 - (v) Sections 3.14.1 and 3.14.3 including the provisions at (1) and (4);
 - (vi) Section 4.2.3 including the objective at (a);
 - (vii) Section 4.2.3.8 including the provisions at (1), (4), (5), (6) and (7);
 - (viii) Section 4.2.3.11 including the provision at (7);
 - (ix) Section 4.2.6 including the objectives at (b) and (c); and
 - (x) Sections 4.2.6.1 and 4.2.6.2, including the provisions at (1), (2) and (3).

Unacceptable landscape design and deep soil provision

- (F) The proposed development does not demonstrate:
 - (a) that 15 per cent canopy cover can be achieved at 10 years post-completion;
 - (b) that excellence and integration of landscape design has been achieved;
 - (c) that the landscape design can be appropriately maintained into the future; and

- (d) that a sufficient area of consolidated, unencumbered deep soil has been provided.

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

- (a) Schedule 1 of the State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, including principles 4 and 5;
- (b) Objectives 3E-1, 4O-1, 4P-1, 4P-2 and 4X-2 of the Apartment Design Guide, including the relevant design criteria and guidance;
- (c) Clause 6.21C(2)(d)(xiii) of the Sydney Local Environmental Plan 2012;
- (d) the following provisions of the Sydney Development Control Plan 2012:
 - (i) Section 3.5.2 including the objective at part (a) and the provision at (2);
 - (ii) Section 4.2.3 including the provision at (a);
 - (iii) Section 4.2.3.5 including the provisions at (1) and (3); and
 - (iv) Section 4.2.3.6 including the provision at (1); and
- (e) the City of Sydney's 'Sydney Landscape Code Volume 2: All Development Except for Single Dwellings', including the relevant guidelines for landscape design and deep soil provision.

Unacceptable likely impacts and site unsuitable for the development

- (G) It has not been demonstrated that the proposed development has satisfactorily addressed:
 - (a) that the land can be made suitable in accordance with State Environmental Planning Policy (Resilience and Hazards) 2021 for the purpose of the proposed development;
 - (b) that flood and stormwater management risks have been fully detailed and managed;
 - (c) 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
 - (d) the suitability of the site for the development.

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

- (a) Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act, 1979;
- (b) Section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 and the Managing Land Contamination Planning Guidelines SEPP 55—Remediation of Land; and
- (c) the following provisions of the Sydney Development Control Plan 2012:

- (i) Clause 5.21 including the objective at (1) and the matters for consideration at (2);
- (ii) Section 3.7 including objectives (a) through (f) inclusive;
- (iii) Section 3.7.1 including the provisions at (1) through (4) inclusive;
- (iv) Section 3.7.2 including the provisions at (5) through (15) inclusive; and
- (v) Section 3.17 including the objective at (a) and the provision at (1).

Not in the public interest

- (H) It has not been demonstrated that the proposed development has satisfactorily addressed the public interest.

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

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

Carried unanimously.

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