

Local Planning Panel

Meeting No 102

Wednesday 14 August 2024

Notice Date 7 August 2024

minutes

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Present

The Hon Dr Robert Stokes (Chair), Ms Melonie Bayl-Smith, Ms Louise Sureda and Ms Judy MacGraw.

At the commencement of business at 5.01pm, those present were:

Dr Stokes, Ms Bayl-Smith, Ms Sureda and Ms MacGraw.

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 24 July 2024, which have been endorsed by the Chair of that meeting.

Item 3 Development Application: 117 Victoria Street, Potts Point - D/2023/862

The Panel refused consent for Development Application Number D/2023/862 for reasons outlined below.

Reasons for Decision

- (A) The proposal is contrary to and fails to adequately satisfy the matters for consideration set out in Section 47(2) of Part 3: Retention of existing affordable rental housing of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) and the Guidelines for Retention of Existing Affordable Rental Housing.
- (B) The application is inconsistent with the Clause 1.2(2)(e) aim of the Sydney LEP 2012 as it fails to encourage the growth and diversity of the residential population of the City of Sydney by providing for a range of appropriately located housing, including affordable housing.
- (C) The application fails to satisfy the objectives of the R1 General Residential Zone of the Sydney LEP as it does not provide for the housing needs of the community and does not contribute to a variety of housing types and densities.
- (D) The proposed development is in breach of the Height of Buildings development standard pursuant to Clause 4.3 of the Sydney LEP 2012 and exceeds the height in storeys control of Section 4.2.1.1 of the Sydney DCP 2012. The applicant's Clause 4.6 variation request to contravene the Height of Buildings standard has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances or that there are sufficient environmental planning grounds to justify contravention of the development standard.
- (E) The proposed development is in breach of the Floor Space Ratio development standard pursuant to Clause 4.4 of the Sydney LEP. The applicant's Clause 4.6 variation request to contravene the Floor space ratio development standard has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances or that there are sufficient environmental planning grounds to justify contravention of the development standard.
- (F) The proposed development is contrary to principles 1 to 9 of the design principles for residential apartment development in Schedule 9 of the Housing SEPP. The proposal provides inadequate amenity to apartments and neighbouring residential buildings and is non-compliant with multiple provisions of the ADG, including Objectives 3B, 3C, 3F, 3H, 3J, 4A, 4D, 4E, 4G, 4L, 4M, 4O, 4P, and 4W.
- (G) The proposed development does not respond to or complement adjoining heritage and contributory buildings, does not respond to the topography of the site and is not in keeping with the unique character of the locality. The proposal is therefore contrary to the locality provisions of Section 2.4.3 and 2.4.7 of the Sydney DCP and the heritage provisions of Clause 5.10 of the Sydney LEP 2012 and Sections 3.9.1, 3.9.5, 3.9.6, 3.9.9 and 3.9.10 of the Sydney DCP 2012.
- (H) The proposal does not meet the requirements of the City's Landscape Code and does not provide 10% deep soil in a consolidated area and is therefore non-compliant with Sections 4.2.3.5 and 4.2.3.6 of the Sydney DCP 2012.
- (I) The development proposes vehicle access from the primary road frontage, does not include bicycle parking, and is contrary to the transport and parking requirements Sections 3.11.3, 3.11.6, and 3.11.11 of the Sydney DCP 2012.

- (J) The proposed side setbacks and building setting is inconsistent with the desired future pattern of residential development and setbacks in the block, pursuant to Section 4.2.2 of the Sydney DCP 2012.
- (K) The development does not provide appropriate amenity for residents. The development does not provide unit, private open space or communal open space in accordance with the minimum dimensions and size requirements of the ADG, and Sections 4.2.3.7, Section 4.2.3.8 and Section 4.2.3.9 of the Sydney DCP 2012. Poor outlook is also provided to bedrooms due to screening and to the lower ground unit to Victoria Street which is contrary to Section 4.2.3.10 of the Sydney DCP 2012.
- (L) Inadequate information has been submitted to properly assess the application and the proposed development therefore fails to satisfy the following requirements:
- (i) The application fails to satisfactorily address site contamination in accordance with Section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021, the Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land, Clause 7.14 Acid Sulfate Soils of the Sydney LEP 2012 and Section 3.17 of the Sydney DCP 2012.
 - (ii) The application provides insufficient information to determine the impacts of the proposed excavation upon the structural integrity of neighbouring buildings and the retained rock face on the adjacent site at 30A - 34 Broughan Street, pursuant to Section 3.9.13 of the Sydney DCP 2012.
 - (iii) Insufficient information has been supplied to determine whether the building breaches the 25m design competition process threshold. No competitive design process has been undertaken for the development and it is therefore contrary to Clause 6.21D(1) of the Sydney LEP 2012 and Section 3.3 of the Sydney DCP 2012.
 - (iv) The application fails to demonstrate 15 per cent tree canopy coverage within 10 years of completion, pursuant to Sections 3.5.1 and 3.5.2 of the Sydney DCP. Insufficient information has been supplied to determine construction impacts on existing trees adjoining the site which is contrary to the requirements of Section 3.5.3 of the Sydney DCP 2012 and Chapter 2 Vegetation in non-rural areas of the Biodiversity and Conservation SEPP 2021.
 - (v) The preliminary public art plan does not satisfy requirements for public art in accordance with the City's Interim Guidelines for Public Art in Private Developments and the development is therefore contrary to the requirements of Section 3.1.5 of the Sydney DCP 2012.
 - (vi) The application fails to demonstrate compliance with the City's Interim Flood Planning Policy and stormwater drainage and quality requirements and is therefore contrary to Clause 5.21 of the Sydney LEP 2012, and Sections 3.7.1, 3.7.2 and 3.7.3 of the Sydney DCP 2012.
 - (vii) The application fails to provide sufficient information to demonstrate that each of the proposed dwellings and neighbouring dwellings will receive the minimum 2 hours of direct sunlight to living room windows and private open space areas between 9am and 3pm on 21 June, pursuant to Section 4.2.3.1 of the Sydney DCP 2012.
 - (viii) The location and design of the waste storage room and waste chutes are contrary to the waste requirements set out in the City of Sydney Guidelines for Waste Management in New Development, Section 3.11.13, Section 3.14, Section 4.2.6 of the Sydney DCP 2012.

- (M) The proposed development fails to exhibit Design Excellence pursuant to Clause 6.21C of the Sydney LEP 2012 due to the following:
- (i) The application fails to demonstrate a high standard of architectural design and detailing appropriate to the building type and surrounding heritage character, pursuant to Clause 6.21C(2)(a).
 - (ii) The form and external appearance of the proposed development will not improve the quality of the public domain, pursuant to Clause 6.21C(2)(b) and Clause 6.21C(2)(d)(x).
 - (iii) The proposed development detrimentally impacts on public view corridors from Victoria Street, pursuant to Clause 6.21C(2)(c).
 - (iv) The application fails to appropriately address heritage issues and streetscape constraints, pursuant to Clause 6.21C(2)(d)(iii).
 - (v) The proposed development fails to provide an appropriate bulk, massing and modulation of buildings, pursuant to Clause 6.21C(2)(d)(v).
 - (vi) The proposal is not consistent with existing street frontage heights, pursuant to Clause 6.21C(2)(d)(vi).
 - (vii) The application fails to adequately address environmental impacts of overshadowing, solar access, views and visual privacy, pursuant to the provisions outlined under Clause 6.21C(2)(d)(vii).
 - (viii) The application fails to adequately consider pedestrian, cycle, vehicular and service access and circulation requirements, pursuant to Clause 6.21C(2)(d)(ix).
 - (ix) The proposed development does not achieve an appropriate interface at ground level between the building and the public domain, pursuant to Clause 6.21C(2)(d)(xii).
 - (x) The proposed development fails to demonstrate excellence and integration of landscape design pursuant to Clause 6.21C(2)(d)(xii).
- (N) The development is unsatisfactory when assessed pursuant to the matters for consideration at section 4.15(1)(e) of the EP&A Act and is therefore not in the public interest.
- (O) As the application was made but not determined on or before 14 December 2023, the bonus floor space and height under Chapter 2 Division 1 of the Housing SEPP does not apply to the development, pursuant to Schedule 7A Savings and Transitional Provisions, Section 8 State Environmental Planning Policy Amendment Housing 2023.

Carried unanimously.

D/2023/862

Item 4 Development Application: 598-610 Crown Street, Surry Hills - D/2023/902

The Panel:

- (A) upheld the variation requested to clause 4.3 Height of Buildings in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012; and
- (B) granted consent to Development Application Number D/2023/902 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~~):

(23) PUBLIC ART STRATEGY

A strategy to address the protection of the 'Village Voices' public artwork shall be submitted to and approved by Council's Area Planning Manager prior to the issue of any construction certificate for the development. All works proposed in the approved strategy shall be implemented in full during the construction of the development. Any damage to the artwork shall be rectified by the developer prior to the issue of an occupation certificate for the development.

Reason

To require a strategy to protect the existing artwork during construction.

Remaining conditions to be renumbered accordingly

Reasons for Decision

The application was approved for the following reasons:

- (A) The proposed development is consistent with the objectives of the E1 Local Centre zone.
- (B) The proposed development satisfies the relevant objectives and provisions of the Sydney Development Control Plan 2012.
- (C) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the height of buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney LEP 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the E1 Local Centre zone and the height of buildings development standard.

(D) Condition 23 was added to require a strategy to protect the existing artwork during construction.

Carried unanimously.

D/2023/902

Speaker

Stephen White (Urbis) – on behalf of the applicant.

Item 5 Development Application: 104 Pitt Street, Redfern - D/2023/1179

The Panel:

- (A) upheld 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; and
- (B) granted consent to Development Application Number D/2023/1179 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 ~~striketrough~~):

(2) DESIGN MODIFICATIONS

The design of the building must be modified as follows:

- (a) ~~The southern timber fencing is not permitted for demolition as no landowners consent has been submitted from 98 Pitt Street Redfern, for the demolition of this structure. To ensure structure integrity of the timber fence as a whole, this fence must be retained in full and not demolished.~~ **The existing timber gate and posts located within the Right of Footway easement are to be retained. Demolition of this gate is not approved.**
- (b) ~~Ne~~ **The** new masonry southern side boundary fencing is permitted to be constructed **on the subject site only and to a maximum height of 1.8m above the existing natural ground level.** ~~as the existing timber fence is required to be retained by (a) above.~~
- (c) No structures or works are permitted to or encroach within the Right of Footway easement or over the land of 98 Pitt Street Redfern, as no land owners consent from this property has been submitted with this development application.
- (d) The western facade glazing (Window WG.06) of the floor to ceiling sliding doors adjacent to the living area at the ground floor level must be amended to comply with the **deemed to satisfy provisions within the NCC 2022 Australian Building Codes Board (ABCB) Part 9.1 Scope and Application of Section 9 and Part 9.2 Fire Separation of External Walls** ~~Volume 2 Part 3.7.2 Fire Separation of External Walls.~~ This may require change to the FRL of the glazing, change to solid non-openable masonry wall or alternative fire protection measures as required to comply with the NCC. **Alternatively, fire protection may be addressed via a performance-based solution that achieves the requirements of the National Construction Code.**
- (e) Details of the proposed landscaping species, densities and irrigation measures for the Level 1 garden bed adjacent to Bedroom 3 and the Level 2 terrace garden bed must be submitted to the satisfaction of Council's Area Planning Manager

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

Reason

To require amendments to the approved plans and supporting documentation following assessment of the development.

(3) FLUSH FITTING OF NEW ROOF STRUCTURES

~~The two approved skylights must be fitted flush to the roof slope and not intrude the ridge lines or damage the flashings.~~

Reason

~~To ensure an appropriate heritage/streetscape outcome.~~

Reasons for Decision

The application was approved for the following reasons:

- (A) The development is consistent with the objectives of the E1 Local Centre 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:
 - (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 Clause 4.4 Floor Space Ratio development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify the contravention.
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the E1 Local Centre zone and the Clause 4.4 Floor Space Ratio development standard.
 - (iii) the proposed works relate and are located wholly on the subject property, being 104 Pitt Street, Redfern.
- (C) The development has been designed to be sympathetic to the character of the locality and is visually unobtrusive when viewed from the Pitt Street and Turner Street frontages.
- (D) The development will not result in any significant adverse environmental impacts to the streetscape or to the amenity of adjoining neighbours.
- (E) The development is generally consistent with the relevant objectives and controls of the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012.
- (F) Condition 2 was amended in line with a request by the applicant, to clarify the extent of the approved works.
- (G) Condition 3 was deleted to avoid any misinterpretation at certification stage, as the drawings demonstrate that the skylights satisfy the intention to keep a low profile.

Carried unanimously.

D/2023/1179

Speaker

Charles Peters (Craft Architects) – on behalf of the applicant.

Item 6 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 5.29pm.

CHAIR