

Relevant Information for Central Sydney Planning Committee

FILE: D/2021/35 **DATE:** 12 August 2021

TO: The Central Sydney Planning Committee

FROM: Graham Jahn AM, Director City Planning, Development and Transport

SUBJECT: Information Relevant To Item 4 – Development Application: 331-337 Kent St, Sydney – D/2021/35

Alternative Recommendation

It is resolved that:

- (A) the requirement under Clause 6.21 of the Sydney Local Environmental Plan 2012 requiring a competitive design process is unreasonable or unnecessary in the specific circumstances;
- (B) the requirement under Clause 7.20 of the Sydney Local Environmental Plan 2012 requiring the preparation of a development control plan is unreasonable or unnecessary in the circumstances; and
- (C) consent be granted to Development Application No D/2021/35, subject to the conditions detailed in Attachment A to the subject report to the Central Sydney Planning Committee on 12 August 2021, subject to the following amendments (additions shown in ***bold italics***, deletions shown in ~~strikethrough~~):

Schedule 1 – Recommended conditions of consent

(7) HERITAGE CONSERVATION WORKS (*HISTORIC VICTORIAN FACADE ONLY*)

- (a) Prior to the issue of the Construction Certificate, a schedule of conservation works to be undertaken concurrent with the works is to be submitted to Council's Urban Design and Heritage Manager for approval.
- (b) The schedule is to detail the conservation of all fabric identified as having a heritage value.

- (c) The schedule is to be supported by outline specifications, methodologies and detailed architectural sections, elevations and plans at 1:20 and 1:5 scales. The details should incorporate any structural and/or building services design for the building.
- (d) The proposed works are to be carried out in a manner that minimises demolition, alterations and new penetrations/fixings to the significant fabric of the existing building.
- (e) All conservation and adaptation works are to be in accordance with the Articles of the Australian ICOMOS Burra Charter 2013. Appropriate qualified contractors and tradespersons are to be commissioned who are skilled in traditional building and engineering trades to carry out the proposed scope of works within the heritage building.
- (f) INSPECTION AND APPROVAL: The conservation works are to be progressively inspected by and be implemented to the satisfaction of the Council's Urban Design and Heritage Manager prior to the issue of any Occupation Certificate or commencement of the use, whichever is the earlier.

(17) FUTURE FOOD USE – MECHANICAL VENTILATION PROVISION

~~Prior to the issue of a Construction Certificate, the mechanical exhaust systems and/or shafts must be designed to allow for the discharge of effluent air above roof level and must be designed with capacity to accommodate exhaust ducts and mechanical ventilation systems for all commercial tenancies proposed with the potential to become a food premises in the future. Systems must be designed in accordance with AS1668.2 – The Use of Ventilation and Air-conditioning in Buildings – Mechanical Ventilation in Buildings, and AS1668.1 – The Use of Ventilation and Air-conditioning in Buildings – Fire and Smoke Control in Buildings.~~

(18) HOURS OF OPERATION

~~The hours of the commercial and retail premises are restricted to between 7am and 40pm Monday to Sunday.~~

(a) The internal hours of operation of any upper level business premises or office premises are permitted to operate 24 hours daily.

(b) The hours of operation of any ground floor retail premises is restricted to between 6am and 7pm daily.

(96A) INTERNAL LIGHTING SYSTEM

The internal lighting system for the commercial office spaces must provide for the efficient use of energy including the use of energy efficient light fittings, zoned lighting and controls and sensors to ensure automatic switch off during non-working hours. LED lighting technology (or other technology with an improved lighting power density – watts per square metre) must be implemented. Details of the internal lighting system must be submitted to and approved by the Accredited Certifier prior to a Construction Certificate being issued.

Background

On 10 August 2021 the subject applicant requested the above amendments to the recommended conditions of consent (refer Table 1 below).

Table 1: Proposed changes to conditions submitted to Council on 10 August 2021

Condition	Comment
Condition 7	<p>We request that this condition be amended so that it is clear that it only relates to the historic facade in the same way as Condition 6.</p> <p>This request seeks to ensure that the documentation required to satisfy the condition relates only to the facade and cannot be expanded to relate to the broader building.</p>
Condition 17	<p>This condition relates to a food tenancy with cooking facilities. As was noted during the assessment, there is no kitchen exhaust proposed because there is no intention to have a commercial kitchen. It is proposed as a simple lobby café with sandwich press (similar to many commercial office developments throughout the CBD (e.g. Long & Short – Angel Place). Commercial kitchens also trigger grease arrestors and a different building class, which requires higher fire rating of the lobby compartment which is not proposed as part of the development.</p> <p>On that basis we question the necessity for inclusion of this condition.</p>
Condition 18	<p>As previously identified in email correspondence, we believe this condition in its current form creates commercial implications in relation to the commercial office component of the development.</p> <p>The proposed amendments suggested by Council are supported:</p> <ul style="list-style-type: none">a) <i>The internal hours of operation of any upper level business premises or office premises are permitted to operate 24 hours daily.</i>b) <i>The hours of operation of any ground floor retail premises is restricted to between 76am and 47pm daily.</i> <p>We have suggested an amendment to the above with regard to the hours of operation of the retail premises as most would require staff to be on premises by 6am/6.30am to commence preparation for the day.</p>

The requested changes are supported for the following reasons:

1. The proposed amendment to **Condition 7** with the inclusion of the words 'historic Victorian facade' confirms that the condition applies only to this part of the existing building. Conservation works to the existing 1980s tower (which does not contain heritage value) are not required;
2. Given the comprehensive redevelopment of the building, it is considered prudent to require the base building to be designed and constructed to allow for any future kitchen exhaust to be discharged at the top of the building. The intent of **Condition 17** is to facilitate the easy adaption of a tenancy for any future food premises use involving a commercial kitchen. This is as any future horizontal discharge of kitchen exhaust may not be supported as it may have unacceptable amenity impacts and will not be able to meet minimum separation distances from openings, Nevertheless, the proposed deletion of Condition 17 is acceptable as the applicant notes the retail tenancies will not have commercial kitchens.
3. The proposed amendment to **Condition 18** is acceptable. The original intent of the condition was to ensure retail premises (which also includes by definition in the Sydney LEP 2012 'food and drink premises') would not be permitted to operate into the later evening hours without supporting documentation (Acoustic Report, Plan of Management) as usually required to properly assess any potential noise or amenity impacts. The commencement time of 6am is commensurate with surrounding café uses in the vicinity, which is advised by the applicant as the intended use of the retail tenancies.

The amendment to the condition to permit operation of the commercial office uses at the upper levels of the development on a 24-hour basis is also supported. A further clarification is required to the Planner's Assessment Report (page 96, paragraph 148(a) – extract below) which notes that the condition was imposed on the basis of an objection from a nearby resident, raising the issue of amenity impacts associated with late-night internal cleaner's lighting and potential glare impacts.

Response: The applicant has provided overshadowing diagrams on request in relation to 110-116 Sussex St as part of the amended proposal. As covered above under **Discussion** the diagrams do not suggest that significant overshadowing impacts are likely to occur to the residential apartments. A condition to restrict hours of operation of the commercial tenancies between 7am and 10pm is considered reasonable to address late night cleaner's lighting concerns. The amended proposal complies with the height and FSR controls for the site, and generally complies with the setback provisions in the context of the existing built form. Considering the CBD context of the site, the amenity impacts from the proposal in terms of outlook and overshadowing are acceptable, particularly as the lower 10 floors of 110-116 Sussex Street are approved for commercial uses under D/1985/400. The existing ground floor courtyard at 110-116 Sussex Street is overshadowed by surrounding buildings on June 21 which is the date referenced in the relevant control (Section 4.2.3 of the Sydney DCP 2012) - impacts in summer months are not required to be assessed. The reflectivity of the building is discussed above. A relevant condition will ensure the glare is limited to protect nearby amenity of residents. A materials and samples board will be required as a condition of consent to be assessed by the Council prior to issue of Construction Certificate.

Figure 1: Extract from assessment report D/2021/35 12 August 2021 Page 96 para 148(a)

On further assessment and given the proposed allowance for 24-hour internal office use on the upper floors, an additional condition (refer **Condition 96A**) is recommended requiring zoned lighting and controls, and sensors to ensure automatic switch off during non-working hours. It is also noted the building's proximity to the residents at 110-116 Sussex St is approximately 15m, and the existing eight storeys of commercial/office use at the site have no restriction on hours of operation.

Prepared by: Amy-Grace Douglas, Senior Planner

Approved



GRAHAM JAHN AM

Director City Planning, Development and
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