

# Local Planning Panel

Meeting No 65

Wednesday 16 March 2022

Notice Date 9 March 2022

*minutes*

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**Present**

Ms Linda Pearson, Ms Megan Jones, Ms Annelise Tuor and Mr John McInerney AM.

At the commencement of business at 5.05pm, those present were:

Ms Pearson, Ms Jones, Ms Tuor 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 Confirmation of Minutes**

The Panel noted the minutes of the Local Planning Panel of 23 February 2022, which have been endorsed by the Chair of that meeting.

**Item 2 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 3 Development Application: 422-424 Cleveland Street, Surry Hills - D/2020/993**

The Panel:

- (A) upheld the variation requested to the height of buildings standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012;
- (B) upheld the variation requested to the motorcycle parking standard under State Environmental Planning Policy (Affordable Rental Housing) 2009 in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012; and
- (C) granted deferred commencement consent to Development Application No. D/2020/993 subject to the conditions set out in Attachments C and D to the subject report, subject to the following amendments to the conditions in Attachment C (additions shown in ***bold italics***, deletions shown in ~~strikethrough~~):

**(2) DESIGN MODIFICATIONS**

The design of the building must be modified as follows:

- (a) An additional source of natural ventilation is to be provided for south facing boarding rooms on Level 4 to achieve both natural ventilation and acoustic levels as specified in the provided acoustic report prepared by Koikas Acoustics, Ref: 4147R20200506as422ClevelandStSurryHills\_DA(5), Version 5, dated 07 September 2020.
- (b) Amend the manager's private open space and rooftop communal open space design to provide for urban canopy cover. Make allowance for structural slab to support 1m depth raised tree planter with 9m<sup>3</sup> soil volume to support a new small sized tree 100L size at installation. Submit:
  - (i) Amended landscape plan and section with levels (SSL, RL, TW), location of drainage outlets, proposed tree species to demonstrate compliance with Sydney Landscape Code Volume 2
  - (ii) Engineers report confirming structural capacity of building for proposed roof terrace loads.
- (c) Plans of ***fixed*** privacy louvres are to be provided at a scale of 1:50 with an increased depth and reduction to the number of louvres to improve outlook ***and minimise privacy impacts to and from the building.***
- (d) Natural light and ventilation is to be provided to the 'common laundry' room located on Level 4.
- (e) Details of the fire hydrant booster assembly, mechanical plant, air intake and exhausts, and air vents for air conditioning to the hall are to be included on plans.

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

**(15) PLAN OF MANAGEMENT – HALL**

- (a) Prior to the issue of any Occupation Certificate, the Plan of Management prepared by UKO Co-living and 107 Projects Incorporate Dated 16.06.2021 is to be updated to reflect the development as approved and submitted to Council's Area Planning Manager for approval. The Plan of Management is to include a more detailed list and schedule of activities and performances that may be undertaken within the hall on different days and times. ***The Plan of Management is to include a restriction to the use of the entry / exit door to High Holborn Street from the hall after 9.00pm (apart from any required fire egress or disability access requirements).***
- (b) The use must always be operated / managed in accordance with the Plan of Management that has been approved by Council. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.

**(24) HOURS OF OPERATION - CAFE**

The hours of operation are regulated as follows:

- (a) The hours of operation must be restricted to between 7:00am and 11:00pm ~~11:00pm~~ **10.00pm** Monday to Saturday, and 8:00pm ~~am~~ to 10:00pm Sundays.
- (b) ~~Notwithstanding (a) above, the use may operate between 7:00am and 12:00 midnight Monday to Saturday for a trial period of one year from the date 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](mailto:liquor@cityofsydney.nsw.gov.au)~~
- (c) ~~Should the operator seek to continue the extended operating hours outlined in (b) above, an application must be lodged with Council 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) Shopfront glazing to the café is to be closed after 6:00pm each day.

**(25) HOURS OF OPERATION - HALL**

The hours of operation are regulated as follows:

- (a) The hours of operation must be restricted to between 7:00am and ~~11:00pm~~ **10.00pm** ~~11:00pm~~ Monday to Saturday, and 7:00am and 10:00pm Sundays.
- (b) ~~Notwithstanding (a) above, the use may operate between 7:00am and 12:00 midnight Monday to Saturday~~ ~~Monday to~~ **Friday and** Saturday for a trial period of one year from the date of the 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](mailto:liquor@cityofsydney.nsw.gov.au)
- (c) Should the operator seek to continue the extended operating hours outlined in (b) above, an application must be lodged with Council 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.

## (27) NOISE - ENTERTAINMENT

- (a) Amplified music & sound is to cease within the **hall** at 10:00pm in accordance with the Acoustic Report prepared by Koikas Acoustics, Ref: 4147R20200506as422ClevelandStSurryHills\_DA(5), Version 5, dated 07 September 2020.
- (b) The  $L_{A10, 15 \text{ minute}}$  noise level emitted from the use must not exceed the background noise level ( $L_{A90, 15 \text{ minute}}$ ) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 5dB between the hours of 7.00am and 12.00 midnight when assessed at the boundary of any affected residence.
- (c) The  $L_{A10, 15 \text{ minute}}$  noise level emitted from the use must not exceed the background noise level ( $L_{A90, 15 \text{ minute}}$ ) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) between the hours of 12.00 midnight and 7.00am when assessed at the boundary of any affected residence.
- (d) Notwithstanding compliance with (a) and (b) above, noise from the use when assessed as an  $L_{A10, 15 \text{ minute}}$  enters any residential use through an internal to internal transmission path is not to exceed the existing internal  $L_{A90, 15 \text{ minute}}$  (from external sources excluding the use) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed within a habitable room at any affected residential use between the hours of 7am and 12midnight. Where the  $L_{A10, 15 \text{ minute}}$  noise level is below the threshold of hearing,  $T_f$  at any Octave Band Centre Frequency as defined in Table 1 of International Standard ISO 226 : 2003- Normal Equal-Loudness-Level Contours then the value of  $T_f$  corresponding to that Octave Band Centre Frequency shall be used instead.
- (e) Notwithstanding compliance with (a), (b) and (c) above, the noise from the use must not be audible within any habitable room in any residential use between the hours of 12.00 midnight and 7.00am.
- (f) The  $L_{A10, 15 \text{ minute}}$  noise level emitted from the use must not exceed the background noise level ( $L_{A90, 15 \text{ minute}}$ ) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 3dB when assessed indoors at any affected commercial premises.

**Note:** The  $L_{A10, 15 \text{ minute}}$  noise level emitted from the use is as per the definition in the Australian Standard AS1055-1997 Acoustics – Description and measurement of environmental noise. The background noise level  $L_{A90, 15 \text{ minute}}$  is to be determined in the absence of noise emitted by the use and be representative of the noise sensitive receiver. Background noise monitoring must be carried out in accordance with the long-term methodology in Fact Sheet B of the NPfl unless otherwise agreed by the City's Area Planning Manager.

## (46) CONSTRUCTION TRAFFIC MANAGEMENT PLAN

- (a) A Construction Traffic Management Plan must be submitted to and approved by Council prior to any demolition works commencing or a Construction Certificate being issued. ***The Plan must consider restricting the size of construction vehicles utilising High Holborn Street and Goodlet Street to small rigid vehicles to minimise impacts on residential uses.***

Construction Traffic and Pedestrian Management Plans are to be prepared in accordance with Standard Requirements for Construction Traffic Management Plan on the City's website <http://www.cityofsydney.nsw.gov.au/business/business-responsibilities/traffic-management/construction-traffic-management-plans>

### 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 materials presented 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 height of buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.2 of the Sydney LEP 2012;
  - (ii) the proposal is in the public interest because it is consistent with the objectives of the B4 Mixed Use Zone and the height of buildings development standard;
  - (iii) 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 the SEPP (Affordable Rental Housing) 2009; and
  - (iv) 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(c) was amended to address the privacy concerns of neighbouring residents.
- (F) Condition 15(c) was added to address the noise concerns of neighbouring residents.
- (G) Conditions 24 and 25 were amended to improve amenity for neighbouring residents.
- (H) Condition 27(a) was amended to correct a typographical error.
- (I) Condition 46(b) was added to incorporate provisions to minimise the impact of vehicle movements on neighbours.
- (J) The deferred commencement consent was issued to ensure that no built form overhang the church roof. The Panel took into account the concerns expressed by the DAPRS in its reconsideration of the application on 7 December 2021 that while the relationship between the new additions and existing structure has been improved in the amended plans, the overhang remains excessive, creating a poor relationship with the Kirk. The Panel notes that while that structure is not a heritage item, it is a contributory item in a heritage conservation area.

Carried unanimously.

**Speakers**

Kerry Gordon, Suzie Matthews, Graeme Aitken, Yasmin Hunter, Vicky Clark, Angela Aspro, Michael Steele, and Penelope Little.

David Elliott (Sir Anthony Mason Chambers), Clare Swan (Ethos Urban), Gretel Pinniger (Applicant) and Kim Jones (JSA Studio) – on behalf of the applicant.

D/2020/993



**Item 4 Development Application: 7 Franklyn Street and 49 Greek Street, Glebe - D/2021/729**

The Panel:

- (A) upheld the variation requested to the Sydney LEP 2012 building height development standard in accordance with clause 4.6 'exceptions to development standards' of the Sydney LEP 2012;
- (B) upheld the variation requested to the Sydney LEP 2012 floor space ratio development standard in accordance with clause 4.6 'exceptions to development standards' of the Sydney LEP 2012;
- (C) upheld the variation requested to the ARH SEPP motorbike parking development standard in accordance with clause 4.6 'exceptions to development standards' of the Sydney LEP 2012; and
- (D) granted consent to Development Application No. D/2021/729 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~~):

**(16) PLAN OF MANAGEMENT**

The use must always be operated / managed in accordance with the Plan of Management, prepared by Mod Urban and dated June 2021 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 is to be amended prior to the issue of an Occupation certificate to incorporate the conditions of consent relating to capacity and hours of operation of the ground floor communal outdoor space and the communal rooftop terrace.***

**(48) PUBLIC DOMAIN TREE PLANTING AND MAINTENANCE**

- (a) A Tree Planting Plan must be submitted and approved by the City's Public Domain Unit prior to the issuing of any Construction Certificate. The plan must include and be consistent with the following requirements:
  - (i) Tree species shall be consistent with the City's Street Tree Master Plan (refer to relevant precinct plans) or other relevant guidance document. ***Possible opportunities for new street tree plantings on the Franklyn Street frontage shall be reviewed as part of the Tree Planting Plan.*** Species substitutes will not be accepted.
  - (ii) Tree pits must be located and constructed in accordance with the City's Street Tree Master Plan (Technical Guidelines) or other relevant guidance document.
  - (iii) The tree pit design must include structural soils or structural cells to support pavements in accordance with the Street Tree Master Plan (Technical Guidelines).
  - (iv) Indicate the chosen tree planting arrangement, being a choice of one of two options, being:

Undertake all tree supply, planting, and maintenance requirements to the required standards and to the satisfaction of the City's Tree Management.

OR

Pay a fee for the City to supply, plant, and maintain each required tree on the applicant's behalf. The fee is consistent with the City's Schedule of Fees and Charges.

- (b) If opting to undertake all tree supply, planting, and maintenance requirements, the following requirement must be met:
- (i) The trees must be a minimum container size of 100 litres, at the time of planting.
  - (ii) All new trees must be grown in accordance with the Australian Standard 2303:2015 'Tree stock for landscape use' and meet the requirements of this standard at the time of planting.
  - (iii) Certification from the tree supplier must be submitted to the City's Tree Management Officer and Public Domain Officer, prior to the trees being planted. The certification must confirm the tree(s) have been grown and comply with the requirements of AS2302. Any new trees that do not conform will be rejected by the City.
  - (iv) The trees must be planted by a qualified Arborist or Horticulturist (AQF Level 3) and be planted before the issuing of the final Occupation Certificate.
  - (v) All new trees must be inspected and approved by the City's Tree Management Officer (or their representative) at the following milestones: before planting with planting pits excavated; after planting; and at the end of the maintenance period.
  - (vi) All trees planted in accordance with the approved Tree Planting Plan must be maintained by a qualified Horticulturist or Arborist (minimum AQF Level 3) for a minimum period of twelve (12) months, commencing from the date of planting. Maintenance includes, but is not limited to, watering, weeding, removal of rubbish from tree base, pruning, fertilizing, pest and disease control and any other operations to maintain a healthy robust tree.
  - (vii) At the end of the twelve (12) month maintenance period, written acceptance of the tree/s must be obtained from the City before release of the public domain bond.
  - (viii) If a tree fails to thrive and successfully establish during the maintenance period, then City will request payment for a replacement tree and establishment period according to the City's Schedule of Fees and Charges.

**Reasons for Decision**

The application was approved for the following reasons:

- (A) The development complies with the objectives of the B2 Local Centre zone pursuant to the Sydney LEP 2012.
- (B) 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 requests have each 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, floor space ratio development standard and motorbike parking development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clauses 4.3 and 4.4 of the Sydney LEP 2012 and clause 30(f) of the ARH SEPP; and
  - (ii) the proposal is in the public interest because it is consistent with the objectives of the B2 Local Centre zone, the objectives of the height of buildings development standard, the floor space ratio development standard and the ARH SEPP development standards.
- (C) The proposal is consistent with the aims and objectives of Division 3 of ARH SEPP.
- (D) Having considered the matters in Clause 6.21(4) of the Sydney LEP 2012, the building displays design excellence because:
  - (i) the materials and detailing are appropriate to the building type and location;
  - (ii) the works will not have any significant impacts on the quality of the public domain; and
  - (iii) the proposed bulk, massing and modulation of the subject building is acceptable.
- (E) The development is consistent with the objectives of the Sydney Development Control Plan 2012 (Sydney DCP 2012).
- (F) Suitable conditions of consent have been applied and the development is considered to be in the public interest.
- (G) Condition 16 was amended to ensure consistency and clarity as to the operation of the Plan of Management and the conditions of consent.
- (H) Condition 48 was amended to incorporate tree planting along Franklyn Street into the public domain plan.

Carried unanimously.

**Speakers**

Edwina Keelan.

Matthew O'Donnell (Mod Urban) – on behalf of the applicant.

D/2021/729

## Item 5 Development Application: 38-46 Oxford Street, Darlinghurst - D/2021/1336

Pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, the Panel granted deferred commencement consent to Development Application No. D/2021/1336 for alterations and additions and change of use, 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~~):

### (8) PLAN OF MANAGEMENT

- (a) The Plan of Management titled 'Sex on-premises Site and Liquor Licence', prepared by Town Planning Group Pty Ltd dated December 2021, is to be amended prior to the issue of a Construction Certificate ~~or the use commencing~~, as follows:
  - (i) To ensure consistency with all conditions of this development consent.
  - (ii) A waste management plan that outlines the procedures for minimising and managing waste that is generated by the premises. This should address such matters as disposal of bottles, details of waste management facilities, waste collection and storage areas.
  - (iii) To refer to waste storage areas being provided and stored within the building at all times.
- (b) The use must always be operated / managed in accordance with the Plan of Management, submitted to satisfy the condition.

### (20) WASTE AND RECYCLING MANAGEMENT - COMMERCIAL

- (a) A Waste and Recycling Management Plan, which addresses **and provides information justifying any inconsistencies with, where practical**, the requirements as set out in Council's *Guidelines for Waste Management in New Developments 2018*, is to be approved by **Council's Area Planning Manager** ~~the Principal Certifying Authority~~ prior to a Construction Certificate being issued.
- ~~(b) All requirements of the approved Waste and Recycling Management Plan must be implemented during construction and operation of the development and include:
 
  - ~~(i) Dedicated space to be provided within the development for the storage and recycling of bulky waste, problem waste, strip-out and food waste.~~
  - ~~(ii) Collection points for waste and recycling must be wholly located within the boundary of the development.~~
  - ~~(iii) The nominated waste and recycling storage areas must be constructed to meet the relevant conditions required by the City's *Guidelines for Waste Management in New Developments 2018*.~~
  - ~~(iv) Provision and storage within the boundary of the development of waste and recycling receptacles and any bulky waste at all times.~~
  - ~~(v) Commercial tenancies must have a commercial waste contract(s) in place prior to commencement of business trading.~~~~

~~(vi) The path of travel between the bin storage areas/bulky waste storage areas and the designated waste/recycling collection point is to have a minimum 1,200mm wall-to-wall clearance, be slip proof, of a hard surface, be free of obstructions and at no point have a gradient exceeding 1:14. The use of a lift is permitted, but consideration should be given to the inclusion of a service lift in this instance.~~

~~— Note: The building manager/strata title manager or body corporate is responsible for ensuring all tenants are kept informed regarding Council's policies, and best practice waste and recycling source separation.~~

#### UPON COMPLETION OF THE DEVELOPMENT

~~(e) (b) Prior to any Occupation Certificate being issued or the use commencing, whichever is earlier, the Principal Certifier must ensure that waste handling works have been completed in accordance with: the Waste and Recycling Management Plan; other relevant development consent conditions; and Council's *Guidelines for Waste Management in New Developments 2018*.~~

#### 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) Appropriate conditions are imposed to ensure the development does not detrimentally impact on the heritage significance of the site.
- (C) The development will not adversely affect the character of the Oxford Street, Darlinghurst locality and the Oxford Street Heritage Conservation Area.
- (D) The development, subject to conditions, will safeguard neighbourhood amenity and will promote the orderly operation of the premises.
- (E) The development accords with objectives of relevant planning controls.
- (F) Condition 8 was amended to confirm that the Plan of Management is to be amended before the issue of a Construction Certificate, in circumstances where the use is ongoing.
- (G) Condition 20 was amended to ensure the Waste and Recycling Management Plan is both operable and approved by Council.

Carried unanimously.

#### Speakers

Adam Parker (Town Planning Group) – on behalf of the applicant.

D/2021/1336

Wednesday 16 March 2022

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The meeting of the Local Planning Panel concluded at 7.35pm.

CHAIR