

Local Planning Panel

Meeting No 48

Wednesday 3 February 2021

Notice Date 27 January 2021

minutes

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Present

Mr Steven Layman (Chair), Mr Tony Caro, Professor Helen Lochhead and Mr John McInerney.

At the commencement of business at 5.20pm, those present were:

Mr Layman, Mr Caro, Prof Lochhead and Mr McInerney.

The Executive Manager Planning and Development 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 advised that the meeting was being held via audio visual links, with panel members, relevant staff and those addressing the panel attending the meeting remotely.

Item 1 Disclosures of Interest

In accordance with section 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.

No members disclosed any 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 16 December 2020, which have been endorsed by the Chair of that meeting.

Item 3 Development Application: 2-12 Carrington St, Sydney - D/2020/959

The Panel granted consent to Development Application No. D/2020/959 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~~):

(2) STAGED OCCUPATION

The occupation of the development may be carried out in stages, with the relevant conditions being satisfied prior to the issue of an Occupation Certificate where specified in the conditions of consent for each stage as detailed below:

(3) <i>Stage</i>	(4) <i>Occupation Certificate Area</i>
(5) Stage 1	(6) Ground Floor
(7) Stage 2	(8) Levels 09 and 10

~~(9)~~ (3) INDOOR HOURS OF OPERATION – SENSITIVE USES

(Remaining conditions to be renumbered accordingly)

(10) OUTDOOR HOURS OF OPERATION - SENSITIVE USES

The outdoor hours of operation are regulated as follows:

- (a) The outdoor hours of operation must be restricted to between 10.00am and 10.00pm Monday to Sunday.
- ~~(b) Notwithstanding (a) above, the use may operate (outdoors) between 9.00am and 12.00am (midnight) for a trial period of 12 months from the date of issue of the first 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.~~

(13) AWNING DESIGN

- (a) The outer edges of the proposed retractable awnings must be set back from the inner face of the heritage parapet by no less than 2m. ***This does not apply to the pleated shadings.***

(16) PLAN OF MANAGEMENT

The use must always be operated / managed in accordance with the Plan of Management V02, prepared by ***Michael Rowe The Point Group*** and dated December 2020 that has been approved by Council. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.

The Plan of Management must include:

- (a) the provision of a means of directly contacting management and security, for the use of nearby residents, with which to lodge noise complaints;***
- (b) a mechanism for the monitoring and reviewing of complaints, to also be made available to Council; and***
- (c) quarterly meetings of venue operators and representatives of residents of 2 York Street, Sydney.***

The amended Plan of Management is to be submitted to Council for approval prior to the issue of an Occupation Certificate.

A show of hands on the motion resulted in an equality of voting as follows –

Ayes (2) The Chair (Mr Layman) and Mr McInerney

Noes (2) Prof Lochhead and Mr Caro

The Chair (Mr Layman) exercised his casting vote in favour of the motion.

Motion carried.

At the conclusion of Item 5 the Chair raised that there may have been confusion regarding the amendment to Condition 10, and recommitted Item 3 with the following amendment:

(10) OUTDOOR HOURS OF OPERATION - SENSITIVE USES

The outdoor hours of operation are regulated as follows:

- (a) The outdoor hours of operation **on Level 9** must be restricted to between 10.00am and 10.00pm Monday to Sunday.
- (b) Notwithstanding (a) above, the use **of Level 10** may operate (outdoors) between 9.00am and 12.00am (midnight) for a trial period of 12 months from the date of issue of the first 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.

Amended motion carried unanimously.

Reasons for Decision

The application was approved for the following reasons:

- (A) The proposal is consistent with the objectives of the B8 Metropolitan Centre zone contained within the Sydney Local Environmental Plan 2012.
- (B) The proposal is consistent with the objective of conserving the heritage significance of the subject locally listed heritage item and demonstrates design excellence in accordance with Clause 5.10 and Clause 6.21 of the Sydney Local Environmental Plan 2012
- (C) Subject to conditions, the development is consistent with the objectives of the Sydney Development Control Plan 2012, in particular the Late Night Management area objectives.
- (D) Issues raised in submissions have been considered and where appropriate have been addressed in the amended Acoustic Assessment and the conditions of consent.
- (E) Condition 13 was amended to clarify that the 2m setback is not required for the pleated shading.
- (F) Condition 16 was amended to address noise concerns of nearby residents.
- (G) Minor formatting and typographical errors were corrected with amendments to Conditions 2, 3, 13 and 16.
- (H) Condition 10 was recommitted to clarify that outdoor dining on Level 9 is restricted to the base hours, whereas Level 10 may operate until midnight for the trial period as specified. Condition 10 was amended to restrict the outdoor operation of Level 9 to the base hours in response to concerns from nearby residents.

D/2020/959

Speakers

Ms Angela Vithoukas (resident), Mr Andrew Mutton (resident), Mr S Bruce Dowton (resident), Ms Jan McClelland AM (resident), Mr John Farrow (Strata Chair), Mr Michael Rowe (Ethos Urban) – on behalf of the applicant, Mr Brett Robinson (The Point Group) – on behalf of the applicant, and Mr George Wei (Acoustic Logic) – on behalf of the applicant.

Item 4 Development Application: 23 Hughes Street, Potts Point - D/2020/950

The Panel refused consent for Development Application No. D/2020/950 for the following reasons:

(A) No BASIX Certificate

The proposal is considered to be BASIX affected development in accordance with the definition outlined under the Environmental Planning and Assessment Regulation 2000.

The provisions of SEPP (BASIX) 2004 Clause(6)(1)(a) requires a BASIX Certificate to accompany a development application for proposed BASIX affected development.

Council Officers informed the applicant that a BASIX Certificate should be submitted on lodgement during Pre-DA discussions (PDA/2020/44) in May 2020.

The applicant has not submitted a BASIX Certificate and contends that one is not required. Council does not support the applicant's assertion that a BASIX Certificate is not required.

(B) Inconsistent with zone objectives

The proposed development will provide an unacceptable level of residential amenity for future occupants and is therefore inconsistent with dot one objective of the R1 - General Residential zone in that it does not provide for the housing needs of the community.

The proposed development is non-compliant with multiple residential amenity controls of the Sydney DCP and results in poor quality residential accommodation with an inadequate level of residential amenity which therefore fails to meet a housing need.

(C) Fails to achieve Design Excellence

The proposed development fails to achieve the principles of Design Excellence in accordance with Clause 6.21 of the Sydney LEP and fails to adequately address the following provisions:

- (4)(d)(ii) any heritage issues and streetscape constraints;
- (4)(d)(v) the bulk, massing and modulation of buildings;
- (4)(d)(vii) environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity;
- (4)(d)(viii) the achievement of the principles of ecologically sustainable development;
- (4)(d)(xii) achieving appropriate interfaces at ground level between the building and the public domain; and
- (4)(d)(xiii) excellence and integration of landscape design.

(D) Heritage impact

The proposed development is inconsistent with the provisions of Clause 5.10 of the Sydney LEP, as it will result in the substantial demolition of a contributory building which will have an adverse impact upon the significance of the heritage conservation area.

The application is inconsistent with Section 3.9.7 of the Sydney DCP and does not justify the substantial demolition of a contributory building.

The proposed additions are non-compliant with the provisions of Section 3.9.7(3)(a) of the Sydney DCP as they are unsympathetic and do not respect the original or characteristic built form.

(E) Unacceptable level of residential amenity

The design of the development restricts natural ventilation and is non-compliant with Section 4.2.3.9 of the Sydney DCP. A number of the bedrooms are deep, single aspect rooms with fixed windows and will therefore have no access to natural ventilation.

12 of the 20 bedrooms have been measured to be undersized as such the proposed development does not comply with Section 4.4.1.2 of the Sydney DCP.

The proposed development offers an inadequate provision of communal indoor living space and a poorly designed communal open space as such the proposed development does not comply with Section 4.4.1.4 of the Sydney DCP.

The proposed stairs and lift lobbies have no access to daylight and the lift lobbies are non-compliant with the 2m width requirement as such the proposed development does not comply with Section 4.2.3.3 of the Sydney DCP.

(F) The proposed development offers an inadequate provision of communal laundry and drying facilities to serve the proposed number of residents of the boarding house space as such the proposed development does not comply with Section 4.4.1.5 of the

(G) Sydney DCP Clause 4.6 - Motorcycle Parking

The proposed development is non-compliant with Clause 30(1)(h) of the Affordable Rental Housing SEPP 2009 which requires the provision of one motorcycle space every five boarding rooms. The proposed development provides no motorcycle parking representing a 100% departure from the development standard.

The Clause 4.6 request to vary the standard is not supported as the development is inconsistent with the objectives of the R1 - General Residential Zone and therefore the request cannot be supported as it does not comply with the provisions of Clause 4.6(4)(a)(ii).

(H) Waste

The proposal to situate a bin storage area within the landscaped front setback will have an adverse impact upon the streetscape as such the proposed development does not comply with Section 3.14 of the Sydney DCP.

(I) Tree management

The proposed removal of Tree 1 and Tree 5 is not supported as they are identified as trees of moderate to high landscape which make a positive contribution to the streetscape, as such the proposed development does not comply with Section 3.5.3 of the Sydney DCP.

(J) Inadequate information for assessment

The applicant has provided inadequate information to facilitate thorough assessment of the development proposal and its impacts, as follows:

- A BASIX Certificate has not been provided, nor has any other details of sustainability commitments, to determine the development's compliance with Section 3.6 of the Sydney DCP.
- The applicant has not undertaken an assessment of the development's impact upon constraining solar access to the lightwell benefitting 25 Hughes Street to determine

whether the proposal will conflict with the provisions of Section 4.2.3.2 of the Sydney DCP.

- The applicant has not submitted any information or analysis of view loss to determine the extent of any impact in accordance with Section 4.2.3.10 of the Sydney DCP.

(K) Public interest

The proposed development will adversely impact upon the heritage significance of the site and proposes unsympathetic additions, whilst providing an unacceptable level of amenity to future occupants and constraining the existing level of amenity to neighbouring properties, and is therefore not in the public interest.

Carried unanimously.

D/2020/950

Speakers

Mr David Orr (resident), Mr Wayne Gross (resident), and Ms Margie Blok (resident).

Item 5 Development Application: 397-399 Harris Street, Ultimo - D/2020/593

The Panel:

- (A) upheld the variation requested to the motorcycle parking development standard required under State Environmental Planning Policy (Affordable Housing) 2009 in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012; and
- (B) granted consent to Development Application No. D/2020/593 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 ~~strike through~~):

(2) DESIGN MODIFICATIONS

The design of the building must be modified as follows:

- (a) Rooms **3 and 4** on the ground floor ~~is~~ **are** to be deleted and the area is to be combined with the adjoining communal living/dining area.
- (b) A bulky goods storeroom is to be provided on the ground floor.
- (c) ***Operable skylights (for both natural light and ventilation) are to be provided for Rooms 3 and 4 on the first floor.***
- (d) ***The existing pergola roof is to be demolished and may be replaced with a smaller solid sloping roof or pergola to provide adequate light, air and protection from the adjacent elevated walkway.***
- (e) ***The provision of an external access door to the 'Bin Store' room for waste collection from outside the premises, including access from the adjacent footpath, shall be investigated.***

The modifications are to be submitted to and approved by Council's Area Planning Manager prior to the issue of a Construction Certificate.

Reasons for Decision

The application was approved for the following reasons:

- (A) The proposal is consistent with the objectives of the B4 Mixed Use Zone.
- (B) The proposal generally satisfies the relevant controls relating to boarding houses.
- (C) The proposal, subject to conditions, satisfies the provisions of clause 6.21 of Sydney LEP 2012.
- (D) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) 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 motorcycle parking development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 30 (1)(H) of SEPP Affordable Rental Housing 2009; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the B4 Mixed Use zone and the motorcycle parking development standard.
- (E) Condition 2 was amended to provide greater amenity to residents.

Carried unanimously.

D/2020/593

The meeting of the Local Planning Panel concluded at 7.16 pm.

CHAIR