

Relevant Information for Local Planning Panel

FILE: D/2019/1163 **DATE:** 25 November 2020

TO: Local Planning Panel Members

FROM: Andrew Thomas, Acting Director City Planning, Development and Transport

SUBJECT: Information Relevant To Item 3 – Development Application: 51 Buckingham Street, Surry Hills – D/2019/1163

For Noting

That the Local Planning Panel note the information contained in this memo.

Background

The Panel Chair has requested that Council officers provide clarification on the following issues:

Issue 1: Photos of subject site

The Panel Chair has raised concern that the photos presented in the assessment report are reproduced from the applicant's submission.

A site visit was undertaken by the assessing officer, Area Planning Manager and Heritage Specialist on 5 December 2019. It was the intention of Council staff to take photos of the site during the inspection as is standard practice for development assessment. However, the applicant/ landowner objected to Council staff taking any photos of the site.

Subsequently, the applicant submitted photos of the site and an associated Digital Images Catalogue Sheet on 10 December 2019. 38 photos of the site and a catalogue with each image keyed to the floor plans were submitted. This, combined with the undertaking of an in-person site inspection of both the internal and external elements of the building, were sufficient for assessment purposes.

Figures 2, 3, 4, 5, 6 and 7 in the assessment report contain photos of the site taken by the applicant.

Issue 2: Photos of view impacts from objector's apartment

Figures 15 and 16 in the assessment report were provided by the relevant objector in their submission dated 4 December 2019. The objection relates to view loss impacts from unit 72/156 Chalmers Street, Surry Hills.

A site inspection to this apartment was not considered warranted in this instance as this was not requested by the objector and the photos provided in the submission were sufficient in order to assess the view impacts.

Notwithstanding, a site inspection of the objector's apartment was undertaken by Council officers on 24 November 2020. The below photos were taken:



Figure 1: View from living room at 72/156 Chalmers Street, Surry Hills, looking north-west

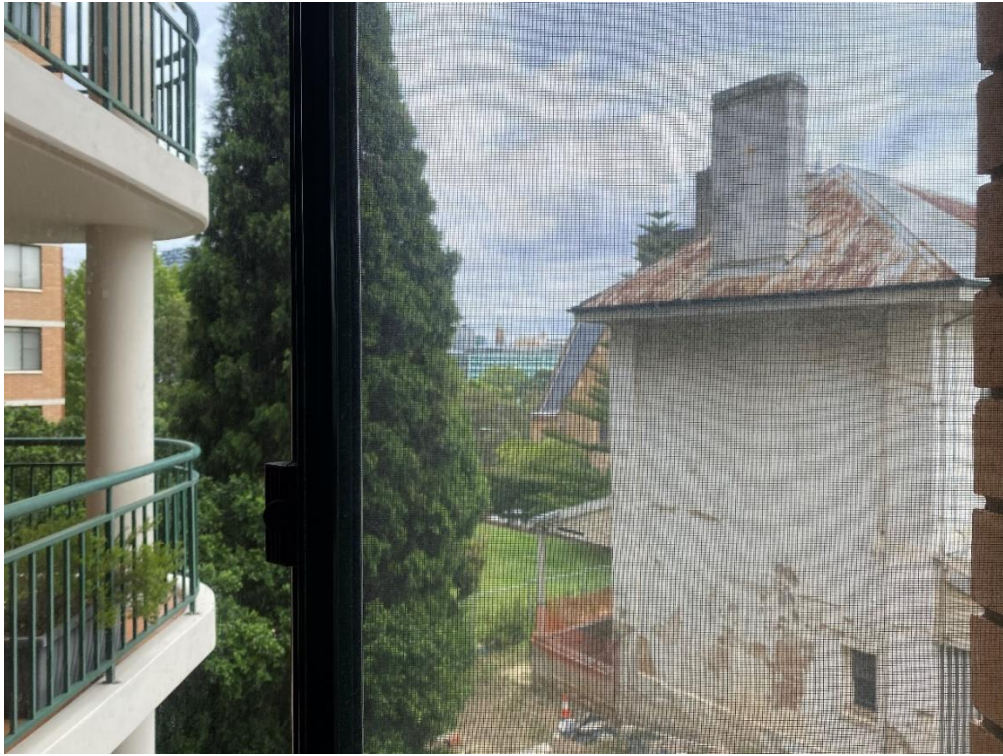


Figure 2: View from western-most window of living room at 72/156 Chalmers Street, Surry Hills, looking north-west



Figure 3: View from bedroom at 72/156 Chalmers Street, Surry Hills, looking north-west



Figure 4: View from bedroom at 72/156 Chalmers Street, Surry Hills, looking north-west



Figure 5: View from balcony at 72/156 Chalmers Street, Surry Hills, looking north-west



Figure 6: View from balcony at 72/156 Chalmers Street, Surry Hills, looking north

The assessment report considers the issue of view impacts in paragraphs 51-52. The impacts are assessed against the planning principles established by *Tenacity Consulting v Warringah Council (2004)*. The four-step assessment is outlined as follows:

(a) *Views to be affected*

The views to be affected remains unchanged from the original assessment. The view in question is a keyhole view between the Princes Gardens Residence A building and the south-west section of Cleveland House. The view is of the lawn and gardens at Princes Gardens, Chalmers Street, Prince Alfred Park and city buildings beyond.

The abovementioned views are not water views nor iconic views (eg of the Opera House or the Harbour Bridge). It is also a partial view rather than a whole view. Therefore, the view in question has minimal value compared to water or iconic views.

(b) *From what part of the property the views are obtained*

The part of the property from which the views are obtained remains unchanged from the original assessment. The view is at an oblique angle and is across numerous side boundaries, which is more difficult to protect. As noted in the relevant judgement, the expectation to retain side views is often unrealistic.

(c) *Extent of the impact*

The submission raised concern about views obtained from a balcony and living room. During the site inspection it was observed that views are also obtained from a north-facing bedroom.

It is noted that the impact on views from living areas is more significant from bedrooms or service areas.

(d) *Reasonableness of the proposal that is causing the impact*

This remains unchanged from the original assessment. The proposal is supported from a heritage perspective with regard to the overall impact on the State heritage item. It complies with the FSR and height in storeys control, however exceeds the 6m height control. As outlined in the discussion section of the assessment report, the proposed height is supported as it is well below the height of the existing building which already exceeds the 6m height control.

Issue 3: Proposed toilet and shower numbers

The Panel has asked if the proposed toilet and shower numbers exceed code requirements for the number of occupants.

Council's Manager Construction & Building Certification Services has advised that the proposed facilities will meet the minimum BCA requirements for sanitary facilities for the existing use of the premises. It is noted that the BCA only provides minimum requirements, not maximum requirements. Based on BCA requirements, the provided sanitary facilities in the rear addition will support 40 male occupants and 30 female occupants. The facilities in the eastern wing would support either 40 males or 30 females.

It is unknown if these numbers exceed the minimum number of workers at this location as this information has not been provided by the applicant, given no intensification of use is proposed.

Issue 4: Fire separation requirements

The Panel has asked if the proposed services extension complies with fire separation requirements, in particular windows and timber cladding close to the boundary.

Any development would need to demonstrate compliance with the Building Code of Australia (BCA) at Construction Certificate stage.

The prescribed conditions in accordance with Division 8A of the *Environmental Planning and Assessment Regulation 2000* require compliance with the BCA. These are included in the recommended conditions of consent.

Issue 5: Condition 1

Condition 1 contains a minor error in referring to Drawing no. 783B-DA-225D, Revision D. See below for alternative recommendation.

Issue 6: Condition 5

The Panel has asked whether the change required by Condition 5 relates to both the SE and SW corners as per the GTA. The south corner described in Condition 5 refers to the south corner of the entire site, being the south-western wing.

For clarity, Condition 5 can be amended as per the alternative recommendation below.

Issue 7: Conditions 23 and 25

The Panel has suggested that Conditions 23 and 25 could specifically mention the Right of Way as per the objections received.

The existing wording of Conditions 23 and 25 is considered sufficient as a means of ensuring that no encroachments occur beyond the boundaries of the subject site. However, this condition can be modified to clarify if requested by the Panel.

Issue 8: Addendum to submission (Attachment C)

The Panel Chair has requested that Council Officers provide a response to the issues raised in the addendum to a previous submission, submitted on 24 November 2020.

Comments on the issues raised in the addendum are provided as follows:

(a) Impacts to western vistas

The submitter raises heritage concerns including impacts to the western vista of Cleveland House.

The proposal has been assessed by Heritage NSW and general terms of approval were granted. The proposal, including the additions to the rear that will be visible from the west, are supported by Heritage NSW, subject to design conditions. This includes Condition 2 of the GTAs, which requires the proposed length and size of the toilet block to be reduced to ensure that the western and eastern facades of the original building are not impacted adversely.

The proposal has also been assessed by Council's Heritage Specialist, who supports the proposal subject to conditions. Council's Heritage Specialist has noted that the new addition block at the rear to host the fire stairs and toilets is supported. The impact is moderate but is a preferred option to avoid internal penetrations to the existing building.

It is also noted that Council's Heritage Specialist supports the demolition of the existing 1940's bathroom on the first floor at the rear as this results in a positive heritage outcome for the building.

(b) Design alternatives

The submitter raises concern that the owner has not exhaustively considered all design alternatives and provides a number of design suggestions.

Heritage NSW and Council's Heritage Specialist support the current design, subject to conditions.

(c) Parking

The submission states that the development will reduce the number of parking spaces at the rear of the property by two parking spaces, which will put additional demand on street parking.

No car parking spaces are identified on the plans. *Clause 7.6 Office premises and business premises* in SLEP 2012 provides maximum car parking provisions. The site is identified as category D, which allows a maximum of 3 car parking spaces on this site.

The absence of car parking on the site therefore complies with Council's maximum car parking provisions.

Issue 19: Clarification from Heritage NSW (Attachment A)

The Panel has sought clarification as to the intent behind Condition 2 of the GTAs provided by Heritage NSW.

A written response from Heritage NSW is provided in Attachment A.

Issue 10: Clause 4.6 variation request (Attachment B)

The Panel has raised concern with the submitted Clause 4.6 variation request.

An addendum to the original Clause 4.6 variation request, dated 24 November 2020, is provided in Attachment B.

An amended assessment against the requirements of Clause 4.6 is outlined as follows:

Clause 4.6 Request to Vary a Development Standard

1. The site is subject to a maximum height of buildings control of 6 metres. The proposed development has a height of 7.9 metres, which results in a 31.6% variation to the standard. The existing building exceeds the maximum height control.
2. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
 - a. That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - b. That there are sufficient environmental planning grounds to justify contravening the standard;
 - c. The proposed development will be consistent with the objectives of the zone; and
 - d. The proposed development will be consistent with the objectives of the standard.
3. A copy of the applicant's written request is provided at Attachment B.

Applicants Written Request - Clause 4.6(3)(a) and (b)

4. The applicant seeks to justify the contravention of the height development standard on the following basis:
 - a. That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - i. The proposed height of the rear roof extension is below the existing height of the building, which exceeds the height development standard as existing, but is appropriate to the condition of the site and its context and compatible with objectives of the standard.
 - ii. The proposed works are only visible from the rear of the property and has minimal visibility from the public domain or Bedford Streets and only of negligible visibility from Buckingham Street.
 - iii. The height limit to the immediate east of the subject property is "J" (9 metres), to the immediate west is "T2" (27 metres) and north and south is "R" (22 metres), so that non-compliance with the development standard would not contravene the overall objectives of the standard as stated above and unjustly penalise development on the subject site.
 - iv. The height limit placed on the subject property given the height limitations on surrounding properties is unreasonable and inappropriate in the surrounding context.
 - v. The existing building establishes and respects notions of transition in built form and land use intensity. It is part of a group with a high quality relationship to private built form and public space void. Thus it contributes to streetscape and character.
 - vi. The proposal will be compatible with the existing historic building on its site and will have minimal impact on its compatibility with the adjoining 'modern' buildings. There is no change proposed to land use; the existing usage is compatible with the usage of surrounding B4 Mixed Use zone properties and its integration within the local community.
 - vii. The height of the proposed works are above the height standard but they are respectful of its heritage context, being both subservient to the original roof and the bulk of the original building and is in keeping with the original character.
 - viii. The proposed additions are 200mm below the height of the existing 1940's services which are to be demolished and replaced as proposed in the subject development application.

- b. That there are sufficient environmental planning grounds to justify contravening the standard:
 - i. The proposed rear roof extension is located at the rear and has minimal visibility from the public domain.
 - ii. The proposed rear roof extension is below the existing maximum height of the existing building.
 - iii. There is no change to the front elevation of the building.
 - iv. The proposal will not result in adverse environmental impacts to surrounding properties.
 - v. There is no significant loss of views which are shared with the subject property and the adjoining building to the south which is marginally and only partially affected by the proposal.
 - vi. There is no significant additional overshadowing to the adjoining building to the south with the proposal which is marginally affected by the proposal.
 - vii. The proposal involves resolution of historic issues associated the relocation of the intrusive toilet block which will assist the preservation of important conservation fabric.
- c. The proposed development will be consistent with the objectives of the zone;
 - i. The proposal allows for the continuance of habitable, appealing and adaptable use of the subject premises and which is consistent with the objectives for the B4 Mixed Use zone enabling integration of suitable business, office, residential and other development by promoting public transport patronage and to encourage walking and cycling consistent with existing local practices.
 - ii. There is no change proposed to land use; the existing usage is compatible with the usage of surrounding B4 Mixed Use zone properties and its integration within the local community.
- d. The proposed development will be consistent with the objectives of the standard
 - i. The proposed height of the rear roof extension is below the existing height of the building, which exceeds the height development standard as existing, but is appropriate to the condition of the site and its context and compatible with objectives of the standard.

- ii. The existing building establishes and respects notions of transition in built form and land use intensity. It is part of a group with a high-quality relationship to private built form and public space void. Thus, it contributes to streetscape and character;
- iii. The proposed works are below the original height of the historic building. While the proposed works are above the height standard, it is respectful of its heritage context, being both subservient to the original roof and is in keeping with the original character. The proposed works are 200mm below the height of the 1940s amenities being replaced.
- iv. The proposed works have minimal visibility from Buckingham Street and no visibility from Bedford Street.
- v. There is no significant loss of views which are shared with the subject property and the adjoining building to the south which is marginally and only partially affected by the proposal.

Consideration of Applicants Written Request - Clause 4.6(4) (a) (i) and (ii)

- 5. Development consent must not be granted unless the consent authority is satisfied that:
 - a. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
 - b. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

- 6. The applicant has adequately addressed that compliance with the standard is unreasonable or unnecessary in the circumstances of the case.
- 7. It is considered that the objectives of the height development standard are achieved notwithstanding the non-compliance. The existing building, being a State Heritage Item, exceeds the 6m height of buildings control and the proposed addition sits below the maximum height of the existing building. The proposed height is therefore appropriate to the condition of the site and its context.
- 8. An appropriate height transition is proposed, with the new development being subservient to the existing heritage item. It is also considered to promote the sharing of views, with acceptable view impacts to neighbouring properties.

Does the written request adequately address those issues at clause 4.6(3)(b)?

9. The applicant has adequately addressed that there are sufficient environmental planning grounds to justify contravening the standard. The proposed additions sit below the existing maximum building height. The additions comply with requirements relating to solar access and overshadowing and will not result in unreasonable environmental impacts to the subject site or neighbouring properties.

Is the development in the public interest?

10. The proposed development will be in the public interest because it is consistent with both the objectives of the height development standard and the objectives for development within the B4 Mixed Use zone.
11. The relevant objectives of the height of buildings development standard are:
 - (a) To ensure the height of development is appropriate to the condition of the site and its context.
 - (b) To ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas.
 - (c) To promote the sharing of views.
12. The proposal provides an acceptable transition from the neighbouring residential developments to the subject site and sits below the maximum height of the existing building on the site. It allows an appropriate height transition to a heritage item and is of a height that is suitable for the heritage conservation area. It will not impact on any significant views or result in any adverse amenity impacts to surrounding development.
13. The objectives of the B4 Mixed Use zone are:
 - (a) To provide a mixture of compatible land uses.
 - (b) 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.
 - (c) To ensure uses support the viability of centres.
14. The proposal is consistent with the objectives for development in the B4 Mixed Use zone in that it is ancillary to an existing commercial land use and will not be incompatible with existing land uses.
15. The proposal is in the public interest because it is consistent with both the objectives of the height development standard and the objectives of the B4 Mixed Use zone.

Conclusion

16. For the reasons provided above the requested variation to the height development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of height development standard and the B4 Mixed Use zone.

Alternative Recommendation

It is resolved that consent be granted to Development Application No D/2019/1163, subject to the conditions detailed in Attachment A to the subject report to the Local Planning Panel on 25 November 2020, subject to the following amendments (additions shown in ***bold italics***, deletions shown in ~~strike through~~):

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2019/1163 dated 21 October 2019 and the following drawings prepared by Jeff Madden and Associates.

Drawing Number	Drawing Name	Date
783B-DA-141B, Revision B	Proposed Basement Floor Works	September 2018
783B-DA-142F, Revision F	Proposed Ground Floor Works	June 2020
783B-DA-143D, Revision D	Proposed Second Floor Works	June 2020
783B-DA-144C, Revision C	Proposed Roof Plan	June 2020
783B-DA-213E, Revision E	Proposed East Elevation	June 2020
783B-DA-211D, Revision D	Proposed South Elevation	June 2020
783B-DA-212B, Revision B	Proposed West Elevation	June 2020
783B-DA-210A, Revision A	Proposed North Elevation	August 2018
783B-DA-214F, Revision F	Section 1	June 2020
783B-DA-2215D, Revision D	Section 2	November 2019
783B-DA-216D, Revision D	Section 3	June 2020

(5) VERANDAH ROOF RECONSTRUCTION

The extension of the verandah roof on the ~~south corner~~ **south west and south east corners of the western wing** must adopt a shake roofing and not glass. Details of the above are to be submitted to and approved by Council's Area Planning Manager/ Area Coordinator Planning Assessments prior to the issue of a construction certificate.

Prepared by: Samantha Campbell, Planner

Attachments

- Attachment A.** Clarification from Heritage NSW – 24 November 2020
- Attachment B.** Addendum to Clause 4.6 Variation Request – Height of Buildings
- Attachment C.** Addendum to Submission (Confidential) – 24 November 2020

Approved



ANDREW THOMAS

Acting Director City Planning, Development
and Transport