

Local Planning Panel

Meeting No 69

Wednesday 8 June 2022

Notice Date 1 June 2022

minutes

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Present

Ms Abigail Goldberg (Chair), Ms Helena Miller, Mr Marcus Trimble and Mr John McInerney AM.

At the commencement of business at 5.00pm, those present were:

Ms Goldberg, Ms Miller, Mr Trimble 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.

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 18 May 2022, which have been endorsed by the Chair of that meeting.

Item 3 Development Application: 17 Billyard Avenue, Elizabeth Bay - D/2021/1261

The Panel refused consent for Development Application Number D/2021/1261 for the reasons outlined below.

Reasons for Decision

The application was refused for the following reasons:

Lack of Clause 4.6 variation request for boarding room size non-compliance

- (A) The proposed development exceeds the maximum permitted boarding room size development standard, as two boarding rooms have a gross floor area of more than 25 square metres, excluding areas used for private kitchen and bathroom facilities.

There has been no written request submitted with the application to justify the boarding room size breach.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 30(1)(b) of the State Environmental Planning Policy (Affordable Rental Housing) 2009;
- (ii) Clause 4.6(1) of the Sydney Local Environmental Plan 2012, including the objectives at parts (a) and (b) of the clause; and
- (iii) Clause 4.6(3) of the Sydney Local Environmental Plan 2012.

Incompatibility with the character of the local area

- (B) The proposed development is not compatible with the character of the local area, or the Bays locality, as it:

- (i) does not respect the existing character and fine grain of the existing building and streetscape;
- (ii) inserts an incompatible addition with minimal boundary setbacks into a narrow space behind a fine grain, low-rise contributory building;
- (iii) will negatively impact the streetscape to Billyard Avenue and the surrounding heritage conservation area;
- (iv) is inconsistent with the objectives of the maximum height of buildings development standard; and
- (v) presents unacceptable bulk, scale, and amenity impacts.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 29(2)(a) of the State Environmental Planning Policy (Affordable Rental Housing) 2009;
- (ii) Clause 30A of the State Environmental Planning Policy (Affordable Rental Housing) 2009;
- (iii) Clause 4.3(1) of the Sydney Local Environmental Plan 2012, including the objectives at parts (a), (b) and (c) of the clause;

- (iv) the aims at parts (a), (b) and (f) of Section 1.3 of the Sydney Development Control Plan 2012;
- (v) the locality statement in Section 2.4.6 of the Sydney Development Control Plan 2012, including the supporting principles at parts (a), (b), (c), (e), (j), (k) and (l) of the section; and
- (vi) the planning principle established in *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191.

Unacceptable impacts on the heritage significance of the heritage conservation area

- (C) The proposed development will have a detrimental effect on the heritage significance of the Elizabeth and Rushcutters Bays heritage conservation area, as:
 - (i) The form of the new rear addition cantilevers over the existing building and does not provide adequate side boundary setbacks, resulting in an unacceptable separation from, and inappropriate interface with the subject contributory building.
 - (ii) The new rear addition has a facade design, articulation and materiality which is incompatible with the subject contributory building and the surrounding heritage conservation area.
 - (iii) No conservation works are proposed to the subject contributory building.
 - (iv) Insufficient geotechnical and structural information has been submitted with the application to address excavation impacts associated with the development on the subject contributory building, the adjacent contributory building, and the adjacent sandstone cliff face.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aim at part (k) of the clause;
- (ii) Clause 5.10(1) of the Sydney Local Environmental Plan 2012, including the objectives at parts (a) and (b) of the clause;
- (iii) Clause 5.10(4) of the Sydney Local Environmental Plan 2012;
- (iv) Clause 6.21(4)(d)(iii) of the Sydney Local Environmental Plan 2012;
- (v) the aims at parts (b) and (f) of Section 1.3 of the Sydney DCP 2012;
- (vi) the principle at part (b) of Section 2.4.6 of the Sydney Development Control Plan 2012;
- (vii) the objectives at parts (a) and (b) of Section 3.9 of the Sydney Development Control Plan 2012;
- (viii) the provisions at Section 3.9.6(1) and (2) of the Sydney Development Control Plan 2012;
- (ix) the provisions at Section 3.9.7(3) and (4) of the Sydney Development Control Plan 2012;
- (x) the provision at Section 3.9.10(4) of the Sydney Development Control Plan 2012; and
- (xi) the provision at Section 3.9.13(1) of the Sydney Development Control Plan 2012.

Failure to exhibit design excellence

(D) The proposed development does not exhibit design excellence, as it:

- (i) fails to deliver a high standard of architectural, urban and landscape design;
- (ii) has a form and external appearance which will detract from the quality and amenity of the public domain;
- (iii) provides an inappropriate contextual response to the streetscape to Billyard Avenue and the surrounding heritage conservation area;
- (iv) detrimentally impacts on view corridors; and
- (v) results in unacceptable environmental impacts.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aims at parts (h), (j), (k) and (l) of the clause;
- (ii) Clause 6.21(1) of the Sydney Local Environmental Plan 2012, including the objective of the clause;
- (iii) Clause 6.21(3) of the Sydney Local Environmental Plan 2012; and
- (iv) Clause 6.21(4) of the Sydney Local Environmental Plan 2012, including the matters for consideration at parts (a), (b), (c) and (d) of the clause.

Unacceptable amenity and view sharing impacts

(E) The proposed development results in, and does not clearly detail and address impacts on the amenity of the occupants of surrounding properties in terms of:

- (i) inadequate building separation and setbacks between the proposed rear addition and surrounding buildings, and its height, bulk, scale, and materiality;
- (ii) view sharing and view loss from the public domain and adjacent private properties, loss of outlook, visual and acoustic privacy, and overshadowing impacts; and
- (iii) provision of sufficient information with the application relating to the amenity impacts identified above, and in relation to reflectivity and light spill impacts.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aims at parts (h) and (l) of the clause;
- (ii) Clause 6.21(4)(c) of the Sydney Local Environmental Plan 2012;
- (iii) Clause 6.21(4)(d)(vii) of the Sydney Local Environmental Plan 2012;
- (iv) the locality statement in Section 2.4.6 of the Sydney Development Control Plan 2012, including the supporting principles at parts (j), (k) and (l) of the section;
- (v) the objective at part (a) of Section 3.2.1 of the Sydney Development Control Plan 2012;
- (vi) the provisions at Section 3.2.1.2(1) and (2) of the Sydney Development Control Plan 2012;

- (vii) the objectives at parts (b) and (f) of Section 3.2.2 of the Sydney Development Control Plan 2012;
- (viii) the provisions at Section 3.2.2(1) and (3) of the Sydney Development Control Plan 2012;
- (ix) the objectives at Section 3.2.7(a) and (b) of the Sydney Development Control Plan 2012;
- (x) the provisions at Section 3.2.7(1) and (2) of the Sydney Development Control Plan 2012;
- (xi) the objective at part (b) of Section 4.4.1 of the Sydney Development Control Plan 2012;
- (xii) the provisions at Section 4.4.1.6(2) and (3) of the Sydney Development Control Plan 2012;
- (xiii) the planning principle established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140;
- (xiv) the planning principle established in *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSWLEC 1046; and
- (xv) the planning principle established in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082.

Unacceptable boarding house amenity

- (F) The proposed development results in substandard amenity for future residents, as it has not:
- (i) adequately addressed matters required including provision of appropriate facilities and amenity for boarding house lodgers, including accessible car parking, storage, kitchenette, and laundry facilities; and
 - (ii) provided adequate measures to address, or sufficient information to permit the assessment of visual and acoustic privacy impacts.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 29(2)(c) of the State Environmental Planning Policy (Affordable Rental Housing) 2009;
- (ii) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aim at part (g) of the clause;
- (iii) Clause 6.21(4)(d)(ix) of the Sydney Local Environmental Plan 2012;
- (iv) the objective at part (e) of Section 3.11 of the Sydney Development Control Plan 2012;
- (v) the provisions at Section 3.11.9(1) and (3) of the Sydney Development Control Plan 2012;
- (vi) the objective at Section 4.4.1(a) of the Sydney Development Control Plan 2012;
- (vii) the provisions at part (a) and (f) of Section 4.4.1.2(1) of the Sydney Development Control Plan 2012;
- (viii) the provision at part (c) of Section 4.4.1.4(2) of the Sydney Development Control Plan 2012;

- (ix) the provisions at part (2)(a) and (3) of Section 4.4.1.5 of the Sydney Development Control Plan 2012; and
- (x) the provisions at Section 4.4.1.6(1) of the Sydney Development Control Plan 2012.

Unacceptable landscape design

(G) The proposed development does not demonstrate:

- (i) that 15 per cent canopy cover can be achieved at 10 years post completion;
- (ii) the resilience, suitability and longevity of the proposed landscape design and green wall; and
- (iii) that excellence and integration of landscape design has been achieved.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 6.21(4)(d)(xiii) of the Sydney Local Environmental Plan 2012;
- (ii) the aims at parts (b) and (g) of Section 1.3 of the Sydney Development Control Plan 2012;
- (iii) the principles at parts (e) and (j) of Section 2.4.6 of the Sydney Development Control Plan 2012;
- (iv) the objective at part (a) of Section 3.5.2 of the Sydney Development Control Plan 2012;
- (v) the provision at Section 3.5.2(2) of the Sydney Development Control Plan 2012; and
- (vi) the relevant guidelines in the City of Sydney's 'Sydney Landscape Code Volume 2: All Development Except for Single Dwellings'.

Unacceptable parking, servicing and waste management provision

(H) The proposed development does not provide:

- (i) service vehicle parking;
- (ii) adequate waste storage areas; and
- (iii) sufficient detail on servicing of the site and waste collection.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) the aim at part (g) of Section 1.3 of the Sydney Development Control Plan 2012;
- (ii) the provision at Section 3.11.6(1) of the Sydney Development Control Plan 2012;
- (iii) the objectives at parts (b) and (c) of Section 3.14 of the Sydney Development Control Plan 2012;
- (iv) the provision at Section 3.14.1(1) of the Sydney Development Control Plan 2012;
- (v) the provision at Section 3.14.3(1) of the Sydney Development Control Plan 2012; and
- (vi) the relevant provisions in the City of Sydney's 'Guidelines for Waste Management in New Developments 2018'.

Unacceptable likely impacts and site unsuitable for the development

- (I) It has not been demonstrated that the proposed development has satisfactorily addressed:
- (i) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality. These include, but are not limited to, impacts relating to construction management; and
 - (ii) the suitability of the site for the development.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979; and
- (ii) Section 4.15(1)(c) of the Environmental Planning and Assessment Act, 1979.

Not in the public interest

- (J) It has not been demonstrated that the proposed development has satisfactorily addressed:
- (i) the public interest.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Section 4.15(1)(e) of the Environmental Planning and Assessment Act, 1979.

Carried unanimously.

D/2021/1261

Speakers

Anthony Kunz (Planning Lab – on behalf of the Pomeroy Strata Committee), Sue Jackson (on behalf of the Selsdon Apartments), Ingrid Wanner, Andrew Andersons, Nadine Morcos, Penny Collins and Simon Perrott;

Prudence Harper – on behalf of the applicant, and Tone Wheeler (Environa Studio) – on behalf of the applicant.

Item 4 Development Application: 375 Glebe Point Road, Glebe - D/2021/1498

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; and
- (C) granted consent to Development Application No. D/2021/1498 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~~):

(6) DESIGN MODIFICATIONS

Prior to the issue of a Construction Certificate, the design of the building must be modified as follows:

- (a) ~~The height of the balcony privacy screens to the north-west and south-east sides of the Level 3 balcony and to the north-west side of the Level 2 balcony are to be reduced in height from 1.8 metres to 1.6 metres.~~
- (a) Planter boxes are to be provided to the Level 2 terrace area to provide increased amenity for the occupants of Apartment 1 and the surrounding neighbours.
- (b) ***The balustrade and side privacy screen treatment of the Level 3 balcony must be revised to provide a uniform appearance. To reduce the bulk of the Level 3 balcony, the balustrade timber battens and privacy screens must not extend below the underside of the balcony floor level.***
- (c) ***The privacy screen provided to the Level 2 roof terrace must be continued for the entirety of the Forsyth Street frontage (south-east boundary) and the entirety of the north-west boundary.***

Details illustrating compliance with this condition shall be submitted to and approved by the City'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 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 and floor space ratio 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
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the B2 Local Centre zone and the objectives of the height of buildings development standard and the floor space ratio development standard.
- (C) Having considered the matters in Clause 6.21C(2) of the Sydney LEP 2012, the building displays design excellence because:
 - (i) the materials and detailing are compatible with existing heritage building and will contribute positively to the character of the conservation area;
 - (ii) the alterations and additions will not impact on any view corridors and will not result in any detrimental environmental impacts in terms of overshadowing, visual privacy or noise; and
 - (iii) the proposed bulk, massing and modulation of the subject building is acceptable.
- (D) The development is generally consistent with the objectives of the Sydney Development Control Plan 2012 (Sydney DCP 2012).
- (E) Suitable conditions of consent have been applied and the development is considered to be in the public interest.
- (F) Condition 6 was amended to provide more uniformity in the appearance of the balcony and terrace.

Carried unanimously.

D/2021/1498

Speaker

Tone Wheeler (Environa Studio) – on behalf of the applicant.

Item 5 Development Application: 28 Broadway, Chippendale - D/2022/101

The Panel granted consent to Development Application No. D/2022/101 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~~):

(6) PLAN OF MANAGEMENT

- (a) ~~The use must always be operated / managed in accordance with the Plan of Management, prepared by Fortress Sydney signed and dated 18 May 2022 (Council Record: 2022/287983) that has been approved by Council. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.~~
- (a) ***The Plan of Management submitted with this application is not approved. A revised plan indicating the location of the queues in front of the premises and Broadway entrance is to be provided in an updated Plan of Management. The updated Plan of Management must be submitted to and approved by Council's Area Coordinator Planning Assessments / Area Planning Manager prior to operation of the premises.***
- (b) All entry and exit to the premises must be accessed via Broadway after midnight.

(10) QUEUING

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

Remaining conditions to be renumbered accordingly.

Reasons for Decision

The application was approved for the following reasons:

- (A) The proposal is consistent with the objectives of the City Edge zone under Sydney Local Environmental Plan 2005.
- (B) The use is considered to be in keeping with the character of this location given its predominantly entertainment and retail uses.
- (C) The amended Plan of Management is acceptable.
- (D) The development is consistent with the objectives of the Sydney Development Control Plan 2012.
- (E) The development, subject to conditions, will not unreasonably compromise the amenity of nearby properties.

- (F) The proposal, subject to conditions, is considered to be in the public interest.
- (G) Condition 6 was amended in line with a request by the applicant, to allow for queueing.
- (H) Condition 10 was deleted as queueing will be managed in accordance with the revised Plan of Management.

Carried unanimously.

D/2022/101

Speaker

James Lidis (Design Collaborative) – on behalf of the applicant.

The meeting of the Local Planning Panel concluded at 6.00pm.

CHAIR