Resolution of Local Planning Panel

14 August 2024

Item 3

Development Application: 117 Victoria Street, Potts Point - D/2023/862

The Panel refused consent for Development Application Number D/2023/862 for the reasons outlined below.

Reasons for Decision

(A) The proposal is contrary to and fails to adequately satisfy the matters for consideration set out in Section 47(2) of Part 3: Retention of existing affordable rental housing of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) and the Guidelines for Retention of Existing Affordable Rental Housing.

(B) The application is inconsistent with the Clause 1.2(2)(e) aim of the Sydney LEP 2012 as it fails to encourage the growth and diversity of the residential population of the City of Sydney by providing for a range of appropriately located housing, including affordable housing.

(C) The application fails to satisfy the objectives of the R1 General Residential Zone of the Sydney LEP as it does not provide for the housing needs of the community and does not contribute to a variety of housing types and densities.

(D) The proposed development is in breach of the Height of Buildings development standard pursuant to Clause 4.3 of the Sydney LEP 2012 and exceeds the height in storeys control of Section 4.2.1.1 of the Sydney DCP 2012. The applicant's Clause 4.6 variation request to contravene the Height of Buildings standard has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances or that there are sufficient environmental planning grounds to justify contravention of the development standard.

(E) The proposed development is in breach of the Floor Space Ratio development standard pursuant to Clause 4.4 of the Sydney LEP. The applicant's Clause 4.6 variation request to contravene the Floor space ratio development standard has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances or that there are sufficient environmental planning grounds to justify contravention of the development standard.

(F) The proposed development is contrary to principles 1 to 9 of the design principles for residential apartment development in Schedule 9 of the Housing SEPP. The proposal provides inadequate amenity to apartments and neighbouring residential buildings and is non-compliant with multiple provisions of the ADG, including Objectives 3B, 3C, 3F, 3H, 3J, 4A, 4D, 4E, 4G, 4L, 4M, 4O, 4P, and 4W.

(G) The proposed development does not respond to or complement adjoining heritage and contributory buildings, does not respond to the topography of the site and is not in keeping with the unique character of the locality. The proposal is therefore contrary to the locality provisions of Section 2.4.3 and 2.4.7 of the Sydney DCP and the heritage provisions of Clause 5.10 of the Sydney LEP 2012 and Sections 3.9.1, 3.9.5, 3.9.6, 3.9.9 and 3.9.10 of the Sydney DCP 2012.

(H) The proposal does not meet the requirements of the City's Landscape Code and does not provide 10% deep soil in a consolidated area and is therefore non-compliant with Sections 4.2.3.5 and 4.2.3.6 of the Sydney DCP 2012.

(I) The development proposes vehicle access from the primary road frontage, does not include bicycle parking, and is contrary to the transport and parking requirements Sections 3.11.3, 3.11.6, and 3.11.11 of the Sydney DCP 2012.

(J) The proposed side setbacks and building setting is inconsistent with the desired future pattern of residential development and setbacks in the block, pursuant to Section 4.2.2 of the Sydney DCP 2012.

(K) The development does not provide appropriate amenity for residents. The development does not provide unit, private open space or communal open space in accordance with the minimum dimensions and size requirements of the ADG, and Sections 4.2.3.7, Section 4.2.3.8 and Section 4.2.3.9 of the Sydney DCP 2012. Poor outlook is also provided to bedrooms due to screening and to the lower ground unit to Victoria Street which is contrary to Section 4.2.3.10 of the Sydney DCP 2012.

(L) Inadequate information has been submitted to properly assess the application and the proposed development therefore fails to satisfy the following requirements:

(i) The application fails to satisfactorily address site contamination in accordance with Section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021, the Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land, Clause 7.14 Acid Sulfate Soils of the Sydney LEP 2012 and Section 3.17 of the Sydney DCP 2012.

(ii) The application provides insufficient information to determine the impacts of the proposed excavation upon the structural integrity of neighbouring buildings and the retained rock face on the adjacent site at 30A - 34 Broughan Street, pursuant to Section 3.9.13 of the Sydney DCP 2012.

(iii) Insufficient information has been supplied to determine whether the building breaches the 25m design competition process threshold. No competitive design process has been undertaken for the development and it is therefore contrary to Clause 6.21D(1) of the Sydney LEP 2012 and Section 3.3 of the Sydney DCP 2012.

(iv) The application fails to demonstrate 15 per cent tree canopy coverage within 10 years of completion, pursuant to Sections 3.5.1 and 3.5.2 of the Sydney DCP. Insufficient information has been supplied to determine construction impacts on existing trees adjoining the site which is contrary to the requirements of Section 3.5.3 of the Sydney DCP 2012 and Chapter 2 Vegetation in non-rural areas of the Biodiversity and Conservation SEPP 2021.

(v) The preliminary public art plan does not satisfy requirements for public art in accordance with the City's Interim Guidelines for Public Art in Private Developments and the development is therefore contrary to the requirements of Section 3.1.5 of the Sydney DCP 2012.

(vi) The application fails to demonstrate compliance with the City's Interim Flood Planning Policy and stormwater drainage and quality requirements and is therefore contrary to Clause 5.21 of the Sydney LEP 2012, and Sections 3.7.1, 3.7.2 and 3.7.3 of the Sydney DCP 2012.

(vii) The application fails to provide sufficient information to demonstrate that each of the proposed dwellings and neighbouring dwellings will receive the minimum 2 hours of direct sunlight to living room windows and private open space areas between 9am and 3pm on 21 June, pursuant to Section 4.2.3.1 of the Sydney DCP 2012.

(viii) The location and design of the waste storage room and waste chutes are contrary to the waste requirements set out in the City of Sydney Guidelines for Waste Management in New Development, Section 3.11.13, Section 3.14, Section 4.2.6 of the Sydney DCP 2012.

(M) The proposed development fails to exhibit Design Excellence pursuant to Clause 6.21C of the Sydney LEP 2012 due to the following:

(i) The application fails to demonstrate a high standard of architectural design and detailing appropriate to the building type and surrounding heritage character, pursuant to Clause 6.21C(2)(a).

(ii) The form and external appearance of the proposed development will not improve the quality of the public domain, pursuant to Clause 6.21C(2)(b) and Clause 6.21C(2)(d)(x).

(iii) The proposed development detrimentally impacts on public view corridors from Victoria Street, pursuant to Clause 6.21C(2)(c).

(iv) The application fails to appropriately address heritage issues and streetscape constraints, pursuant to Clause 6.21C(2)(d)(iii).

(v) The proposed development fails to provide an appropriate bulk, massing and modulation of buildings, pursuant to Clause 6.21C(2)(d)(v).

(vi) The proposal is not consistent with existing street frontage heights, pursuant to Clause 6.21C(2)(d)(vi).

(vii) The application fails to adequately address environmental impacts of overshadowing, solar access, views and visual privacy, pursuant to the provisions outlined under Clause 6.21C(2)(d)(vii).

(viii) The application fails to adequately consider pedestrian, cycle, vehicular and service access and circulation requirements, pursuant to Clause 6.21C(2)(d)(ix).

(ix) The proposed development does not achieve an appropriate interface at ground level between the building and the public domain, pursuant to Clause 6.21C(2)(d)(xii).

(x) The proposed development fails to demonstrate excellence and integration of landscape design pursuant to Clause 6.21C(2)(d)(xii).

(N) The development is unsatisfactory when assessed pursuant to the matters for consideration at section 4.15(1)(e) of the EP&A Act and is therefore not in the public interest.

(O) As the application was made but not determined on or before 14 December 2023, the bonus floor space and height under Chapter 2 Division 1 of the Housing SEPP does not apply to the development, pursuant to Schedule 7A Savings and Transitional Provisions, Section 8 State Environmental Planning Policy Amendment Housing 2023.

Carried unanimously.

D/2023/862