

# Local Planning Panel

Meeting No 99

Wednesday 12 June 2024

Notice Date 5 June 2024

*minutes*

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#### Present

Ms Jan Murrell (Chair), Mr Paul Berkemeier, Ms Vanessa Holtham and Mr Jayden Bregu.

At the commencement of business at 5.02 pm, those present were:

Ms Murrell, Mr Berkemeier, Ms Holtham and Mr Bregu.

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 22 May 2024, which have been endorsed by the Chair of the meeting.

**Item 3 Modification Application: 18 Huntley Street, Alexandria - D/2022/716/A**

The Panel grants consent to Modification Application Number D/2022/716/A subject to the conditions set out in Attachment 'A' of the Council's Officer's Report and with the following further amendments (with additions shown in **bold italics** and deletions shown in ~~strikethrough~~):

**(8) TRADING HOURS - MINOR DEVELOPMENT**

- (a) The **indoor** trading hours are restricted to between 7.00am and 10:00pm Monday to Saturday and between 7.00am and 8.00pm Sunday.
- (b) ***The outdoor trading hours are restricted to between 7.00am and 4.00pm Monday to Sunday for a trial period of 12 months, from the date of this amended consent, until 12 June 2025.***
- (c) ***Should the operator seek to continue the 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) ***All staff must vacate the premises within one hour after closing.***

**Reason**

To ensure the premises operates within the approved hours of operation.

***Amended 12 June 2024 – D/2022/716/A***

**(12) PLAN OF MANAGEMENT**

- (a) ***The Plan of Management prepared by WT Design Pty Ltd signed and dated 25 April 2024 must be amended to ensure consistency with all conditions of consent. The amended Plan of Management must be submitted to and approved by Council's Area Planning Manager prior to the commencement of increased patrons under Condition 15(b).***
- (b) The use must always be operated / managed in accordance with the Plan of Management, ~~prepared by Jianxin Cheng signed and dated 11 November 2022 that has been approved by Council~~ ***under part (a) above.*** 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.

***Amended 12 June 2024 – D/2022/716/A***

**(14) COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO INCREASING PATRON CAPACITY**

- (a) *All relevant performance parameters (including but not limited to requirements, engineering assumptions and recommendations) in the DA Acoustic Report (with the exception of the solid awning) prepared by Koikas Acoustics Pty Ltd, dated 20 March 2024, ref 6122R20240314asEllenCafe, titled Noise Complaint Review, Council Ref 2024/243982 must be implemented in the development prior to the commencement of increased patrons as permitted by Condition 15(b) of this consent.*
- (b) *Prior to the commencement of increased patrons as permitted by Condition 15(b) of this consent, the final construction drawings and final construction methodology must be assessed and reported to be in accordance with the requirements of the DA Acoustic Report in (a) above, with reference to relevant documentation. This must be done by a Suitably Qualified Acoustic Consultant\* (see definition below). Prior to the commencement of additional patrons as permitted by Condition 15(b) of this consent, plans are to be submitted to and approved by Council's Area Planning Manager.*
- (c) *Prior to the commencement of increased patrons as permitted by Condition 15(b) of this consent, a Suitably Qualified Acoustic Consultant\* is to provide a written Acoustic Verification Report to the satisfaction of Council that the development complies with the requirements set out in the Report and in (a) and (b) above.*

*Note: Suitably Qualified Acoustic Consultant means a consultant who possesses the qualifications to join the Australian Acoustical Society, Institution of Engineers Australia (grade of member) or the Association of Australasian Acoustical Consultants (grade of member firm).*

- (d) *All physical aspects of the building's structure installed in order to meet performance parameters in accordance with this condition must be maintained at all times.*

**Reason**

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

**Added 12 June 2024 – D/2022/716/A**

**(15) MAXIMUM PATRON CAPACITY**

- (a) *The maximum capacity is restricted to 20 patrons within the internal area and no patrons within the external area prior to Conditions 12(a) and 14 being satisfied.*
- (b) *The increased patrons numbers, following Conditions 12(a) and 14 being satisfied are:*
- (i) *The maximum capacity is restricted to 30 patrons within the internal area.*
- (ii) *The maximum capacity is restricted to 10 patrons within the outdoor terrace.*

**Reason**

**To ensure the premises can safely accommodate patrons and safeguard the amenity of the surrounding neighbourhood.**

**Added 12 June 2024 – D/2022/716/A**

**(16) ~~ACOUSTIC AWNING – ADDITIONAL DESIGN & ACOUSTIC SPECIFICATION REQUIRED – DESIGN & CONSTRUCTION SPECIFICATION OF ACOUSTIC AWNING PRIOR TO COMMENCEMENT OF INCREASED PATRONS~~**

**~~Reference is made to the acoustic report listed in the COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO THE COMMENCEMENT OF INCREASED PATRONS condition:~~**

- ~~(a) This report requires a solid awning to be constructed to address an identified external noise impact that would not comply with relevant noise criteria.~~**
- ~~(b) To address this issue, design drawings and an acoustically certified construction methodology must be submitted and approved in accordance with this condition, via a separate Development Application to be submitted to Council within six (6) months from the date of this amended consent.~~**

**~~Prior to the design and construction of the awning, the applicant is to engage with the original Architects of 18 Huntley Street (DKO) to oversee the design. Following this consultation (which is to be confirmed in writing from DKO architects), detailed design drawings, materials and construction specification of the acoustic awning must be submitted via a separate Development Application within six (6) months of this amended consent.~~**

**~~The detailed design drawings and materials and construction specification as outlined above must be accompanied by a statement of acoustic compliance from a Suitably Qualified Acoustic Consultant\* (the consultant) as follows:~~**

- ~~(a) The consultant will review the work submitted as per) above.~~**
- ~~(b) The consultant will ensure that the awning is sufficiently designed so that the external noise emissions do not cause any cumulative exceedance of noise criteria.~~**
- ~~(c) If necessary, the consultant will direct further changes to the work required by this condition.~~**
- ~~(d) Once satisfied with the work above, the consultant will submit a compliance statement that the material (with document references) has been reviewed and will be acoustically sufficient to prevent non-compliance with noise criteria.~~**
- ~~(e) \*Note: "Suitably qualified acoustic consultant" means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustical Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.~~**

~~The particulars specified in this condition must be submitted as part of the separate Development Application.~~

~~Upon satisfaction of this condition, the particulars will form part of the requirements for certification and verification in the COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO THE COMMENCEMENT OF INCREASED PATRONS condition.~~

~~Added 12 June 2024 – D/2022/716/A~~

## Reasons for Decision

The application was approved for the following reasons:

- (A) The development, as modified, is substantially the same development as that originally approved and is consistent with Section 4.55(2)(a) of the Environmental Planning and Assessment Act 1979.
- (B) The proposal complies with the relevant controls of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (C) The proposed amendment represents an appropriate use of the outdoor space and results in a patron capacity that remains capable of being properly managed.
- (D) The proposed amendment includes the provision of several acoustic measures to ensure impacts are minimised to surrounding residents which are recommended to be implemented prior to the commencement of increasing patron numbers.
- (E) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
  - (i) The development, as modified, is in the public interest because it is consistent with the objectives of the R1 General Residential zone and Sydney Development Control Plan 2012 and is consistent with the intended use of the site and the original approval.
  - (ii) Condition 8 was amended to protect the amenity of surrounding residents.
  - (iii) Condition 12 was amended to ensure consistency with all conditions of consent.
  - (iv) Condition 14 was added to ensure all parties are aware of the supporting documentation that applies to the development.
  - (v) Condition 15 was added to ensure the premises can safely accommodate patrons and safeguard the amenity of the surrounding neighbourhood.
  - (vi) Condition 16 was deleted to remove the acoustic awning requirement.

Carried unanimously.

D/2022/716/A

## Speakers

Carl Mhitarian and Maria Morgan – submitters.

Kim Rothe (Matsuplan) – on behalf of the applicant.

**Item 4 Development Application: 256 Crown Street Darlinghurst - D/2023/265**

The Panel grants consent to Development Application Number D/2023/265 subject to the conditions set out in Attachment 'A' to the Council's Officer's Report, with the following amendments (additions shown in ***bold italics***, deletions shown in ~~strikethrough~~):

**(17) APPROVED DEVELOPMENT**

- (a) Development must be in accordance with Development Application No. D/2023/265 dated 31 March 2023 and the following drawings prepared by Tonkin Zulaikha Greer:

Drawing Number	Drawing Name	Date
A031	Existing Sections	03.11.23
A011 Rev 01	Basement Demolition Plan	03.11.23
A012 Rev 01	Ground Floor Demolition Plan	03.11.23
A013 Rev 01	First Floor Demolition Plan	03.11.23
A014 Rev 01	Second Floor Demolition Plan	03.11.23
A015 Rev 01	Roof Demolition Plan	03.11.23
A021 Rev 01	Demolition Elevations 01	03.11.23
A022 Rev 01	Demolition Elevations 02	03.11.23
A101 Rev 01	Basement Floor Plan	03.11.23
A102 Rev 01	Ground Floor Plan	03.11.23
A103 Rev 02	Level 1 Floor Plan	11.03.24
A104 Rev 02	Level 2 Floor Plan	11.03.24
A105 Rev 02	Level 3 Floor Plan	11.03.24
A106 Rev 02	Level 4 Floor Plan	11.03.24
A107 Rev 02	Level 5 Roof Top Plan	11.03.24
A108 Rev 02	Roof Plant Plan	11.03.24
A202 Rev 02	Kells Lane Elevation	11.03.24
A203 Rev 02	Langley Street Elevation	11.03.24
A204 Rev 02	Foley Street Elevation	11.03.24
A301 Rev 01	Section 1	11.03.24
A302 Rev 02	Section 2	11.03.24



Drawing Number	Drawing Name	Date
A303 Rev -0	Section 3	11.03.24
<b>A201 Rev 01</b>	<b>Crown Street Elevation</b>	<b>3.11.2023</b>

and as amended by the conditions of this consent.

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

### Reason

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

## (8) INTERNAL HOURS OF OPERATION

The internal hours of operation are regulated as follows:

- (a) The base internal hours of operation must be restricted to between 10am and 10.00pm Monday to Saturday inclusive.
- (b) Notwithstanding (a) above, the use may operate between **7am and 10am and 10.00pm and 12 midnight** for a trial period of 1 year from the date of issue of 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). **No alcohol is to be served prior to 10.00am.**
- (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.

### Reason

To ensure the premises operates within the approved hours of operation.

## (9) EXTERNAL HOURS OF OPERATION - ROOFTOP

The external hours of operation are regulated as follows:

- (a) The base external hours of operation must be restricted to between 10.00am and 8.00pm Monday to Saturday inclusive.
- (b) Notwithstanding (a) above, the use may operate between **8.00am and 10am and 8.00pm and 10.00pm** for a trial period of 1 year from the date of issue of Occupation Certificate. **No alcohol is to be served prior to 10.00am.**

- (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.

### Reason

To ensure the premises operates within the approved hours of operation.

## (68) NATIONAL CONSTRUCTION CODE COMPLIANCE - ALTERATIONS AND ADDITIONS - UPGRADE OF THE BUILDING IS REQUIRED

- ~~(a) Pursuant to Section 64 of the Environmental Planning and Assessment Regulation 2021 an assessment of the development proposal has been undertaken and:~~
- ~~(i) As more than 50 percent of the volume of the building is proposed to be altered or has been altered over the previous 3 year period; and/or~~
  - ~~(ii) The measures contained in the building are inadequate to protect persons using the building and to facilitate their egress from the building in the event of fire, or to restrict the spread of fire from the building to other buildings nearby, it is determined that the whole building must be brought into total conformity with the *Building Code of Australia*.~~
- ~~(b) If compliance with (a) above cannot be achieved through the deemed-to-satisfy pathway, a performance solution in accordance with the BCA must be prepared and submitted to the Registered Certifier illustrating how the relevant performance provisions are to be satisfied prior to the issuing of a construction certificate.~~

***Pursuant to Section 64 of the Environmental Planning and Assessment Regulation 2021, where currently non-compliant, the whole of the existing building must be upgraded to comply with the performance requirements relevant to the following Parts of the Building Code of Australia:***

- (a) Fire resistance - Part C1;**
- (b) Fire resistance and stability – Part C2;**
- (c) Compartmentation and separation - Part C3;**
- (d) Protection of openings - Part C4;**
- (e) Access and egress - Part D1;**
- (f) Provision of escape - Part D2;**
- (g) Construction of exits - Part D3;**
- (h) Fire fighting equipment - Part E1;**
- (i) Smoke hazard management (Performance Requirements) - Part E2;**
- (j) Lift installations - Part E3; and**
- (k) Visibility in an emergency, exit signs and warning systems - Part E4.**

**Reason**

To ensure the works comply with relevant regulations, in particular for fire and safety.

**(131) OPERATIONAL NOISE**

- (a) *Appropriate attended noise monitoring must be undertaken by a suitably qualified acoustical consultant\* during operation of the premises at 3 months and 12 months following the commencement of use. The acoustic consultant must verify noise emanating from the premises, at the nearest residential receiver, does not exceed the noise criteria detailed in Condition 127 "Noise Entertainment".***
- (b) *An acoustic report detailing the results of monitoring undertaken should be submitted to the Council's Area Planning Manager within 7 days after monitoring has taken place.***
- (c) *Where noise is found to exceed the noise criteria, the acoustic report must recommend further measures to ensure compliance with the criteria. Evidence that these measures have been implemented must be provided to Council's Area Planning Manager.***

***Note: Suitably Qualified Acoustic Consultant means a consultant who possesses the qualifications to join the Australian Acoustical Society, Institution of Engineers Australia (grade of member) or the Association of Australasian Acoustical Consultants (grade of member firm). With respect to (i), in selecting a consultant, the proponent may wish to consider previous relevant experience of the consultant.***

**Reason**

***To ensure the acoustic amenity of the surrounding area is reasonably maintained.***

**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 outlined in the report to the Local Planning Panel.**
- (B) The development, subject to conditions, is consistent with the objectives of the MU1 Mixed Use zone.**
- (C) Subject to the recommended conditions of consent, the proposed development achieves acceptable amenity for adjoining sites.**
- (D) The proposal provides 10 per cent cultural and creative floor space and complies with the alternative maximum height of buildings control under in Clause 6.60D of the Sydney Local Environmental Plan 2012 and the design of the development responds appropriately to the scale of surrounding buildings.**
- (E) The proposed density of the development complies with the maximum floor space ratio development standard in Clause 4.4 of the Sydney Local Environmental Plan 2012.**
- (F) The development, subject to conditions, exhibits design excellence and satisfies the provisions of Clause 6.21C of the Sydney Local Environmental Plan 2012.**

- (G) Subject to conditions, the proposal generally satisfied the relevant objectives and provisions of the Sydney Local Environmental Plan 2012 and the Transport and Infrastructure SEPP.
- (H) Condition 1 was amended to ensure the consent includes a correct record of all relevant plans.
- (I) Conditions 8 and 9 were amended in line with a request made by the applicant, to utilise the premises prior to 10am.
- (J) Condition 68 was amended to ensure that required fire safety measures are addressed whilst balancing the protection of existing heritage fabric.
- (K) Condition 131 was added to ensure the acoustic amenity of neighbouring properties.

Carried unanimously.

D/2023/265

**Speakers**

David Chivers – submitters.

Kristy Hodgkinson (Hamptons) – on behalf of the applicant, and Tim Greer (Tonkin Zulaikha Greer) – on behalf of the applicant.

**Item 5 Development Application: 7 Rennie Street, Redfern - D/2024/69**

The Panel:

- (A) upholds the variation requested to Clause 4.4 'Floor Space Ratio' in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 as the Panel is satisfied the development is consistent with the objectives of the development standard and is in the public interest; and
- (B) grants consent to Development Application Number D/2024/69 subject to the conditions set out in Attachment 'A' to the Council Officer's Report.

**Reasons for Decision**

The application is approved for the following reasons:

- (A) The development is consistent with the objectives of the R1 General Residential zone of the Sydney Local Environmental Plan 2012.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that 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 'Floor Space Ratio' development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.4 of the Sydney Local Environmental Plan 2012.
- (C) The proposed development complies with the maximum Height of Buildings development standard contained in Clause 4.3 of the Sydney Local Environmental Plan 2012.
- (D) The proposed development exhibits design excellence in accordance with the requirements contained in Clause 6.21C of Sydney Local Environmental Plan 2012.
- (E) The proposed development provides an appropriate response to the Thurlow Street special locality of the site, is compatible and commensurate with the built form, scale and character of the adjoining contributory terraces within the Rennie and Mount Streets heritage conservation area.
- (F) The development will not result in any adverse significant environmental impacts and does not compromise the amenity of neighbouring properties.
- (G) The proposal is generally consistent with the relevant objectives and controls of the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012.

Carried unanimously.

D/2024/69

The meeting of the Local Planning Panel concluded at 6.55 pm.

CHAIR