

Local Planning Panel

Meeting No 108

Wednesday 18 December 2024

Notice Date 11 December 2024

minutes

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Present

The Hon Dr Robert Stokes (Chair), Ms Penny Murray, Mr Brendan Randles and Ms Judy MacGraw.

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

Dr Stokes, Ms Murray, Mr Randles 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.

Dr Stokes disclosed a reasonably perceived conflict regarding Items 4 and 5 on the agenda, in that an employee of the applicant is a member of a board of a not-for-profit of which he is also a member. Following assessment of the above disclosure of interest under the Code of Conduct for Local Planning Panels and the City of Sydney Local Planning Panel Operational Procedures, Dr Stokes is not required to step out for deliberation on Items 4 and 5.

No other 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 27 November 2024, which have been endorsed by the Chair of that meeting.

Item 3 Development Application: 117 Victoria Street, Potts Point - D/2024/524

The Panel refused consent for Development Application Number D/2024/524.

Reasons for Decision

The application was refused for the following reasons:

- (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 has not submitted a Clause 4.6 variation request to demonstrate 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, 4E, 4G, 4L, 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 3.9.5, 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 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 and Section 4.2.3.8 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 Brougham 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% 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), and
 - (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.

Carried unanimously.

D/2024/524

Item 4 Development Application: 141-155 Commonwealth Street, Surry Hills - D/2024/122

The Panel:

- (A) upheld the variation requested to Clause 4.3 Height of Buildings development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012;
- (B) upheld the variation requested to Clause 4.4 Floor Space Ratio development standard in accordance with Clause 4.6 'Exceptions to development Standards' of the Sydney Local Environmental Plan 2012; and
- (C) granted consent to Development Application Number D/2024/122 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~~):

(46) PROTECTION OF STONE KERBS

- (a) The existing stone kerbs on the [~~Street Name/s~~] ***Commonwealth Street and Reservoir Street*** frontage[s] of the site are to be retained and properly protected during demolition, excavation and construction works.
- (b) To avoid damage to stone kerbs during excavation and construction works for the development, temporary removal and storage of the stone kerbs may be approved by Council. Removed, serviceable stone kerbs (i.e. those that are in good condition as agreed by Council officers) must be re-installed in accordance with the City of Sydney's standard details and specifications after the construction works have been completed. A temporary concrete kerb will need to be constructed to retain the footpath until the stone kerbs can be reinstalled.
- (c) Note the following:
 - (i) all costs associated with the works are to be borne by the developer.
 - (ii) Damaged kerbs are to be replaced to match existing to Council's satisfaction or as otherwise advised by Council officers.
 - (iii) Where new vehicle crossings or temporary crossings are to be constructed to access the property, the affected kerb stones should be salvaged and reused wherever possible.
 - (iv) All new driveway laybacks and kerbs are to be constructed with stone kerbs to match existing stones or as specified by City officers.
 - (v) Council approval is required before kerbs are removed.
 - (vi) Council approval is required prior to the cutting of existing stone kerbs for stormwater kerb outlets.
 - (vii) Stone kerbs and gutters may be bonded in accordance with the City of Sydney's adopted Schedule of Fees and Charges. If so, this will be included with the Public Domain Damage Bond.

Reason

To ensure the protection of stone kerbs.

(91) STREET TREE PROTECTION

All street trees located directly outside the site must be retained and protected in accordance with the Australian Standard 4970 Protection of Trees on Development Sites. All street trees must be protected during the construction works as follows:

- (a) Tree trunk and major branch protection must be undertaken prior to the commencement of any works (including demolition). The protection must be installed and certified by an arborist with a minimum AQF Level 5 qualification in arboriculture and must include:
 - (i) An adequate clearance, minimum 250mm, must be provided between the structure and tree branches, and trucks at all times.
 - (ii) Tree trunk/s and/or major branches to a height of two metres, must be protected by wrapped thick underlay carpet or similar padding material to limit damage.
 - (iii) Timber planks (50mm x 100mm or similar) must be placed around tree trunk/s. The timber planks must be spaced at 100mm intervals and must be fixed against the trunk with tie wire, or strapping. The thick underlay carpet or similar padding material and timber planks must not be fixed to the tree in any instance, or in any fashion.
 - (iv) Tree trunk and major branch protection is to remain in place for the duration of construction and development works and must be removed at the completion of the project.
- (b) Temporary signs, or any other items, shall not be fixed or attached to any street tree.
- (c) All hoarding support columns are to be placed a minimum of 300mm from the edge of the existing tree pits/setts, so that no sinking or damage occurs to the existing tree pits. Supporting columns must not be placed on any tree roots that are exposed.
- (d) Young street trees must be protected by installing three (3) wooden stakes around the edge of the tree pits or a minimum of 1 metre from the base of the trunk. Hessian must be wrapped around the stakes. If existing stakes or a metal tree guard are already in place, these suffice as tree protection.
- (e) Materials or goods, including site sheds, must not be stored or placed:
 - (i) around or under the tree canopy; or
 - (ii) within two (2) metres of tree trunks or branches of any street trees.
- (f) Any excavation within any area known to or suspected of having tree roots greater than 30mm diameter must be undertaken by hand.
- (g) Any trenching works for services, hydraulics, drainage etc. must not be undertaken within ~~[specify] metres~~ **the Tree Protection Zone** of the trunk of any street tree. Alternate installation methods for services such as directional boring/drilling or redirection of services must be employed where roots greater than 30mm diameter are encountered during installation of any services.

- (h) Existing sections of kerbs adjacent to any street tree must not be removed without approval from the Council's Tree Management Officer.
- (i) Any damage sustained to street tree/s as a result of the erection of any construction activities (including demolition) must be immediately reported to the Council's Tree Management Officer on 9265 9333. Any damage to street trees as a result of any construction activities may result in prosecution under the Local Government Act 1993 and the Environmental Planning and Assessment Act 1979.

Reason

To ensure the protection and ongoing health of the street trees.

(120) HOURS OF OPERATION – ROOFTOP AND OUTDOOR TERRACE

The hours of operation/use of the outdoor rooftop and lower terrace on Level 1 are to be restricted to the following:

- (a) The use of these areas are restricted to between 7am and 8pm, Monday to Sunday.
- (b) Notwithstanding (a) above, ~~these areas~~ **the rooftop outdoor terrace** may be used between 8pm and 10pm, Monday to Sunday for a trial period of 1 year from the date of issue of the Occupation Certificate.
- (c) Should the operator seek to continue the extended operating hours outlined in (b) above, an application must be lodged with Council at least 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 NSW Police and Liquor & Gaming.

Reason

To ensure the premises trades within the approved trading hours.

Reasons for Decision

The application was approved for the following reasons:

- (A) The proposal is consistent with the objectives of the MU1 Mixed Use Zone.
- (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 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.

The Clause 4.6 variation request is therefore upheld and approval to vary the Height of Buildings development standard is granted.

- (C) 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 LEP 2012.

The Clause 4.6 variation request is therefore upheld and approval to vary the Floor Space Ratio development standard is granted.

- (D) The proposed design of the development respects the historic character of the heritage conservation area and its surroundings, whilst simultaneously mitigating environmental impacts of overshadowing and overlooking of neighbouring properties pursuant to the design excellence provisions of Clause 6.21C of the Sydney LEP 2012.
- (E) The proposed development, subject to the recommended conditions of consent, adequately addresses and safeguards the visual and acoustic privacy of neighbouring residential properties pursuant to Clause 6.21C(2)(d)(vii) of the Sydney LEP 2012.
- (F) The proposed development, subject to recommended conditions of consent, exhibits excellence in landscape integration and will enhance the urban greening of the site pursuant to Clause 6.21C(2)(d)(xiii) of the Sydney LEP 2012.
- (G) The proposed development is appropriate to its site and setting, by delivering a high-quality design and suitable use to enhance the vitality of the locality and promote the orderly and economic use and development of the land pursuant to Object (c) of the Environmental Planning and Assessment Act 1979 (Clause 1.3(c)).
- (H) Condition 46 was amended to clarify condition requirements regarding protection of stone kerbs.
- (I) Condition 91 was amended to clarify condition requirements regarding the protection of street trees.
- (J) Condition 120 was amended to address acoustic and privacy concerns of neighbouring residents.

Carried unanimously.

D/2024/122

Speaker

Anthony Betros (ABC Planning) – on behalf of the applicant.

Item 5 Development Application: 158 Botany Road and 158 Wyndham Street, Alexandria - D/2023/1012

The Panel:

- (A) pursuant to Section 3.3.1 of the Sydney Development Control Plan 2012 and Section 1.2 of the Competitive Design Policy, approved the Design Excellence Strategy for 158 Botany Road, Alexandria prepared by Ethos Urban on behalf of Blueshore Development Group, dated 25 October 2024, as shown at Attachment D to the subject report; and
- (B) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, granted a deferred commencement consent to Development Application D/2023/1012 subject to the conditions set out in Attachment A to the subject report.

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 recommended conditions of consent, 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 is permissible with consent in the MU1 - Mixed Use zone and is consistent with the objectives of the zone.
- (C) The concept envelope complies with the 35m height of buildings development standard pursuant to clauses 4.3 and 6.60B of the Sydney Local Environmental Plan 2012.
- (D) The concept envelope is capable of accommodating development that complies with the floor space ratio controls pursuant to clauses 4.4, 6.14, 6.60B and 6.21D of the Sydney Local Environmental Plan 2012.
- (E) The concept proposal is capable of satisfying the relevant objectives of the Sydney Development Control Plan 2012 including Section 5.10 relating to the Botany Road Precinct.
- (F) The concept proposal and Design Excellence Strategy establish suitable parameters for a competitive design process and detailed design of the building at 158 Botany Road. Subject to the recommended conditions, the proposed envelope can accommodate a detailed building design of an appropriate bulk and scale that is in keeping with the desired future character of the area and capable of achieving design excellence in accordance with clause 6.21C of the SLEP 2012.
- (G) A deferred commencement condition is recommended to enable the draft VPA to be executed and registered on title.

Carried unanimously.

D/2023/1012

Speakers

Michael Talone and Vanessa Knight.

Stephen Gouge (Ethos Urban) – on behalf of the applicant, and Adam Haddow (SJB) – on behalf of the applicant.

Item 6 Development Application: 35, 300 and 400 Barangaroo Avenue, Barangaroo - D/2024/847

The Panel granted consent to Development Application Number D/2024/847 subject to the conditions set out in Attachment A to the subject report.

Reasons for Decision

The application was approved for the following reasons:

- (A) The development is consistent with the objectives of the B4 Mixed Use zone of the State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021.
- (B) The proposal generally satisfies the objectives and provisions of Appendix 5 of the State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021, subject to conditions.
- (C) The proposal is consistent with the relevant objectives and provisions of the Sydney Development Control Plan 2012, City of Sydney Late Night Trading Premises Development Control Plan 2007, and other applicable Development Control Plans, subject to conditions.
- (D) Subject to the recommended conditions of consent, the proposed development will have an acceptable impact on the amenity of the site locality and will not result in unreasonable additional adverse environmental impacts to adjoining sites. Conditions of consent are recommended to ensure the uses are managed in an appropriate manner in accordance with the endorsed Plan of Management and relevant standards.

Carried unanimously.

D/2024/847

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

CHAIR

