

Item 8.**Development Application: 122 Buckingham Street Surry Hills**

File No.: D/2018/143

Summary

Date of Submission:	20 February 2018
Applicant:	Mr Luigi Rosselli
Architect:	Luigi Rosselli Pty Ltd
Developer:	Mr Luigi Rosselli
Owner:	Rosselli Investments Pty Ltd
Cost of Works:	Nil

Proposal Summary: Consent is sought for the use of the ground floor of the existing building as a retail premise with trading permitted from 7.00am to 10.00pm every day. The specific use and fit-out will be subject to a future application. The ground floor was previously approved as a car park for the existing commercial offices. The amount of floor space proposed to be converted from car park to retail is 80.7 square metres.

While the application does not propose any new works, the conversion of part of the ground floor will increase the gross floor area of the building from 297.1sqm to 377.8sqm. In accordance with the definition for gross floor area, car parking was excluded from the original GFA calculation. The resultant floor space ratio will be 2.56:1, 28% over the maximum FSR of 2:1. The existing end of trip facilities will be maintained and are excluded from the calculation of gross floor area.

It is noted that the ground floor and facade were constructed contrary to the approved plans, in that the turntable was not installed and the garage door was replaced by a glass bi-fold door. The works as undertaken will facilitate the use of the ground floor for retail and have been certified through the Construction Certificate issued for the building. Note: this application does not certify the unauthorised works undertaken.

Proposal Summary:
(continued)

The applicant has submitted a request to vary the maximum permitted floor space ratio in accordance with Clause 4.6 of the Sydney LEP 2012. The variation to the standard is acceptable as:

- The development will not increase the bulk and scale of the building.
- The loss of one on-site car space will be compensated by the provision of one additional on-street car space following the removal of the existing vehicle cross-over.
- The site is adjacent to an existing loading zone for deliveries.
- The retail premise will provide improved activation and passive surveillance of the street within the B4 - Mixed Use zone.

The application has been referred to the Local Planning Panel for determination as the development seeks approval to vary the FSR standard by more than 10%.

The application was exhibited to the surrounding area for a period of 14 days. Four submissions were received raising the following concerns:

- The development exceeds the maximum FSR
- Unknown future use
- Saturation of food and drink premises
- Traffic and parking
- Servicing
- Noise
- Odour
- Smoking

A condition of consent is recommended requiring the removal of the driveway crossover prior to the issue of an Occupation Certificate and commencement of the use

The concerns raised are addressed within the body of the report.

- Summary Recommendation:** The development application is recommended for approval, subject to conditions.
- Development Controls:** Sydney Local Environmental Plan 2012
Sydney Development Control Plan 2012
- Attachments:** A Recommended Conditions of Consent
B Proposed Plans

Recommendation

It is resolved that

- (A) The Local Planning Panel support the variation sought to Clause 4.3 "Height of Buildings" in accordance with Clause 4.6 "Exceptions to development standards" in the Sydney Local Environmental Plan 2012
- (B) Consent be granted to Development Application No. D/2018/143 subject to the conditions set out in Attachment A to this report.

Reasons for Recommendation

The reasons for the Recommendations are as follows:

- (A) It is consistent with the objectives of the B4 - Mixed Use zone.
- (B) The variation to clause 4.4 of the Sydney Local Environmental Plan 2012 "Floor space ratio" is consistent with the provisions of Clause 4.6 "Exceptions to development standards" and is in the public interest.
- (C) As conditioned, it is generally consistent with the objectives of the relevant controls for the site.
- (D) The specific retail use and fit-out of the premise will be subject to a future complying development certificate or development application.
- (E) The loss of an onsite car space and loading area will be compensated by an additional on-street car space on Buckingham Street subject to a condition requiring the removal of the vehicle crossover and layback. An on-street loading zone is located adjacent to the site and is sufficient to meet the needs of the existing office premises and future retail premises.
- (F) The recommended operational conditions will ensure the future retail use will operate without adverse impacts to the amenity of neighbouring properties.
- (G) For reasons outlined in the report to the Local Planning Panel.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 9 March 2018.
2. 122 Buckingham Street is legally known as Lot 2 DP 1222850 and is located on the east side of Buckingham Street. The site area is 142.8sqm and contains a recently constructed four storey commercial building.
3. The surrounding area is characterised by residential and commercial terraces, residential flat buildings, office buildings and commercial warehouses. Buckingham Street contains many street trees with a mature street tree located in front of the subject site.



Figure 1: Aerial image of subject site (in blue) and surrounding area, including the heritage terrace row to the north and commercial warehouse to the east.

4. Adjoining the site to the south at no. 252-256 Cleveland Street is a two storey warehouse. The application site previously formed part of this site and was used as a private car park.
5. No. 258-266 Cleveland Street is located to the east of the subject site and contains a four storey commercial warehouse. To the immediate north, nos. 108-116 and 120 Buckingham Street forms a residential terrace row and is of local heritage significance (item 1465). Note that the rear of nos. 112-120 Buckingham Street are used in conjunction with the commercial warehouse at no. 258-266 Cleveland Street for car parking.

6. North of the terrace row is a four storey commercial building (no. 104-106 Buckingham Street), a five storey mixed use building (no. 96-102 Buckingham Street) and a four storey commercial building (no. 92-94 Buckingham Street).
7. Between nos. 91 and 101 Buckingham Street opposite the site is a residential terrace row and local heritage item (item 1464). North of this terrace row is a residential flat building (no. 61-89 Buckingham Street).
8. The site is located within the Cleveland Gardens conservation area (C62) and is not a heritage item.
9. Photos of the site and surrounds are provided below:



Figure 2: The subject site, with the terracotta facade viewed from Buckingham Street



Figure 3: The proposed retail space which has been approved as on-site parking



Figure 4: Residential and commercial properties opposite on Buckingham Street

Proposal

10. Permission is sought to use the approved on-site parking on the ground floor of the existing building as a retail premise. The premise will have a gross floor area of 80.7sqm.
11. The specific use and fit-out of the premise will be subject to a subsequent complying development certificate or development application. The application proposes the hours of operation be restricted to 7.00am to 10.00pm every day. A signage strategy accompanies the application. While no physical works are proposed, the change of use will require the existing driveway to be removed and the kerb reinstated.

History Relevant to the Development Application

12. On 12 December 2016, development consent D/2016/898 was granted for the construction of a four storey commercial building fronting Buckingham Street. The ground floor of the building was approved for use as one car parking space and one loading area with a turntable. The applicant stated at the time that the loading area was essential for a prospective tenant, being a landscape studio and was therefore not counted as gross floor area.
13. However, during construction, the developer replaced the approved garage door to the Buckingham Street frontage with full height glass bi-fold doors. The turntable and car park space were not constructed. The upper floors of the building are currently occupied. The works are compatible with the architecture of the building and streetscape, while the works were certified by the Principal Certifier during the construction of the building.

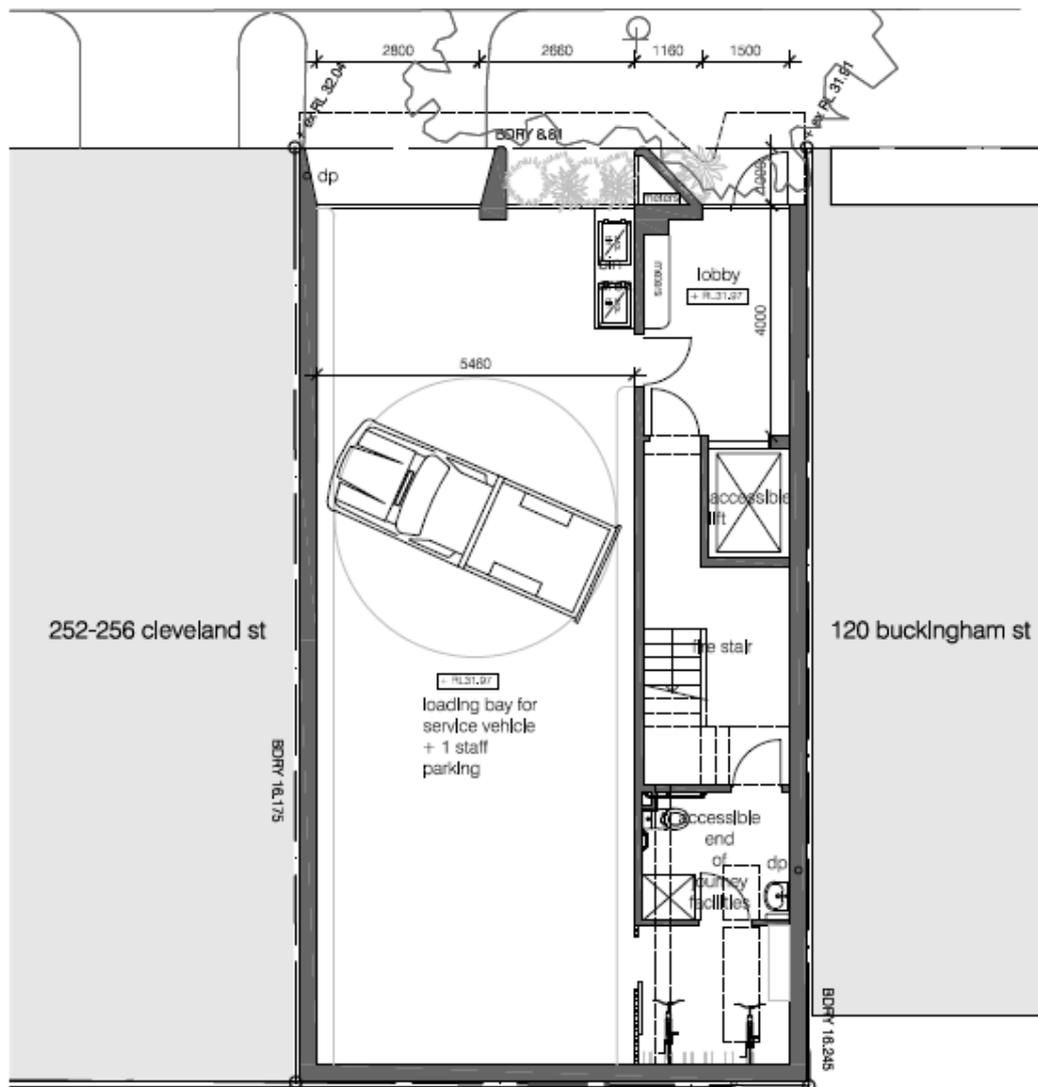


Figure 5: The approved ground floor layout

Economic/Social/Environmental Impacts

14. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
 - (a) Environmental Planning Instruments and DCPs.

State Environmental Planning Policy No 64—Advertising and Signage

15. A signage strategy accompanies the application and proposes one under-awning sign and one wall sign to the Buckingham Street frontage. The signs will not be illuminated and are to be made of matte steel.
16. SEPP No. 64 was gazetted on 16 March 2001 and aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.

17. Clause 8 of SEPP No. 64 states the following:

A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:

- (a) that the signage is consistent with the objectives of this Policy as set out in Clause 3 (1) (a), and
- (b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.

Assessment Criteria

18. The signage strategy has been assessed in accordance with the assessment criteria of SEPP No. 64.
19. The signs are of an appropriate size, form and location in keeping with the architecture of the building and the context of the surrounding area. The signs will not be illuminated and will not adversely impact the safety and function of the adjacent footpath and road. The signs will not add to clutter within the street and are appropriately sited adjacent to the entrance to the premise.
20. The signage strategy is consistent with the assessment criteria and objectives of SEPP No. 64 and is acceptable. A condition of consent is recommended requiring any future signage to be consistent with the strategy.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

21. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
22. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
- (a) protect and improve hydrological, ecological and geomorphologic processes;
 - (b) consider cumulative impacts of development within the catchment;
 - (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off;
 - (d) protect and rehabilitate riparian corridors and remnant vegetation.
23. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained with the deemed SEPP.

Sydney LEP 2012

24. The site is located within the B4 - Mixed Use zone. The proposed use is defined as a retail premise and is permissible with consent.

25. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.4 Floor Space Ratio	No	A maximum FSR of 2:1 is permitted. A FSR of 2.56:1 is proposed, excluding the "end of journey facilities" already approved under D/2016/898. Further discussion is provided under the Issues heading.
4.6 Exceptions to development standards	Yes	The application seeks to vary the FSR standard under Clause 4.4 Further discussion is provided under the Issues heading.
5.10 Heritage conservation	Yes	The site is located within the Cleveland Gardens conservation area (C62) and adjoins a local heritage item being no. 120 Buckingham Street to the north and is opposite a local heritage item at nos. 91-101 Buckingham Street. The proposed signage strategy is compatible with the character and appearance of the conservation area. The proposed use will also enhance the vitality of the conservation area.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
6.21 Design excellence	Yes	The proposed retail use of the space is compatible with the existing use and location of the site, and the signage strategy is consistent with the design excellence provisions.

Part 7 Local Provisions - General	Compliance	Comment
7.15 Flood planning	Yes	The floor area is above the 1 in 100 year probable flood level.

Sydney DCP 2012

26. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

2.11.8 Prince Alfred Park Locality

The subject site is located in the Prince Alfred Park East locality. Subject to recommended conditions regarding noise, trading hours and servicing, the use of the ground floor for a retail premise will contribute positively to the mixed use area.

3. General Provisions	Compliance	Comment
3.1 Public Domain Elements	Yes	A condition of consent is recommended requiring the removal of the existing vehicle crossing to Buckingham Street prior to the commencement of the use and the issue of an occupation certificate.
3.2 Defining the Public Domain	Yes	Subject to conditions of consent, the use will not adversely impact the amenity of the surrounding area whilst providing an active frontage to Buckingham Street.
3.7 Water and Flood Management	Yes	The floor area is above the 1 in 100 year probable flood level.
3.9 Heritage	Yes	See discussion under Clause 5.10 of the Sydney LEP.
3.11 Transport and Parking	Yes	Sufficient worker and visitor bike spaces are provided at ground floor level (approved under D/2016/898).
3.12 Accessible Design	Yes	A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the NCC.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.

3. General Provisions	Compliance	Comment
3.14 Waste	Yes	<p>A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.</p> <p>Waste collection and servicing are only permitted from 7.00am to 8.00pm weekdays and 9.00am to 5.00pm weekends and public holidays, to avoid noise disruption to the surrounding area</p>
3.16 Signage and Advertising	Yes	<p>The application is accompanied by a signage strategy, proposing an under-awning sign and a wall sign.</p> <p>A condition of consent is recommended requiring any future tenant proposing signage to comply with the signage strategy.</p>

Issues

Floor space

27. The applicant has submitted a request to vary the maximum floor space ratio standard of 2:1 pursuant to Clause 4.6 of the Sydney Local Environmental Plan 2012. The conversion of the ground floor to a retail premise increases the gross floor area of the building by 80.7sqm, resulting in a floor space ratio of 2.56:1 or 28% over the standard. Car parking and loading areas are excluded from the calculation of gross floor area in accordance with the definition under the Sydney LEP 2012. As such, the conversion of the car parking and loading area to retail increases the gross floor area of the building.
28. The floor space ratio calculation excludes the end of journey floor space approved under D/2016/898 in accordance with Clause 6.13 of the Sydney Local Environmental Plan 2012. The site is provided additional floor space above the standard equal to a floor space ratio of 0.08:1.
29. A statement in support of the variation to the floor space ratio standard pursuant to Clause 4.6 of the Sydney LEP 2012 has addressed the relevant matters for consideration under subsection (3), being that compliance with the standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard. The applicant stated the following specifically to address subsection (3):
- The development will not increase the bulk of the building.
 - The development reflects the desired character of the area.

- The development meets the needs of the surrounding area.
 - The development improves the activation of the street.
 - The proposal is consistent with the provision of ground floor retail and mixed uses above seen in the surrounding area.
 - The loss of on-site parking will have a negligible impact on street parking.
30. In accordance with subsection (4), development consent cannot be granted where the applicant's submission has not adequately addressed the matters for consideration under subsection (3) and where the proposal is not in the public interest because it is inconsistent with the objectives of the height standard and the objectives of the zone.
31. The objectives of the B4 - Mixed Use zone are as follows:
- To provide a mixture of compatible land uses.
 - To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
 - To ensure uses support the viability of centres.
32. The objectives of Clause 4.4 the floor space ratio standard are as follows:
- (a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,
 - (b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,
 - (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,
 - (d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.
33. The development is consistent with the objectives of the B4 - Mixed Use zone by converting a car parking space into a retail space at ground level. The development will provide greater activation of the street and, subject to conditions to protect the amenity of neighbouring residential properties, will integrate well with the mixed use surroundings.
34. The site is in an accessible location being approximately 500 metres from Central Station and future light rail stations, and 200 metres from bus stops on Chalmers Street and Cleveland Street. By reducing the provision of car parking on site and the surrounding street network having restricted parking, staff and patrons will rely on active and public transportation. It is noted that the loss of one car space on the site will be compensated by the addition of one on street car space following the deletion of the driveway.
35. With regard to objective (a) of the floor space ratio standard, the development will support the needs of the surrounding area. The development will not detract from nearby centres and will support the nearby resident and worker population.

36. With regard to objective (b), the development will not result in additional bulk on the site and is a more efficient use of land. Staff and patrons have access to active and public transport with restricted on street parking.
37. With regard to (c), the addition of 80.7sqm of retail gross floor area will not overwhelm nearby infrastructure. Notwithstanding, the development is subject to section 7.11 contributions which are discussed further in the report.
38. With regard to (d), the site is located within a mixed use area, with residential, office, business and retail premises in close proximity and a significant feature of the area. Section 3.2 of the Sydney Development Control Plan 2012 encourages active ground floor uses such as retail premises, while private car parking in accessible locations such as this is discouraged. Conditions of consent are recommended to ensure the future use of the premise will not adversely impact the amenity of the surrounding area.
39. The development will not increase the bulk of the building and will be a positive contribution to the streetscape. The on street loading space in front of the property will accommodate demand for servicing the site. Variation to the maximum floor space ratio permitted is therefore unreasonable and unnecessary and there are sufficient environmental planning grounds to support the variation. The development is consistent with the objectives of the zone and the floor space ratio standard and is therefore in the public interest. The applicant has adequately addressed the provisions of Clause 4.6(3) and accordingly the development meets the tests of subsection (4). The variation is therefore acceptable.

Amenity

40. In accordance with Section 4.2.9 of the Sydney DCP 2012, non-residential uses within the B4 - Mixed Use zone are required to consider impact on the amenity of nearby residential properties. The relevant matters for consideration are trading hours, noise and vehicular and pedestrian traffic.
41. The specific use and fit-out of the premise is to be determined by way of a subsequent complying development certificate or development application. The application proposes trading hours from 7.00am to 10.00pm every day. The hours are generally consistent with the complying development codes for retail premises and the City's draft Open and Creative City controls, which identifies the site as suitable for retail trading from 7.00am to 10.00pm.

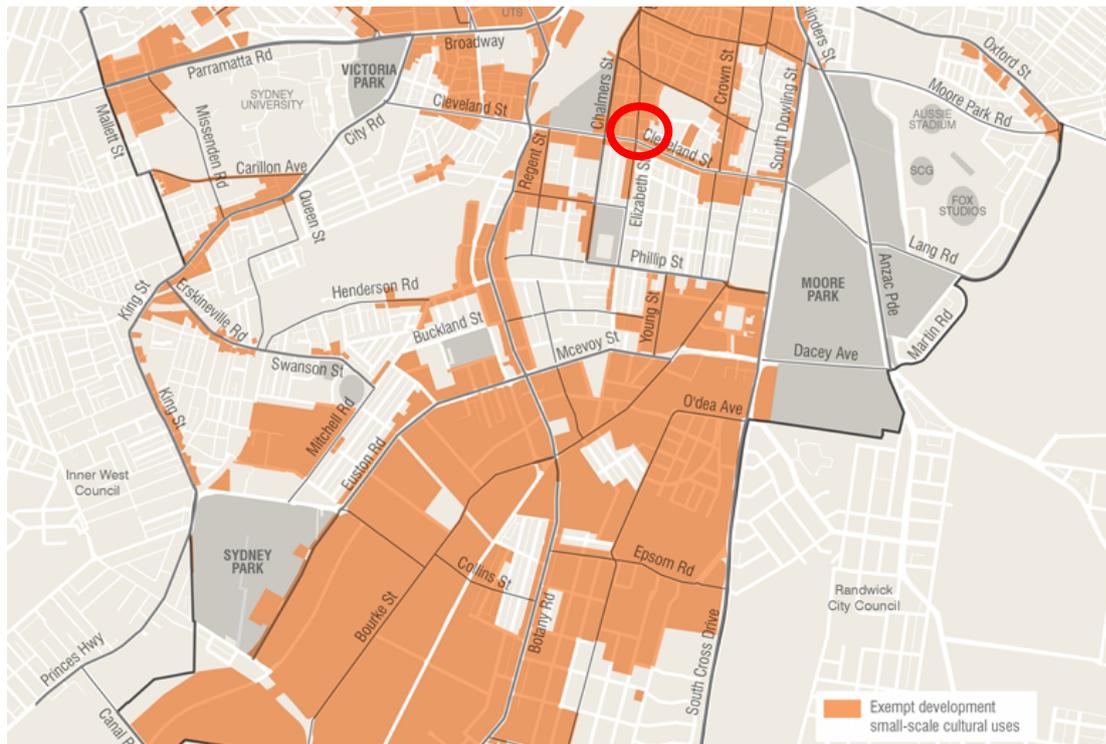


Figure 6: The site, circled in red, is identified as appropriate for retail trading from 7.00am to 10.00pm under the draft Open and Creative City policy

42. Conditions of consent are recommended requiring any future premise to mitigate noise and ensure that waste collection and servicing are undertaken from 7.00am to 8.00pm weekdays and 9.00am to 5.00pm weekends and public holidays to avoid noise disruption to the surrounding area.
43. It is noted that pubs, small bars, food and drink premises with greater than 50 patrons, and entertainment facilities cannot be approved under complying development provisions. Any application for these premises would be required to submit a subsequent development application.

Parking and deliveries

44. The development will displace one car space and loading area from the site. One additional on street car space will be provided with the deletion of the driveway, improving the availability of parking for the general public. There is a loading zone located in front of the premises which may be used for deliveries. As previously discussed, the traffic and servicing demands anticipated from a retail use will be minimal and not adversely impact the availability of car parking and loading areas in the surrounding street network.
45. Business parking permits may only be issued to future operators in accordance with Council's parking permit policy. In the event that a business parking permit is issued, it is unlikely to noticeably reduce the availability of on street parking in the surrounding area.

Other Impacts of the Development

46. The proposed development is capable of complying with the BCA. It is Class 6.

47. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

Suitability of the site for the Development

48. The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial/residential surrounding and amongst similar uses to that proposed.

Internal Referrals

49. The premises has not been designed in a way that could physically accommodate a mechanical ventilation system to discharge to the roof. As such, Council's Environmental Health officer recommended a condition limiting any future food and drink premises to pre-packaged food only.

External Referrals

Notification and Delegation

50. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development was notified for a period of 14 days between 23 February 2018 and 10 March 2018. As a result of this notification there were four submissions received raising the following objections:

- (a) The development exceeds the maximum floor space ratio permitted for the site.

Response - The applicant has submitted a request to vary the maximum permitted floor space ratio for the site in accordance with Clause 4.6 of the Sydney LEP 2012. As discussed previously, the variation is acceptable.

- (b) The development does not specify the future use of the premise.

- (c) The area is well served by food and drink premises.

Response - Any future use will be subject to either the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 or a subsequent development application. The concentration of other food and drink premises in the area is not a planning consideration under current controls.

- (d) The loss of on-site car parking will reduce the availability of on street parking spaces.

Response - Subject to a condition requiring the deletion of the driveway, the development will compensate the loss of one on-site car space with one on street car space, which will be available for the general public. In addition, the City's controls discourage on-site parking and reliance on private vehicles.

- (e) Deliveries and waste collection will be undertaken at all hours, disrupting the amenity of the surrounding area.

Response - Conditions of consent are recommended limiting waste collection and servicing from 7.00am to 8.00pm weekdays and 9.00am to 5.00pm weekends and public holidays to avoid noise disruption to the surrounding area.

- (f) Noise from any future use

Response - A condition is recommended to limit the noise from any future use.

- (g) Odour from any future food and drink premises

Response - The premise has not been designed to accommodate a mechanical ventilation system to discharge to the roof. As such, a condition is recommended restricting any future food and drink premises to pre-packaged food only, with no primary cooking of food.

- (h) Potential issues from patrons smoking in front of the premise

Response - Smoking in public areas is regulated by NSW Health under the Smoke Free Environment Act 2000.

Public Interest

51. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

S7.11 Contribution

52. The development is subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015. The calculation is based on the highest order retail use, being a food and drink premises (restaurant, cafe or take away premise).

53. The following monetary contribution is required towards the cost of public amenities:

(a) Open Space	\$4,872.57
(b) Community Facilities	\$4,591.15
(c) Traffic and Transport	\$763.85
(d) Stormwater Drainage	\$0
Total	\$10,227.58

Conclusion

54. The application proposes the use of the approved ground floor car park and loading area as a retail premise. The application does not propose any works, with the specific use and fit-out of the premise subject to a subsequent application for either a complying development certificate or development consent. The proposed hours are from 7.00am to 10.00pm every day. A signage strategy accompanies the proposal.
55. The changes to the front facade and ground floor to facilitate the retail use have been undertaken without consent. The works are compatible with the architecture of the building and streetscape, while the works were certified by the Principal Certifier during the construction of the building. As such no action is proposed on the unauthorised works.
56. The applicant has submitted a request to vary the maximum floor space ratio for the site pursuant to clause 4.6 of the Sydney Local Environmental Plan 2012. The conversion of the car park space increases the gross floor area of the building by 80.7sqm, resulting in a floor space ratio of 2.56:1 or 28% over the maximum permitted floor space ratio of 2:1. This calculation excludes the end of journey facilities approved under D/2016/898.
57. The variation to the standard is acceptable as the additional floor area will not increase the bulk of the building, will improve the activation of the street and, subject to conditions, will not adversely impact the amenity of the surrounding area. The variation satisfies the tests under clause 4.6 and is supported.
58. The future use and fit-out of the site may be undertaken in accordance with the SEPP (Exempt and Complying Development Codes) 2008, which does not permit pubs, small bars, restaurants and cafes with more than 50 people and entertainment facilities. Any of these uses would be subject to a future development application.
59. The proposed trading hours are consistent with Council's planning controls and the draft Open and Creative City policy. Conditions of consent are recommended regarding noise, servicing and the deletion of the driveway to protect the amenity of the surrounding area and provide one additional on street car space.
60. The development is in the public interest and recommended for approval.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

David Zabell, Specialist Planner