

Resolution of Local Planning Panel

18 December 2024

Item 4

Development Application: 141-155 Commonwealth Street, Surry Hills - D/2024/122

The Panel:

- (A) upheld the variation requested to Clause 4.3 Height of Buildings development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012;
- (B) upheld the variation requested to Clause 4.4 Floor Space Ratio development standard in accordance with Clause 4.6 'Exceptions to development Standards' of the Sydney Local Environmental Plan 2012; and
- (C) granted consent to Development Application Number D/2024/122 subject to the conditions set out in Attachment A to the subject report, subject to the following amendments (additions shown in ***bold italics***, deletions shown in ~~strikethrough~~):

(46) PROTECTION OF STONE KERBS

- (a) The existing stone kerbs on the [~~Street Name/s~~] ***Commonwealth Street and Reservoir Street*** frontages of the site are to be retained and properly protected during demolition, excavation and construction works.
- (b) To avoid damage to stone kerbs during excavation and construction works for the development, temporary removal and storage of the stone kerbs may be approved by Council. Removed, serviceable stone kerbs (i.e. those that are in good condition as agreed by Council officers) must be re-installed in accordance with the City of Sydney's standard details and specifications after the construction works have been completed. A temporary concrete kerb will need to be constructed to retain the footpath until the stone kerbs can be reinstalled.
- (c) Note the following:
 - (i) all costs associated with the works are to be borne by the developer.

- (ii) Damaged kerbs are to be replaced to match existing to Council's satisfaction or as otherwise advised by Council officers.
- (iii) Where new vehicle crossings or temporary crossings are to be constructed to access the property, the affected kerb stones should be salvaged and reused wherever possible.
- (iv) All new driveway laybacks and kerbs are to be constructed with stone kerbs to match existing stones or as specified by City officers.
- (v) Council approval is required before kerbs are removed.
- (vi) Council approval is required prior to the cutting of existing stone kerbs for stormwater kerb outlets.
- (vii) Stone kerbs and gutters may be bonded in accordance with the City of Sydney's adopted Schedule of Fees and Charges. If so, this will be included with the Public Domain Damage Bond.

Reason

To ensure the protection of stone kerbs.

(91) STREET TREE PROTECTION

All street trees located directly outside the site must be retained and protected in accordance with the Australian Standard 4970 Protection of Trees on Development Sites. All street trees must be protected during the construction works as follows:

- (a) Tree trunk and major branch protection must be undertaken prior to the commencement of any works (including demolition). The protection must be installed and certified by an arborist with a minimum AQF Level 5 qualification in arboriculture and must include:
 - (i) An adequate clearance, minimum 250mm, must be provided between the structure and tree branches, and trucks at all times.
 - (ii) Tree trunk/s and/or major branches to a height of two metres, must be protected by wrapped thick underlay carpet or similar padding material to limit damage.
 - (iii) Timber planks (50mm x 100mm or similar) must be placed around tree trunk/s. The timber planks must be spaced at 100mm intervals and must be fixed against the trunk with tie wire, or strapping. The thick underlay carpet or similar padding material and timber planks must not be fixed to the tree in any instance, or in any fashion.
 - (iv) Tree trunk and major branch protection is to remain in place for the duration of construction and development works and must be removed at the completion of the project.
- (b) Temporary signs, or any other items, shall not be fixed or attached to any street tree.

- (c) All hoarding support columns are to be placed a minimum of 300mm from the edge of the existing tree pits/setts, so that no sinking or damage occurs to the existing tree pits. Supporting columns must not be placed on any tree roots that are exposed.
- (d) Young street trees must be protected by installing three (3) wooden stakes around the edge of the tree pits or a minimum of 1 metre from the base of the trunk. Hessian must be wrapped around the stakes. If existing stakes or a metal tree guard are already in place, these suffice as tree protection.
- (e) Materials or goods, including site sheds, must not be stored or placed:
 - (i) around or under the tree canopy; or
 - (ii) within two (2) metres of tree trunks or branches of any street trees.
- (f) Any excavation within any area known to or suspected of having tree roots greater than 30mm diameter must be undertaken by hand.
- (g) Any trenching works for services, hydraulics, drainage etc. must not be undertaken within ~~specify~~ metres **the Tree Protection Zone** of the trunk of any street tree. Alternate installation methods for services such as directional boring/drilling or redirection of services must be employed where roots greater than 30mm diameter are encountered during installation of any services.
- (h) Existing sections of kerbs adjacent to any street tree must not be removed without approval from the Council's Tree Management Officer.
- (i) Any damage sustained to street tree/s as a result of the erection of any construction activities (including demolition) must be immediately reported to the Council's Tree Management Officer on 9265 9333. Any damage to street trees as a result of any construction activities may result in prosecution under the Local Government Act 1993 and the Environmental Planning and Assessment Act 1979.

Reason

To ensure the protection and ongoing health of the street trees.

(120) HOURS OF OPERATION – ROOFTOP AND OUTDOOR TERRACE

The hours of operation/use of the outdoor rooftop and lower terrace on Level 1 are to be restricted to the following:

- (a) The use of these areas are restricted to between 7am and 8pm, Monday to Sunday.
- (b) Notwithstanding (a) above, ~~these areas~~ **the rooftop outdoor terrace** may be used between 8pm and 10pm, Monday to Sunday for a trial period of 1 year from the date of issue of the Occupation Certificate.

- (c) Should the operator seek to continue the extended operating hours outlined in (b) above, an application must be lodged with Council at least 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 NSW Police and Liquor & Gaming.

Reason

To ensure the premises trades within the approved trading hours.

Reasons for Decision

The application was approved for the following reasons:

- (A) The proposal is consistent with the objectives of the MU1 Mixed Use Zone.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that 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 4.3 of the Sydney LEP 2012.

The Clause 4.6 variation request is therefore upheld and approval to vary the Height of Buildings development standard is granted.

- (C) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that 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 Floor Space Ratio development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 4.4 of the Sydney LEP 2012.

The Clause 4.6 variation request is therefore upheld and approval to vary the Floor Space Ratio development standard is granted.

- (D) The proposed design of the development respects the historic character of the heritage conservation area and its surroundings, whilst simultaneously mitigating environmental impacts of overshadowing and overlooking of neighbouring properties pursuant to the design excellence provisions of Clause 6.21C of the Sydney LEP 2012.
- (E) The proposed development, subject to the recommended conditions of consent, adequately addresses and safeguards the visual and acoustic privacy of neighbouring residential properties pursuant to Clause 6.21C(2)(d)(vii) of the Sydney LEP 2012.
- (F) The proposed development, subject to recommended conditions of consent, exhibits excellence in landscape integration and will enhance the urban greening of the site pursuant to Clause 6.21C(2)(d)(xiii) of the Sydney LEP 2012.
- (G) The proposed development is appropriate to its site and setting, by delivering a high-quality design and suitable use to enhance the vitality of the locality and promote the orderly and economic use and development of the land pursuant to Object (c) of the Environmental Planning and Assessment Act 1979 (Clause 1.3(c)).

- (H) Condition 46 was amended to clarify condition requirements regarding protection of stone kerbs.
- (I) Condition 91 was amended to clarify condition requirements regarding the protection of street trees.
- (J) Condition 120 was amended to address acoustic and privacy concerns of neighbouring residents.

Carried unanimously.

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