

**Item 3.****Development Application: 422-424 Cleveland Street, Surry Hills - D/2020/993**

File No.: D/2020/993

**Summary**

**Date of Submission:** 30 September 2020, amended plans received 11 May, 12 August 2021

**Applicant:** Pyrafount No. 6 Pty Ltd

**Architect:** JSA Studio

**Owner:** Pyrafount No. 6 Pty Ltd

**Planning Consultant:** Ethos Urban

**Heritage Consultant:** Letizia Coppo and Associates

**DAPRS:** 7 December 2020, 7 December 2021

**Cost of Works:** \$5,658,567.00

**Zoning:** B4 Mixed Use Zone, proposal permissible with consent

**Proposal Summary:** The application proposes alterations and additions to the Kirk building for a mixed use development including boarding house, cultural entertainment venue and café.

The proposal was considered by the Local Planning Panel (LPP) on 3 November 2021. At that meeting the application was deferred to enable the Design Advisory Panel Residential Subcommittee (DAPRS) to consider the application as amended and comment on:

- The height of new addition including height non-compliance and desirable zone transition.

- Design excellence including the relationship between new additions and the existing structure, scale of the proposed additions, compatibility with the character and road pattern of the local area, and impacts on adjoining properties including privacy and overshadowing to lower level units of 426 Cleveland Street.

The application was reviewed by DAPRS on 7 December 2021. The panel has provided advice in respect of these items. The panel is generally satisfied that the proposal is of an appropriate height and scale and is compatible with the character of the locality. Concern has been expressed with the 'overhang'/ cantilever to the church building. Additional comments have been made in terms of privacy, ventilation, landscaping and spatial requirements.

Revised recommended conditions of consent are provided for the panel's consideration in response to the DAPRS comments. These are included in Attachment C. A deferred commencement condition is also provided in Attachment D for the panel's consideration in response to the DAPRS comments if an alternative recommendation is sought.

**Summary Recommendation:** The development application is recommended for approval, subject to conditions.

**Development Controls:**

- (i) State Environmental Planning Policy No. 55 - Remediation of Land
- (ii) State Environmental Planning Policy (Affordable Rental Housing) 2009
- (iii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (iv) State Environmental Planning Policy (Infrastructure) 2007
- (v) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- (vi) Sydney Local Environmental Plan 2012
- (vii) Sydney Development Control Plan 2012
- (viii) City of Sydney Development Contributions Plan 2015

**Attachments:**

- A. LPP Resolution - 3 November 2021
- B. DAPRS Advice Sheet - 7 December 2021
- C. Amended Recommended Conditions of Consent
- D. Deferred Commencement Condition of Consent
- E. LPP Report - 3 November 2021
- F. Recommended Conditions of Consent - 3 November 2021
- G. Selected Drawings
- H. Applicant Response to DAPRS - 2 February 2022
- I. DAPRS Advice Sheet - 7 December 2020
- J. Clause 4.6 Variation Request - Height of Buildings
- K. Clause 4.6 Variation Request - Motorcycle Parking

## Recommendation

It is resolved that:

- (A) the variation requested to the height of buildings standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld;
- (B) the variation requested to the motorcycle parking standard under State Environmental Planning Policy (Affordable Rental Housing) 2009 in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (C) consent be granted to Development Application No. D/2020/993 subject to the conditions set out in Attachment C to the subject report:

## Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal is consistent with the objectives of the B4 Mixed Use Zone.
- (B) The proposal generally satisfies the relevant controls relating to boarding houses.
- (C) The proposal subject to conditions satisfies the provisions of clause 6.21 of Sydney LEP 2012.
- (D) Based upon the materials presented 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 4.2 of the Sydney LEP 2012;
  - (ii) the proposal is in the public interest because it is consistent with the objectives of the B4 Mixed Use Zone and the height of buildings development standard;
  - (iii) 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 motorcycle parking development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 30(1)(h) of the SEPP (Affordable Rental Housing) 2009; and
  - (iv) the proposal is in the public interest because it is consistent with the objectives of the B4 Mixed Use Zone and the motorcycle parking development standard.

## Background

1. The application was considered by the Local Planning Panel (LPP) at its meeting of 3 November 2021. The panel resolved to defer the application to enable the Design Advisory Panel Residential Subcommittee (DAPRS) to consider the amended proposal and comment on issues previously raised by DAPRS including:
  - (a) height of the new addition, including remaining non-compliance with the height control in clause 4.3 of the Sydney Local Environmental Plan 2021, and a desirable zone transition; and
  - (b) In relation to the design excellence criteria:
    - (i) relationship between the proposed new additions and the existing structure;
    - (ii) scale of the proposed additions;
    - (iii) compatibility with the character and road pattern of the local area (clause 30A State Environmental Planning Policy (Affordable Housing) 2009); and
    - (iv) impact on adjoining properties, including privacy issues relating to operable louvres to the boarding house rooms, and overshadowing of lower level units at 426 Cleveland Street.

## Design Advisory Panel Subcommittee Residential

2. The amended application was considered by DAPRS on 7 December 2021. The advice sheet provided by the panel is included in Attachment B. The panel provided the following comments in response to the deferral items:
  - (a) Height

The reduced height and overall scale of the additions can now be considered acceptable, however any impacts on neighbours due to additional shadowing need to be clarified. Although there is a distinct jump in building height from High Holburn Street and Goodlet Lane to development controls along Cleveland Street the proposal has improved to include landscape and terrace to step down in scale on the north of the upper level.

Further discussion is included below to clarify overshadowing impacts of the proposal under the heading 'Discussion'.

(b) Design excellence criteria

(i) Relation between additions and the existing structure

The relationship between new additions and existing structure has improved with the retention of all timber support arches, the deletion of new columns through the space and a reduced basement area, however still needs further resolution (refer Section D on DA 5.02). The cantilever remains excessive creating a poor relationship with the heritage item (sic). The overlap of the church ridge and the cantilever needs structural clarification. The scale of the overhang could be further reduced without a reduction in room numbers. The geometric and material resolution of the underside of the overhang may benefit from further modelling studies.

(ii) Scale of proposed additions

The reduced height and overall scale of the additions can now be considered acceptable, however any impacts on neighbours due to additional shadowing need to be clarified. Although there is a distinct jump in building height from High Holburn Street and Goodlet Lane to development controls along Cleveland Street the proposal has improved to include landscape and terrace to step down in scale on the north of the upper level.

(iii) Compatibility with the character and road pattern of the local area

The unconventional design and appearance can generally be considered compatible (or not incompatible) with the character of the local area on the basis of the uniqueness of the site and existing building, the varied existing context and the proposed intended cultural uses. SDCP 2.13.1(h) notes to 'encourage a mix of building types to reflect existing diversity of form and massing'. SDCP 2.13.1(i) notes to 'protect the curtilage of special building types along Cleveland Street, notably church building, to enable visual appreciation of the buildings' which is achieved. SDCP 2.13.1(k) is to 'encourage active uses on ground floor... Above ground uses should be diverse such as... residential' which is achieved. SDCP 2.13.1(j) 'notes to encourage cafes... (to offer outdoor dining to activate and enliven the street where footpath width permits)' which is enabled.

Whilst developing the proposal further the Panel recommends a reduction in the number of materials and styles, in particular, reconsideration of the use of heat treated stainless steel. Although the design has improved the compatibility with the local character and relationship to the dwellings in High Holborn Street needs to be considered.

(iv) Impact on adjoining properties, including privacy issues relating to operable louvres to the boarding house rooms, and overshadowing of lower level units at 426 Cleveland Street

Zero setback on east boundary leads to difficulty with privacy screening and results in poor outlook from the rooms and compromised amenity. A larger scale louvre or some shaping to the wall could help direct views to the north east while providing better outlook and amenity. Visual privacy of the neighbouring properties appears to have been achieved. The solar access to 426 Cleveland Street appears to comply with the requirements of the ADG and the City's Draft Overshadowing Documentation Guide.

For the top two floors, it may be possible to introduce some upwards looking clear glass windows above eye height.

A larger scale louvre or some shaping to the wall could help direct views to the north east while providing better outlook and amenity

3. Additional comments were also provided in respect of:
  - (a) ventilation to common laundry areas;
  - (b) landscaping;
  - (c) window operation;
  - (d) wardrobe space; and
  - (e) spatial requirements for risers, fire booster assembly, plant room, air intakes, ventilation for hall AC.
4. The recommended conditions of consent have been updated to address comments provided by DAPRS in relation to privacy devices, ventilation, window operation and spatial requirements and are included as Attachment C to this report. A condition is already included in respect of landscaping and maintenance thereof. The proposed room sizes comply with both the Sydney DCP 2012 and SEPP (Affordable Rental Housing) 2009 size controls and are therefore considered to provide sufficient room for wardrobe space.
5. A deferred commencement condition is included in Attachment D in relation to the proposed cantilever to the church building for the panel's consideration. The deferred commencement condition would require the deletion of two boarding rooms overhanging the church building on Level 4 should the panel choose this alternative recommendation

Applicant's Response:

6. In response to the comments provided by DAPRS the applicant has provided a written response and additional information including structural details of the proposed cantilever support structure, boarding room window operability details, previously provided view from the sun study drawings, and an indicative construction traffic management plan. There are no new amendments to the proposed design previously considered by the LPP.
7. The response and documents provided by the applicant are included in Attachment I.

## Proposed Development

8. The application seeks consent for the following:
  - Demolition of lean-to addition and northern rear wall of the existing Kirk building.
  - Alterations and additions for a mixed use building including:
    - Alterations and restoration works to the Kirk building for use as a community/entertainment venue with entries off Cleveland Street and High Holborn Street. Proposed hours of operation:
      - Monday to Saturday 7:00am to 12:00 midnight, Sunday 7:00am to 10:00pm.
    - New five storey plus basement addition for café and boarding house uses.
    - 26 room boarding house with level 4 balcony communal open space and indoor common area. Ground level car / motorcycle and bicycle parking.
    - Ground level café with entry from High Holborn street. Proposed hours of operation:
      - Monday to Saturday 8:00am to 12:00 midnight, Sunday: 8:00am to 10:00pm
    - Basement level co-working workshop space.

## Assessment

9. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).
10. The assessment contained within the report to LPP on 3 November 2021 included in Attachment E remains applicable to the application.
11. Savings provisions apply in respect of State Environmental Planning Policy (Affordable Rental Housing) 2009.



## Discussion

### Overshadowing

12. The following information on overshadowing is provided to address the comments from DAPRS in respect of overshadowing (as stated below):

The reduced height and overall scale of the additions can now be considered acceptable, however any impacts on neighbours due to additional shadowing need to be clarified. Although there is a distinct jump in building height from High Holburn Street and Goodlet Lane to development controls along Cleveland Street the proposal has improved to include landscape and terrace to step down in scale on the north of the upper level.

The solar access to 426 Cleveland Street appears to comply with the requirements of the ADG and the City's Draft Overshadowing Documentation Guide.

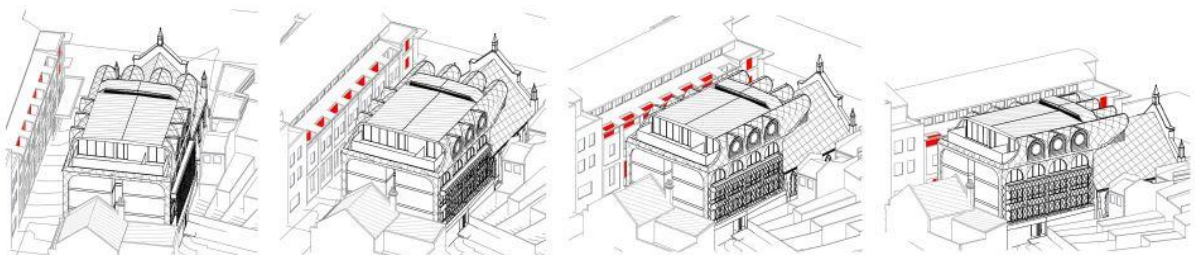
13. The assessment report to the LPP meeting 3 November 2021 included the following assessment against Section 4.2.3.1 of Sydney DCP 2012:

The application includes views from the sun which demonstrate the overshadowing impact of the proposal.

The proposal will impact on apartments within the converted warehouse building to the east at 426 Cleveland Street. 14 apartments face west, 8 of the apartments currently receive 2 hours of sunlight, 6 of the apartments receive less than 2 hours of sunlight as the ground level apartments do not start receiving sunlight until after 1pm. The upper level apartments retain sunlight as they are not impacted upon until 3pm.

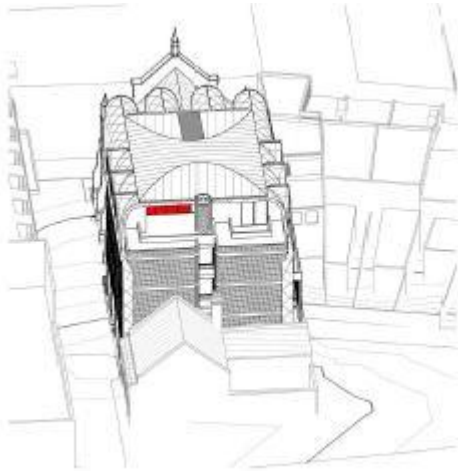
The lower level apartments will be impacted and will not receive sunlight. Given that any form of development other than a single storey form with a flat roof would result in overshadowing to these apartments, the overshadowing is acceptable in the circumstances given the permitted height controls for the development.

14. The shadowing impacts are illustrated in the following view from the sun drawings in Figure 1 that show time intervals of (from left to right) 12.00pm, 1.00pm, 2.00pm and 3.00pm (mid-winter). The red shaded areas on the drawings illustrate available sunlight to the principle living areas and balconies in front. The upper level apartments of 426 Cleveland Street retain DCP compliant 2 hours of solar access between 12.00pm to 2.00pm with the additional non-compliant height of the proposal.



**Figure 1:** View from the sun drawings

15. The overshadowing of development to the west will be impacted to 11.00am and then retain sunlight access thereafter. This is illustrated in the view of the sun diagrams above, and the additional 11.00am drawing below. They retain compliant sun access mid-winter.



**Figure 2:** View from the sun drawing 11.00am

16. The overshadowing impacts of the proposal are considered to be acceptable.

#### **Privacy and amenity**

17. The DAPRS provided the following comments in respect of privacy and amenity to and from boarding rooms:

Zero setback on east boundary leads to difficulty with privacy screening and results in poor outlook from the rooms and compromised amenity. A larger scale louvre or some shaping to the wall could help direct views to the north east while providing better outlook and amenity. Visual privacy of the neighbouring properties appears to have been achieved.

18. Drawings of the proposed louvres are included in the proposed plans:

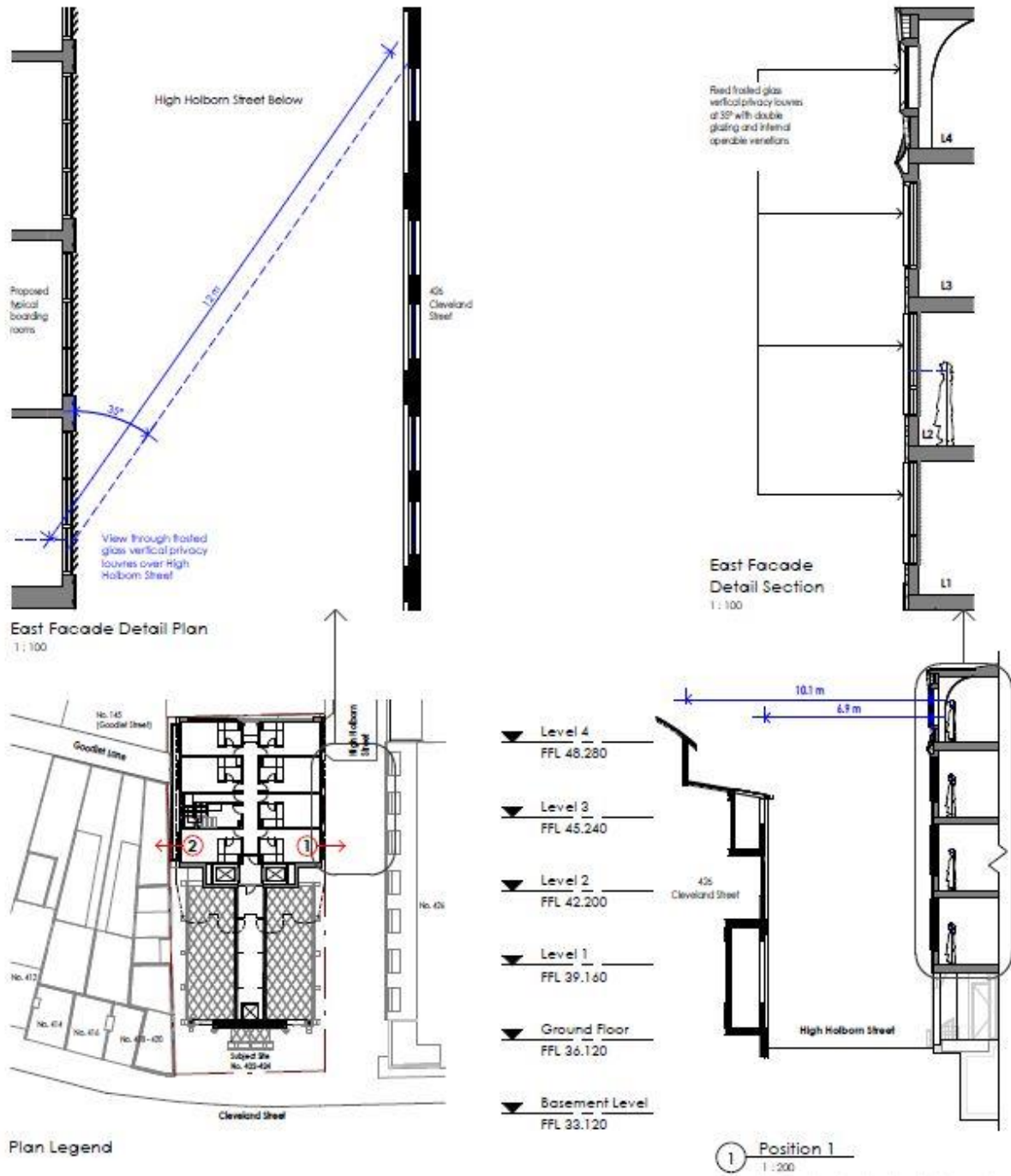


Figure 3: Louvre details east façade

- An updated design modification condition is included to require a reduced number of wider louvres as part of the updated recommended conditions of consent in Attachment C to address this DAPRS comment.

## Consultation

### Internal Referrals

20. The application, including the submissions were discussed with the City's Transport and Access Unit who advised that the proposal remains supported subject to the recommended conditions. Vehicles servicing the site will be restricted in terms of sizing as part of the loading management plan required under Condition 136.
21. An indicative construction traffic management plan has been reviewed by the City's City Infrastructure and Traffic Operations Unit who advised that the site is constrained in terms of access and that only small rigid vehicles would be able to use High Holborn Street. A more detailed construction pedestrian traffic management plan would be required to be provided under Condition 46 prior to any demolition or construction taking place which would be a usual process and requirement.

### Relevant Legislation

22. Environmental Planning and Assessment Act 1979.

### Conclusion

23. The application as amended has been reviewed by DAPRS who have provided comments in respect of the deferral matters from the LPP resolution of 3 November 2021. The DAPRS have commented that the proposal is of an appropriate height and scale and is compatible with the character of the locality. Concern has been expressed with the proposed cantilever to the church building.
24. The application is recommended for approval and updated recommended conditions of consent including an alternative deferred commencement condition dealing with the cantilever of the church structure have been prepared for the panel's consideration.

## ANDREW THOMAS

Executive Manager Planning and Development