

Local Planning Panel

Meeting No 90

Wednesday 22 November 2023

Notice Date 15 November 2023

minutes

Index to Minutes

ITEM	PAGE NO
1. Disclosures of Interest	2
2. Confirmation of Minutes	2
3. Development Application: 11-15 Collins Street, Beaconsfield - D/2022/1021	3
4. Development Application: 5-19 Mary Street, Surry Hills - D/2022/1343	5
5. Development Application: 193 Harris Street, Pyrmont - D/2023/132	12
6. Development Application: 195 Harris Street, Pyrmont - D/2023/199	14
7. Report to the Local Planning Panel - Status of Applications	16

Present

Mr Steven Layman (Chair), Mr Tony Caro, Ms Penny Murray and Mr John McInerney AM.

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

Mr Layman, Mr Caro, Ms Murray and Mr McInerney.

The Manager Planning Assessments 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 1 November 2023, which have been endorsed by the Chair of that meeting.

Item 3 Development Application: 11-15 Collins Street, Beaconsfield - D/2022/1021

Pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, the Panel granted a deferred commencement consent to Development Application Number D/2022/1021 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~~):

(18) SITE AUDIT STATEMENT

Prior to the issue of a construction certificate associated with the built form of the development (excluding building work directly related to remediation ***and any construction certificate associated with demolition or site preparation***), a Section A Site Audit Statement must be obtained from a NSW Environment Protection Authority accredited Site Auditor and submitted to the Council's Area Planning Manager at email address:

hbapplications@cityofsydney.nsw.gov.au

The Site Audit Statement must confirm that the site has been remediated in accordance with the approved Remedial Action Plan and clearly state that site is suitable for the proposed use.

- (a) In circumstances where the Site Audit Statement is subject to conditions that require ongoing review by the Auditor or Council, these must be reviewed and must be approved by the Council's Health and Building Unit in writing through the Area Planning Manager before the Site Audit Statement is issued.
- (b) In circumstances where the Site Audit Statement conditions (if applicable) are not consistent with the consent, the development must not proceed until the inconsistency has been resolved to the satisfaction of Council (such as via a S4.55 modification of the consent pursuant to the provisions of the *Environmental Planning & Assessment Act 1979*).
- (c) **No Occupation Certificate is to be issued** by the Principal Certifier unless a Site Audit Statement has been submitted to and approved by Council in accordance with this condition.

Reason

To ensure that the site is appropriately remediated.

(19) REVISED REMEDIATION ACTION PLAN

Prior to the issue of any Construction Certificate associated with the built form of the development (***excluding building work directly related to remediation and any construction certificate associated with demolition or site preparation***) any variations to the approved Remediation Action Plan (RAP) must be submitted to Council and approved by the NSW EPA Site Auditor and Councils Area Planning Manager.

Reason

To ensure that the site is appropriately remediated.

(42) LAND REMEDIATION (Where Site Auditor engaged)

The site is to be remediated and validated in accordance with the Remedial Action Plan (RAP) prepared by EIA Australia dated 21st July 2023, referenced: E25501.E06, Council Ref: 2023/108600, and any subsequent RAP following the additional investigations required in the RAP, and the Letter of Interim Advice prepared by NSW Environment Protection Authority accredited Site Auditor Julie Evans dated 4th August 2023, referenced: E070, Council Ref: 2023/10860021. All remediation work carried out shall be conducted in accordance with the guidelines in force from time to time under the Contaminated Land Management Act 1997.

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination must be immediately notified to the Council's Area Planning Manager, the Site Auditor and the Principal Certifier.

Any variations to the approved Remediation Action Plan must be approved in writing by the Site Auditor and Council's ~~Area Coordinator Planning Assessments~~ / Area Planning Manager prior to the commencement of such work.

Reason

To ensure that the site is appropriately remediated.

(43) NOTIFICATION – NEW CONTAMINATION EVIDENCE

~~Council's Area Planning Manager and the Principal Certifier must be notified of any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination.~~

Reason

~~To ensure that the site is appropriately remediated.~~

Reasons for Decision

The application was approved for the following reasons:

- (A) The proposal complies with the relevant controls of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (B) The proposal represents appropriate development for the site.
- (C) Subject to conditions, the proposal satisfies design excellence provisions.
- (D) A public benefit offer has been made and satisfies 6.14 of the Sydney LEP relating to the provision of community infrastructure within Green Square. This is subject to deferred commencement to execute the associated Voluntary Planning Agreement.
- (E) Conditions 18 and 19 were amended to allow greater flexibility and clarity during the early phases of construction.
- (F) Condition 42 was amended to specify the Council Area Planning Manager.
- (G) Condition 43 was deleted to remove duplication.

Carried unanimously.

D/2022/1021

Item 4 Development Application: 5-19 Mary Street, Surry Hills - D/2022/1343

The Panel granted consent to Development Application No. D/2022/1343 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~~):

(3) DESIGN MODIFICATIONS

The design of the Foster House component of the building must be modified as follows:

- (a) ***Privacy treatments to the Hands Lane elevation of the building are to be further incorporated into the design of the building to minimise overlooking impacts to 56-60 Foster Street and 46-54 Foster Street.***
- (b) ***The privacy treatments proposed must be designed having regard for the need to address overlooking whilst ensuring an adequate level of amenity to the proposed development by way of providing adequate ventilation, access to daylight and outlook.***

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

Reason

To address potential overlooking impacts of the development.

(9) AFFORDABLE HOUSING CONTRIBUTION – RESIDUAL LAND OR CENTRAL SYDNEY – PAYMENT IN LIEU OF FLOOR SPACE CONTRIBUTION – PRIOR TO CONSTRUCTION CERTIFICATE, 17-19 MARY STREET, SURRY HILLS – STAGE 3B

- (a) In accordance with the City of Sydney Affordable Housing Program and prior to the issue of any Construction Certificate ***relating to stage 3B***, the applicant must provide evidence that a monetary contribution towards the provision of affordable housing has been paid to the City of Sydney Council.
- (b) The contribution is \$381,292.9 (indexed in accordance with (c)). This is calculated by establishing the sum of the equivalent monetary contribution \$ 10,611.53 multiplied by 1% of the total floor area for non-residential development (696.7sqm) and the equivalent monetary contribution \$10,611.53 multiplied by 3% of the total floor area for residential development (965.5sqm).
- (c) If the contribution is paid after the indexation period in which the consent is granted, being March 2023 to February 2024, the above contribution will be adjusted according to the Sydney LGA median strata dwelling price ('MDP') using the following formula.
- (d) Contribution payable at Time of Payment = $C \times MDP2 / MDP1$, where:
 - (i) C is the original total contribution amount payable to the City of Sydney as shown above;
 - (ii) MDP2 is the Median Strata Dwelling Price in Sydney LGA taken from the most recent NSW Government Rent and Sales Report at the time of indexation of the equivalent monetary contribution rate; and

- (iii) MDP1 is the Median Strata Dwelling Price in Sydney LGA taken from the NSW Government Rent and Sales Report used to establish the current equivalent monetary contribution rate, being 1 March 2023 to 29 February 2024.

Contact Council’s Planning Assessment Unit at planningsystemsadmin@cityofsydney.nsw.gov.au for written confirmation of the amount payable, with indexation as necessary, prior to payment.

Reason

To ensure development contributions are paid to contribute to the provision of essential affordable rental housing infrastructure.

(10) SECTION 7.12 CONTRIBUTIONS PAYABLE – SUBMITTED AND VERIFIED PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE, 17-19 MARY STREET, SURRY HILLS – STAGE 3B

A monetary contribution is payable to the City of Sydney pursuant to Section 7.12 of the *Environmental Planning and Assessment Act 1979* and the *Central Sydney Development Contributions Plan 2020*.

The Section 7.12 levy is determined by the development cost, as per the following table:

Development cost *	Levy
* Refer to Section 2.3 of the <i>Central Sydney Development Contributions Plan 2020</i> for information on determining the development cost.	
Up to and including \$250,000	NIL
More than \$250,000, up to and including \$500,000	1%
More than \$500,000, up to and including \$1,000,000	2%
More than \$1,000,000	3%

The Section 7.12 levy is payable to the City of Sydney in accordance with the following:

- (a) Prior to any Construction Certificate **relating to stage 3B** being issued, evidence must be provided of Council’s written verification of the amount of the contribution as required in (b) below, and that the levy has been paid to the Council in accordance with this condition. Payment may be by EFTPOS (debit card only), CASH or a BANK CHEQUE made payable to the City of Sydney. Direct debit, personal or company cheques will not be accepted.

- (b) The contribution must not be paid to the City of Sydney until it is accompanied by separate written verification by the City of Sydney of the specific amount payable. In order to obtain such verification, one of the following must be submitted:
- (i) **For development between \$250,000 and \$3,000,000** – the City of Sydney *Cost Summary Report* must be completed by a suitably qualified person such as the Project Architect or Project Manager and submitted to the City of Sydney together with the copies of the plans the subject of the application for the Construction Certificate. An electronic copy of the *Cost Summary Report* is available from the City's website at www.cityofsydney.nsw.gov.au; or
 - (ii) **For development more than \$3,000,000** – The City of Sydney *Registered Quantity Surveyor's Detailed Cost Report* must be completed by a Quantity Surveyor registered with the Australian Institute of Quantity Surveyors or a person who can demonstrate an equivalent qualification and submitted to the City of Sydney together with the copies of the plans the subject of the application for the Construction Certificate. An electronic copy of the *Registered Quantity Surveyor's Detailed Cost Report* is available from the City's website at www.cityofsydney.nsw.gov.au.
- (c) The Council will consider the documentation submitted under subclause (b) and determine the cost of the proposed development having regard to the information submitted and to such other matters as it considers appropriate and will notify the Registered Certifier accordingly.
- (d) The development cost is to be determined in accordance with Section 2.3 of the Central Sydney Development Contributions Plan 2020, located in the version in force at the date of the grant of this consent.

Please contact Council's Planning Administration staff at Planningsystemsadmin@cityofsydney.nsw.gov.au to request a written Statement of Contributions Owing, prior to payment.

Reason

To ensure development contributions are paid to address the increased demand for public facilities, amenities, and services in Central Sydney by a growing residential and workforce population.

(40) BICYCLE PARKING AND END OF TRIP FACILITIES

- (a) The minimum number of bicycle parking spaces and end of trip facilities to be provided within the site boundary for the development must comply with the table below.

Bicycle Parking Type	Number	Requirements
Residential	50 for 5-15 Mary Street 10 for 17-19 Mary Street	Spaces must be 50/50 class 1 and 2 bicycle locker Spaces must be a class 1 bicycle locker
Residential visitor	1 for 17-19 Mary Street	Spaces must be Class 3 bicycle rails
Retail / Commercial staff	3 for 5-15 Mary Street 4 for 17-19 Mary Street	Spaces must be Class 2 bicycle facilities
Non-residential visitor	1 for 5-15 Mary Street 1 for 17-19 Mary Street	Spaces must be Class 3 bicycle rails
End of Trip Facility Type	Number	
Showers with change area	1 for 5-15 Mary Street 1 for 17-19 Mary Street	
Personal lockers	3 for 5-15 Mary Street 5 for 17-19 Mary Street	

- (b) The layout, design and security of bicycle facilities must comply with the minimum requirements of Australian Standard AS 2890.3 Parking Facilities Part 3: Bicycle Parking Facilities. The details must be submitted to and approved by the Registered Certifier confirming prior to and form part of the relevant Construction Certificate being issued.

Reason

To ensure the allocation of bicycle parking onsite that is in accordance with Australian Standards and the Council’s DCP.

(55) PUBLIC DOMAIN LIGHTING UPGRADE

Prior to issue of the Stage 3a and 3b Construction Certificate, a concept Public Domain Lighting Upgrade Plan for pedestrian and street lighting in the public domain must be submitted to and approved by City’s Public Domain Unit. The Lighting Plan must be prepared in accordance with the *Sydney Streets Technical Specifications A5 and B8, Sydney Lights Design Code* and *Public Domain Manual*. This information is available for download from the City’s website at

<https://www.cityofsydney.nsw.gov.au/development/public-domain-works/da-associated-works>.

The lighting upgrade plan must cover all adjacent street frontages, being Mary Street and Hands Lane and shall be designed to include the following requirements:

Mary Street (in front of development site to Reservoir Street)

1. Provide lighting design complying with requirements of AS1158 under Category PR 3 on the roadway and footways.
2. Supply and install City standard steel poles and LED luminaires.
3. Propose glare shields to prevent glare in residential properties.

Hands Lane (along development site)

1. Provide lighting design complying with requirements of AS1158 Category PR3.
2. Decommission existing City wall mount lights on the property.
3. Supply and install new City standard LED wall mount lights. Installation must be accessible for maintenance and upgrade by City-authorized technicians and contractors along the entire length. All cabling must be installed on the building surface within galvanised steel conduits, MMS cabling or similar approved method. Establish an access easement in favour of the City for ongoing maintenance and upgrade of wall mounted City lighting, if applicable.
4. Supply and install a new 3Phase City MSB.
5. Propose glare shields to prevent glare in residential properties.
6. Decommission Ausgrid's redundant PUMS supplies that currently feed the wall mount lights on Blackburn Street and Hands Lane.
7. New City wall mount lights along Hands Lane ~~and existing wall mount lights in Blackburn Street (across Foster Street)~~ must be fed from the new City MSB.
8. Provide temporary lighting complying with City public domain lighting specifications prior to removal of existing public lights.

Advice on site specific lighting requirements must be obtained from City's Public Domain Unit before proceeding with the preparation of any final lighting design proposals.

Reason

To ensure pedestrian and street lighting in the public domain complies with Council's requirements.

(124) HOURS OF USE – COMMON ROOF TERRACE

The common roof terrace for 5-15 Mary Street (Foster House) **and 17-19 Mary Street (Mixed Use Site)** is restricted to between 7am and 10pm Monday to Sunday.

Reason

To achieve appropriate residential amenity outcomes.

(125) PLAN OF MANAGEMENT – FOSTER HOUSE

- (a) ***The Plan of Management is to be amended to address how the premises will manage the following:***
- (i) ***loitering around the site;***
 - (ii) ***residents smoking around the site; and***
 - (iii) ***noise from balconies.***

The amended Plan of Management is to be submitted to and approved by Council's Area Planning Manager prior to the issue of a Construction Certificate for Stage 3B.

- (b) The use of Foster House must always be operated / managed in accordance with the Plan of Management **approved under (a) above**, ~~prepared by The Salvation Army signed and dated 15 December 2022 that has been approved by Council.~~ In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.

Reason

To ensure all parties are aware of the approved supporting documentation that applies to the development.

Reasons for Decision

The application was approved for the following reasons:

- (A) The proposal satisfies the objectives of the Environmental Planning and Assessment Act 1979, in that, subject to the imposition of conditions as recommended, it achieves the objectives of the planning controls for the site for the reasons outlines in the report to the Local Planning Panel.
- (B) The proposal generally satisfied the objectives and provisions of Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (C) The proposal is consistent with the objectives of the MU1 - Mixed Use zone.
- (D) The proposed development appropriately responds to the site and its context, with a building that is appropriate in terms of its height, floor space and environmental impact, and achieves design excellence.
- (E) Subject to the recommended conditions of consent, the proposed development achieves acceptable amenity for the existing and future occupants of the subject site and adjoining sites.
- (F) The proposed land uses are permissible within the zone and will support the vitality of the area. Subject to the recommended conditions of consent, the proposed land uses will positively contribute to the amenity of the locality and will not result in adverse impacts.
- (G) The public interest is served by the approval of the development, as amendments to the application have generally addressed the concerns of Council staff and the community, and the recommended conditions of consent will mitigate any environmental impacts that could potentially arise from the construction and operation of the proposed development.
- (H) Condition 3 was added to address privacy concerns.

- (I) Conditions 9 and 10 were amended to clarify that the contributions apply only to the 17-19 Mary Street component of the development and are to be paid prior to the release of a construction certificate for Stage 3B relating to the 17-19 Mary Street component of the development.
- (J) Condition 40 was amended having regard to the generally short stay nature of the residential use of the Foster House component of the development.
- (K) Condition 55 was amended to remove the areas that are not directly adjacent to the site.
- (L) Condition 124 was amended to include 17-19 Mary Street.
- (M) Condition 125 was amended to address potential impacts to the surrounding locality.

Carried unanimously.

D/2022/1343

Speakers

Gerrard Malcolm and Conrad Ingram.

Matt Fisher (Salvation Army) – on behalf of the applicant.

Item 5 Development Application: 193 Harris Street, Pyrmont - D/2023/132

The Panel refused consent for Development Application Number D/2023/132 for the reasons outlined below.

Reasons for Decision

The application was refused for the following reasons:

Floor Space Ratio

- (A) The proposed floor space ratio exceeds the maximum floor space ratio (FSR) for the site contrary to Sydney Local Environmental Plan (SLEP) 2012 clause 4.4 *Floor space ratio*. The applicant's clause 4.6 written request is factually inaccurate given the request has been prepared on the basis that the assumed extent of variation is 1.08:1. This is incorrect as the extent of variation is 1.14:1. The applicant's written request to justify the contravention of the FSR development standard is therefore flawed and cannot be relied upon.
- (B) The applicant has failed to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

Design Excellence and Amenity

- (C) The proposal provides poor residential amenity in terms of an inadequately sized communal kitchen, poor amenity of the indoor communal facilities, inadequate solar access to the indoor and outdoor communal facilities and poor amenity of the outdoor communal open space. As such, the proposal does not achieve design excellence under the provisions of SLEP 2012 clause 6.21C in regard to the matters at subclauses (2)(a), (2)(d)(v), (vii) and (xiii). Development consent cannot be granted to development that does not achieve design excellence under the provisions of Clause 6.21C(1).
- (D) The proposal is contrary to the amenity provisions of the Sydney Development Control Plan (SDCP) 2012 Section 4.4.1 relating to Boarding houses and student accommodation as it does not provide an acceptable level of amenity and accommodation to meet the needs of residents and owners.
- (E) The proposal is contrary to the aims of the SLEP 2012, specifically Clause 1.2(h) which aims to enhance the amenity and quality of life of local communities.
- (F) In the absence of providing adequate residential amenity, the proposal is inconsistent with the objectives of the E1 Local Centre zone which seek to provide uses that serve the needs of people who live in the area.

Canopy Cover

- (G) The proposal does not provide appropriate tree canopy cover and is contrary to Section 3.5 of the SDCP 2012 relating to urban ecology.

Inadequate Information

- (H) Insufficient information has been provided in the form of a Plan of Management which is required as per Section 4.4.1.7 of the SDCP 2012.
- (I) The applicant has not demonstrated that sufficient waste facilities will be provided for occupants and that waste can be appropriately managed which is contrary to Section 3.14 of the SDCP 2012 relating to waste management.

Public Interest

- (J) For the reasons set out above, the application is not in the public interest, contrary to the requirements of the Environmental Planning and Assessment Act 1979 section 4.15 Evaluation.

Carried unanimously.

D/2023/132

Item 6 Development Application: 195 Harris Street, Pyrmont - D/2023/199

The Panel refused consent for Development Application Number D/2023/199 for the reasons outlined below.

Reasons for Decision

The application was refused for the following reasons:

Floor Space Ratio

- (A) The proposed floor space ratio exceeds the maximum floor space ratio (FSR) for the site contrary to Sydney Local Environmental Plan (SLEP) 2012 clause 4.4 *Floor space ratio*. The applicant's clause 4.6 written request is factually inaccurate given the request has been prepared on the basis that the assumed extent of variation is 1.08:1. This is incorrect as the extent of variation is 1.14:1. The applicant's written request to justify the contravention of the FSR development standard is therefore flawed and cannot be relied upon.
- (B) The applicant has failed to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

Design Excellence and Amenity

- (C) The proposal provides poor residential amenity in terms of an inadequately sized communal kitchen, poor amenity of the indoor communal facilities, inadequate solar access to the indoor and outdoor communal facilities and poor amenity of the outdoor communal open space. As such, the proposal does not achieve design excellence under the provisions of SLEP 2012 clause 6.21C in regard to the matters at subclauses (2)(a), (2)(d)(v), (vii) and (xiii). Development consent cannot be granted to development that does not achieve design excellence under the provisions of Clause 6.21C(1).
- (D) The proposal is contrary to the amenity provisions of the Sydney Development Control Plan (SDCP) 2012 Section 4.4.1 relating to Boarding houses and student accommodation as it does not provide an acceptable level of amenity and accommodation to meet the needs of residents and owners.
- (E) The proposal is contrary to the aims of the SLEP 2012, specifically Clause 1.2(h) which aims to enhance the amenity and quality of life of local communities.
- (F) In the absence of providing adequate residential amenity, the proposal is inconsistent with the objectives of the E1 Local Centre zone which seek to provide uses that serve the needs of people who live in the area.

Inadequate Information

- (G) Insufficient information has been provided in the form of a Plan of Management which is required as per Section 4.4.1.7 of the SDCP 2012.
- (H) The applicant has not demonstrated that sufficient waste facilities will be provided for occupants and that waste can be appropriately managed which is contrary to Section 3.14 of the SDCP 2012 relating to waste management.

Public Interest

- (I) For the reasons set out above, the application is not in the public interest, contrary to the requirements of the Environmental Planning and Assessment Act 1979 section 4.15 Evaluation.

Carried unanimously.

D/2023/199

Item 7 Report to the Local Planning Panel - Status of Applications

The Panel received and noted the subject report.

Carried unanimously.

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The meeting of the Local Planning Panel concluded at 5.45pm.

CHAIR