

Local Planning Panel

Meeting No 21

Wednesday 5 June 2019

Notice Date 29 May 2019

minutes

city of villages

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Present

Mr Richard Pearson (Chair), Mr Paul Berkemeier, Mr Shaun Carter and Mr John McInerney.

At the commencement of business at 5.01pm, those present were:-

Mr Pearson, Mr Berkemeier, Mr Carter and Mr McInerney.

The Director City Planning, Development and Transport was also present.

The Chair opened the meeting with introductory comments about the purpose and format of the meeting and an acknowledgement of country.

The Chair adjourned the Panel meeting at 5.40pm to further consider Item 3.

The Chair reconvened the Panel meeting at 5.50pm.

Mr Carter left the meeting at 6.24pm, prior to discussion on Item 5, and returned to the meeting at 6.40pm, at the conclusion of discussion and voting on Item 5.

Item 1 Disclosures of Interest

In accordance with Clause 4.17 of the Code of Conduct five new alternate expert Local Planning Panel members lodged a Disclosure of Pecuniary Interests return.

The Disclosure of Interest forms are received and noted.

In accordance with Clause 4.9 of the Code of Conduct for Local Planning Panel Members, all panel members have signed a declaration of interest in relation to each matter on the agenda.

Mr Pearson disclosed a less than significant, non-pecuniary interest in Item 4 - Development Application: 44-48 O'Dea Avenue, Waterloo (Building A) as he previously worked for JBA Urban Planning in 2004/05 which is now part of Ethos Urban, the applicant's planning consultant. As the involvement was a considerable time ago, the interest is a non-pecuniary and non-significant conflict under the Code of Conduct and does not require Mr Pearson to stand aside from determination of the matter.

Mr Carter disclosed a reasonably perceived pecuniary interest in Item 4 - Development Application: 44-48 O'Dea Avenue, Waterloo (Building A) as Mr Carter is employed by Ethos Urban on one project and is designing the home of one of the directors of Ethos Urban who are the applicant's planning consultant. Given the conflict of interest, Mr Carter will step out for deliberation on Item 4.

No members disclosed any other pecuniary or non-pecuniary interests in any matter on the agenda for this meeting of the Local Planning Panel.

Item 2 Confirmation of Minutes

The Panel noted the minutes of the Local Planning Panel of 15 May 2019, which have been endorsed by the Chair of that meeting.

It was noted that there is an error in the attendance listed in the minutes for this meeting. Local Planning Panel expert member Peter Romey was not listed as present nor was his vote for Item 3 recorded as "for" for the alternate recommendation proposed. Council staff will correct the minutes and re-publish on the Council website.

Item 3 Development Application: 92 Glebe Point Road, Glebe - D/2019/42

The Chair adjourned the Panel meeting at 5.40pm to further consider Item 3.

The Chair reconvened the Panel meeting at 5.50pm.

The Panel granted consent to Development Application No. D/2019/42 subject to the conditions set out in [Attachment A](#) to the subject report, subject to the following amendments (additions shown in *bold italics* and deleted text shown in ~~strikethrough~~):

(2) DESIGN MODIFICATIONS

The design must be modified as follows:

- (a) The plans must be amended to reduce the outdoor dining area along Mitchell Street to accommodate ~~2~~ **4** tables and ~~4~~ **8** chairs adjoining the bar/lounge area on the ground floor, accommodating a maximum of ~~4~~ **8** patrons;

...

(6) EXTERNAL HOURS OF OPERATION - SENSITIVE USES- REAR COURTYARD

- (a) The external hours of operation for the rear courtyard must be restricted to between 8am and 8pm Monday to Sunday.
- (b) Notwithstanding (a) above, the external areas, namely rear courtyard, may operate between 8am and 10pm Monday to Sunday for a trial period of one year from the date of issue of the Occupation Certificate. Council's Health and Building Unit is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to liquor@cityofsydney.nsw.gov.au
- (c) A further application may be lodged to continue the operating hours outlined in (b) above not less than 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 the Police.

(d) No smoking in the courtyard at any time.

(7) EXTERNAL HOURS OF OPERATION – OUTDOOR FOOTWAY DINING

- (a) The footway:
 - (i) on Glebe Point Road*** may operate between 8am and 9pm Monday to Sunday;
and
 - (ii) on Mitchell Road may operate between 8am and 6pm Monday to Sunday***

for a trial period of one year from the date of issue of the Occupation Certificate.

The tables and chairs on Mitchell Road should be stored after 6pm.

Council's Health and Building Unit is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to liquor@cityofsydney.nsw.gov.au

(8) USE OF FOOTWAY SEATING

The following conditions apply to footway seating:

- (a) The use of the subject area for outdoor seating is only allowed in conjunction with the provision of a simultaneous food service from the associated approved bar/café use.
- (b) The management/licensee/owner of the property must enter into a licence with Council for the use of the subject area of the footway with all legal costs associated with the preparation of the licence being borne by the management/licensee/owner. The licence must be executed prior to the use of the footway for seating.

Note: Should the operator of the premises change at any time, the licence is required to be renewed under the name of the new operator.

- (c) The use of the footway may be suspended to facilitate Council approved special events to be held in the street or for road and services works. No claim for compensation is entitled under such circumstances.
- (d) In addition to Council's daily street sweeping and cleansing operations, the operator of the outdoor café must ensure that the surrounds of the building including pavements and gutters are to be kept clean and free of litter at all times.
- (e) A maximum of ~~68~~ tables, 2 bench seats and ~~42~~**16** chairs are approved to be located within the footway area. The number of persons utilising the footway area shall not exceed ~~20~~**24** persons.

(21) QUEUING

No persons are to be permitted to drink or queue outside the premises at any time. ***The Plan of Management is*** ~~Security officers are~~ to ensure that there is no queue for the premises and ~~take~~-all reasonable steps ***are taken*** to ensure compliance with this condition.

Reasons for Decision

The application was approved for the following reasons:

- (A) The application is consistent with the objectives of the B2 Local Centre zone applicable under the Sydney Local Environmental Plan 2012.
- (B) The proposed signage complies with the relevant aims, objectives and provisions of the State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64).
- (C) The proposed outdoor dining complies with the relevant aims, objectives and provisions of the Roads Act 1993 and the City's Policy and Guidelines for outdoor dining subject to recommended amendments addressing the amenity of neighbouring properties.
- (D) The proposal is within a Local Centre Area and the recommended hours of operation are consistent with the objectives and in accordance with the recommended hours for this area for Category B premises as identified in the Sydney Development Control Plan 2012.
- (E) The application achieves design excellence in accordance with Clause 6.21 (4) of the Sydney Local Environmental Plan 2012 in that the materials and detailing of the replacement window to Glebe Point Road and signage complements the heritage significance of the building as a local heritage item.
- (F) The effect on the public interest has been mitigated by reducing the capacity and extent of the outdoor dining area. A maximum capacity has been recommended for the rear courtyard and hours of operation consistent with the Sydney Development Control Plan 2012

provisions. Conditions addressing the public submissions have been recommended focusing on improved management practises.

- (G) Conditions 2, 7 and 8 were amended to increase the number of outdoor seats on Mitchell Road by two tables and restrict the use of footway seating on Mitchell Road to 6pm. These amendments were made in response to a submission made by the applicant which sought a minor increase in capacity with a reduction in hours of footway use by three hours. The Panel considered the increased seating for a reduction in hours for the footway use on Mitchell Road to be an appropriate amendment that would serve to protect the amenity of Mitchell Road and neighbouring properties.
- (H) Condition 6 was amended to restrict smoking in the outdoor courtyard of the subject site. This amendment was made in response to a submission made by an adjoining resident to protect the amenity of neighbouring residents.
- (I) Condition 21 was amended to remove reference to 'security officers'. The submitted Plan of Management was considered to be the appropriate mechanism for managing queuing for a venue of this size.

Carried unanimously.

D/2019/42

Speakers

Ms Anna Rorke (resident), Ms Angela Boulougouris (applicant) and Mr Evan Gilchrist (Stirling and Andie – on behalf of the applicant).

Item 4 Development Application: 5-7 Bourke Road, Alexandria - D/2018/1208

The Panel:

- (A) granted deferred commencement consent to Development Application D/2018/1208 pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, subject to the conditions set out in [Attachment A](#) to the subject report, subject to the following amendments (additions shown in *bold italics* and deleted text shown in ~~strike through~~); and
- (B) the Design Excellence Strategy for 5-7 Bourke Road, Alexandria, prepared by SJB Planning and dated April 2019, be endorsed in accordance with Section 3.3.1 of the Sydney Development Control Plan 2012 and Section 1.2 of the City of Sydney Competitive Design Policy.

PART B – CONDITIONS OF CONSENT**SCHEDULE 1A****(4) DETAILED DESIGN OF BUILDING**

- (a) The detailed design development application must address the following requirements:
 - (i) A deep soil zone with a minimum area of 69sqm and minimum dimension of 3m must be provided within the approved building envelope.
 - (ii) The amount of car parking located above ground shall be limited to a single level, with only 50% of the permitted car parking able to be accommodated as above ground car parking in accordance with the provisions of Section 5.2.12 of the Sydney Development Control Plan 2012.
 - (iii) Any above ground car parking must be designed to be adaptable and must comply with the provisions contained in Sections 3.11.14 and 5.2.12 Sydney Development Control Plan 2012 (SDCP 2012). Any above ground car parking is required to be appropriately screened while still achieving a high quality facade which contributes to the streetscape and meets the provisions for design excellence contained in Clause 6.21 of Sydney Local Environment Plan 2012.
 - (iv) The north facade, particularly at ground level, must be designed to provide visual interest and activation to the future Liveable Green Network.
 - (v) The detailed design is to minimise and mitigate the potential for blank walls particularly where they adjoin the property boundary with 189 Wyndham Street and 9-13 Bourke Road, Alexandria.
 - (vi) Any required substation is to be integrated into the fabric of the building and must not be a free standing kiosk substation. The substation should not compromise activation of the streetscape or public domain.
 - (vii) Enclosures and screening of any plant and essential services are to be of high material quality equal in standard to the façade.
 - (viii) The floor to ceiling heights and floor to floor heights must comply with the minimum heights specified in Section 4.2.1.1 of SDCP 2012.
 - (ix) The provision of a green wall/s should be explored in accordance with the provisions of Section 5.8.7.4 of SDCP 2012.

(x) External sun shading to both glazed elevations.

- (b) The competitive design process brief shall incorporate the above design requirements.

Reasons for Decision

The application was approved for the following reasons:

- (A) The concept development is consistent with Section 4.15 of the Environmental Planning and Assessment Act 1979, in that subject to the imposition of appropriate conditions as recommended, it achieves the objectives of the planning controls for the site and does not result in unreasonable environmental impacts for the reasons outlined in the report to the Planning Panel.
- (B) The proposal is consistent with the objectives of the Sydney Local Environmental Plan 2012 (SLEP 2012).
- (C) The concept development complies with the maximum permitted height under Clause 4.3 of SLEP 2012, and the subsequent detailed development application is capable of complying within the maximum permitted floor space ratio within the parameters of the building envelope, pursuant to Clauses, 4.4 and 6.14 of SLEP 2012. The detailed DA is also capable of achieving up to an additional 10% additional floor space within the parameters of the building envelope, pursuant to compliance with Clause 6.21 of SLEP 2012 and the recommended conditions of consent.
- (D) The proposal, subject to conditions, satisfies the relevant provisions contained in Clause 6.21(4) of SLEP 2012 as the proposed land use is suitable for the site, the proposal sets out ecological sustainable development key targets for the development, the building envelope does not detrimentally impact of view corridors or result in unacceptable overshadowing, and the massing and setbacks of the building envelope are compatible with the character of the area.
- (E) The proposal is generally consistent with the provisions of the Sydney Development Control Plan 2012 (SDCP 2012), particularly the Green Square and Southern Employment Lands specific provisions which apply to the site. Subject to the imposition of a condition reducing the extent of car parking, the proposal is capable of complying with the above ground car parking provisions of Section 5.2.12 of the SDCP 2012.
- (F) The Design Excellence Strategy complies with Section 3.3 of the SDCP 2012 and the City of Sydney Competitive Design Policy.
- (G) The proposal will improve the quality of the public domain through dedication of land towards the widening of the footpath along Bourke Road and through dedication of land for future public open space being the Liveable Green Network.
- (H) Deferred commencement approval enables the voluntary planning agreement to be executed and registered on title.
- (I) For the reasons above and as outlined in this report, the proposed development is in the public interest subject to conditions.
- (J) Condition 4 was amended to include a new clause (a)(x) to ensure the architecture is site and place specific and designed for Sydney's warm climate.

Carried unanimously.

D/2018/1208

Speakers

Mr Scott Barwick (SJB Architects – on behalf of the applicant) and Mr Evan Pearson (Candalepas Architects – on behalf of the applicant).

Item 5 Development Application: 44-48 O'Dea Avenue, Waterloo (Building A) - D/2018/789

Mr Carter left the meeting at 6.24pm, prior to discussion on Item 5, and returned to the meeting at 6.40pm, at the conclusion of discussion and voting on Item 5.

The Panel:

- (A) upheld the variation sought to the height of building development standard under Clause 4.3, in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012 in this instance; and
- (B) granted deferred commencement consent to Development Application D/2018/1208 pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, subject to the conditions set out in [Attachment A](#) to the subject report, subject to the following amendments (additions shown in *bold italics* and deleted text shown in ~~strikethrough~~):

(132A) ROADS AND MARITIME SERVICES – DESIGN PLANS AND HYDRAULIC CALCULATIONS

Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to Roads and Maritime Services for approval, prior to commencement of any works.

(132B) ROADS AND MARITIME SERVICES – DESIGN DRAWINGS AND DOCUMENTS

- (a) *The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime Services for assessment, in accordance with Technical Direction GTD2012/001.*
- (b) *The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the by Roads and Maritime Services.*
- (c) *If it is necessary report to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days' notice to excavate below the base of the footings. The notice is to include complete details of the work.*

(132C) ROADS AND MARITIME SERVICES – ROAD OCCUPANCY LICENCE

A Road Occupancy License (ROL) should be obtained from the Roads and Maritime Services Transport Management Centre for any works that may impact on traffic flows on O'Dea Avenue during construction activities.

(132D) ROADS AND MARITIME SERVICES – VEHICLES

- (a) *All vehicles are required to enter and exit the property in a forward direction.*
- (b) *All vehicles are to be contained on the site before being required to stop.*
- (c) *All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on O'Dea Avenue.*

Reasons for Decision

The application was approved for the following reasons:

- (A) The proposed development is consistent with Section 4.15 of the Environmental Planning and Assessment Act 1979, in that it achieves the objectives of the planning provisions for the site and does not result in any unreasonable environmental impacts for the reasons outlined in the report.
- (B) The development is consistent with the objectives of the B4 Mixed Use zone pursuant to the Sydney Local Environmental Plan 2012 (Sydney LEP 2012).
- (C) The variation to Clause 4.3 height of building development standard under the Sydney LEP 2012 pursuant to Clause 4.6 is supported and it is considered to be in the public interest.
- (D) The development is consistent with the permitted Floor Space Ratio (FSR) under Clause 4.4 of the Sydney LEP 2012.
- (E) The development exhibits design excellence pursuant to Clause 6.21 of the Sydney LEP 2012. In particular, the development exceeds the minimum BASIX targets for water and energy.
- (F) The development will provide a high level of amenity for future occupants as it is consistent with the design quality principles of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development and meets the objectives of the Apartment Design Guide.
- (G) The development is consistent with the concept development consent (D/2016/1450) applicable to the site pursuant to Section 4.24(2) of the Environmental Planning and Assessment Act 1979.
- (H) The development is generally consistent with the objectives of the Sydney Development Control Plan 2012 (Sydney DCP 2012), specifically the Green Square and Lachlan Precinct provisions which apply to the site.
- (I) For the reasons above and as outlined in this report, the proposed development is in the public interest, subject to conditions.
- (J) The Panel accepted the inclusion of Conditions 132A-D as proposed by Council staff.. The conditions were recommended in response to a submission made by the RMS.

Carried unanimously.

D/2018/789

Speakers

Mr Daniel Howard (Ethos Urban – on behalf of the applicant).

Item 6 Development Application: 382A Pitt Street, Sydney - D/2019/274

The Panel granted consent to Development Application No. D/2019/274 subject to the conditions set out in [Attachment A](#) to the subject report, subject to the following amendments (additions shown in *bold italics* and deleted text shown in ~~strikethrough~~);

(12) SEX INDUSTRY PREMISES – LIGHTING

- (a) All workrooms in sex service premises must be provided with an adequate level of lighting to allow sex workers to conduct health checks of their clients for any visible signs of sexually transmitted diseases, and/or a lamp is to be provided specifically for this.
- ~~(b) All sex on premises cubicles, booths and sexual activity areas must be fitted with a local lighting system that achieves an adequate level of luminance for the purpose of allowing patrons to conduct examination of each other for visible evidence of sexual transmitted disease and to assist safe sexual practices. User adjustable dimmer switches may be installed to achieve this.~~
- (c) All sex on premises cubicles, booths and sexual activity areas must be fitted with lighting that achieves a minimum luminance of 80lx for the purpose of spot cleaning. This must be achieved either through the provision of a separate zoned lighting system or incorporated into the design of the local lighting system for sexual transmitted infection examination by patrons.
- (d) The premises must be capable of being illuminated with an adequate level of lighting so that the premises can be thoroughly cleaned ~~when patrons are not on the premises~~ **when closed for business**.

(13) SEX ON PREMISES VENUE SERVICES PREMISES – CLEANING

- ~~(a) The premises, including any booths, cubicles, walls, floors and 'glory holes' must be constructed of durable, impervious materials with smooth finishes that are able to be cleaned easily.~~
- (b) A cleaning register is to be kept on the premises at all times and must be available for inspection by authorised officers on demand. The register must include but not be restricted to: date/time of all cleaning activities; printed name and signature of the employee(s) conducting the cleaning; and notation of specific areas requiring spot cleaning attention.
- (c) Spot cleaning must be conducted on as a minimum hourly **daily** basis or more frequently if needed and during peak periods.
- ~~(d) There must be a minimum of 2 staff available at all times at the premises so as cleaning and security can be maintained.~~

(14) SEX SERVICES PREMISES – SHARPS WASTE DISPOSAL EQUIPMENT

At least one sharps container ~~of a one litre or more capacity~~ is to be provided **in all sanitary facilities** and kept on premises at all times for use by clients or staff as required.

The container(s) are to comply with the requirements of AS4261:1994 and/or AS4031:1992 and be disposed of in accordance with the Department of Environment and Conservation's requirements.

(30) AIR CONDITIONING CONDENSERS

The two existing air-conditioning condensers and associated wiring above the awning of the site, shall be relocated to a non-visible location of the building, when viewed from Pitt Street. Amended details are to be submitted prior to the Occupation Certificate being issued.

Reasons for Decision

The application is approved for the following reasons:

- (A) The use is permissible with consent in the B8 Metropolitan Centre zone.
- (B) The hours and number of working rooms are reduced from the previous use as a sex industry premises (restricted premises).
- (C) The proposed use as a sex services premises is considered to be in keeping with the character of the area given its broad mix of commercial uses.
- (D) The Plan of Management adequately addresses the operational, safety and security requirements of the premises.
- (E) It is not considered that the proposal will result in any significant amenity impacts.
- (F) The Panel supported amendments made to Conditions 12, 13 and 14 as proposed by Council staff. A further amendment to Condition 12 was made at the Panel meeting in response to a submission made by the applicant seeking the deletion of Condition 12(b) related to lighting.
- (G) Condition 30 was added to require the removal of the existing air condenser units on the front façade of the building fronting Pitt Street at first floor level. The units are visually intrusive and the relocation of the units will improve the appearance of the building and streetscape of Pitt Street.

Carried unanimously.

D/2019/274

Speakers

Ms Julie Bates (Urban Realists – on behalf of the applicant).

Item 7 Development Application: 55-67 Clarence Street, Sydney - D/2019/60

The Panel deferred consideration of Development Application No. D/2019/60 at 55-67 Clarence Street, Sydney, to a future meeting of the Local Planning Panel.

Reasons for Decision

The Panel deferred the matter to allow for further discussions to be held between Council staff and the applicant in relation to Condition 25 *Public Domain Plan* and the scope of public domain works required. Following these discussions a report is to be presented back to the Local Planning Panel for consideration.

Carried unanimously.

D/2019/60

Speakers

Mr Thomas Cook (Willowtree Planning – on behalf of the applicant) and Mr Mark Frinsdorf (Artifex Property – on behalf of the applicant).

Item 8 Development Application: 22-28 Darlinghurst Road, Potts Point - D/2019/331

The Panel granted consent to Development Application No. D/2019/331 subject to the conditions set out in [Attachment A](#) to the subject report.

Reasons for Decision

The application was approved for the following reasons:

- (A) The development, subject to conditions, is consistent with the objectives of the B2 Local Centre zone.
- (B) The development is consistent with the relevant controls for the site and, subject to conditions, will not have an adverse impact on the amenity of neighbouring properties.
- (C) The proposal is within a Late Night Management Area and the proposed hours of operation are consistent with the objectives and in accordance with the recommended hours for this area for Category A premises as identified in the Sydney Development Control Plan 2012.
- (D) The premises has successfully completed a 12 month trial period for extended trading hours for the outdoor dining area that has not detrimentally impacted on the amenity of the surrounding area.

Carried unanimously.

D/2019/331

Item 9 Development Application: 123 Pitt Street, Sydney - D/2018/1473

The Panel granted consent to Development Application No. D/2018/1473 subject to the conditions set out in [Attachment A](#) to the subject report.

Reasons for Decision

The application was approved for the following reasons:

- (A) The proposal is permissible with consent.
- (B) The proposal satisfies the relevant planning controls.
- (C) The proposal has acceptable heritage impacts.
- (D) The proposal is in the public interest subject to adherence of the conditions of consent.

Carried unanimously.

D/2018/1473

Item 10 Local Planning Panel - Revised Operational Procedures

The Local Planning Panel adopted the revised City of Sydney Local Planning Panel Operational Procedures, as shown at [Attachment A](#) to the subject report, subject to the following amendments (additions shown in *bold italics* and deleted text shown in ~~striketrough~~);

21. Panel members are to manage and disclose pecuniary and non-pecuniary conflicts of interest in accordance with Part 4 and Part 5 of the Code.

22. Declared conflicts of interest relating to relationships of panel members with professional service providers will be dealt with in accordance with the process set out in Appendix A.

Reasons for Decision

The revised Operational Procedures will enable the Panel to more effectively and transparently conduct its business as they provide a clear set of guidelines for considering conflicts of interest relating to relationships of panel members with professional service providers, as well as other minor procedural amendments.

Carried unanimously.

X014523

The meeting of the Local Planning Panel concluded at 7.10pm.

CHAIR