

Relevant Information for Local Planning Panel

FILE: D/2021/1261 **DATE:** 8 June 2022

TO: Local Planning Panel Members

FROM: Andrew Thomas, Executive Manager, Planning and Development

SUBJECT: Information Relevant To Item 3 – Development Application: 17 Billyard Avenue, Elizabeth Bay - D/2021/1261

Alternative Recommendation

It is resolved that consent be refused for Development Application Number D/2021/1261 for the reasons outlined in the 8 June 2022 Local Planning Panel report, subject to the following amendment (deletions shown in ~~strikethrough~~):

~~Lack of valid BASIX certificate~~

~~(l) — The development application has not been accompanied by a valid BASIX certificate and is therefore contrary to and fails to satisfy:~~

~~(i) — the requirement in Clause 2A of Schedule 1, Part 1 of the Environmental Planning and Assessment Regulation, 2000, for a development application for BASIX affected development to be accompanied by a valid BASIX certificate or certificates, issued no earlier than 3 months before the date on which the application is made.~~

Background

BASIX

At the time of lodgement of the subject development application on 1 November 2021, the definition of a **BASIX affected building** was as follows:

BASIX affected building means any building that contains one or more dwellings, but does not include a hotel or motel.

A BASIX Certificate was required for the development at this point in time.

On 26 November 2021, the definition of a **BASIX affected building** was amended in the *Environmental Planning and Assessment Regulation, 2000* to specifically exclude a boarding house such as that proposed. Refer to the amended definition below:

BASIX affected building means a building containing at least 1 dwelling, but does not include the following types of development as defined in the Standard Instrument—

- (a) hotel or motel accommodation, or
- (b) a boarding house, hostel or co-living housing that—
 - (i) accommodates more than 12 residents, or
 - (ii) has a gross floor area of more than 300 square metres.

There were no transitional arrangements in this amendment of the *Environmental Planning and Assessment Regulation, 2000*.

As such, a BASIX Certificate is no longer required for the proposed development and the above reason for the refusal of the proposed development must be struck out.

Response to preliminary assessment

City planning staff wrote to the applicant on 14 February 2022 requesting withdrawal of the application, or significant amendment with additional information for the proposed development.

The applicant submitted a letter titled 'reply to preliminary assessment letter' to the City on 3 June 2022 in response, a copy of which is reproduced at **Attachment A**.

The content of the applicant's submission is summarised and addressed as follows:

- (i) **Issue:** Applicability of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

Response: This matter is addressed under the 'State Environmental Planning Policy (Housing) 2021' heading at paragraphs 50 to 53 on page 41 of the LPP assessment report.

The savings and transitional provisions in Schedule 7 of the Housing SEPP was amended on 18 March 2022 to clearly exclude it from operating in relation to the proposed development.

The City's letter to the applicant was sent on 14 February 2022, prior to the further amendment of the savings and transitional provision for the Housing SEPP.

- (ii) **Issue:** Height compliance.

Response: This matter is addressed in the table section under the 'Part 4 Principal development standards' and the 'Height of buildings' provision on page 54 of the LPP assessment report.

(iii) **Issue:** No amendment required to height of proposed development.

Response: The incompatibility of height of the proposal with the surrounding development is addressed in the LPP assessment report under:

- part (B) of the 'Reasons for Recommendation' on pages 6 and 7; and
- the 'Building height' subheading at part (b)(i) of paragraph 65 on page 50.

(iv) **Issue:** Delay and error in identification of view impacted apartments.

Response: The time taken to assess view impacted adjacent apartments resulted from:

- the time required for a thorough review of the submissions received by the City in opposition to the application;
- adverse weather conditions impacting visibility; and
- the number of site inspections required to be undertaken to determine view impacted apartments.

A typographical error was made in the City's correspondence to the applicant dated 9 March 2022, however the view affected buildings were clearly identified by their respective names, and this matter was clarified in subsequent correspondence with the partner of the owner of the subject site.

The following information has been obtained by the applicant and would assist in determining where view impacts arise:

- survey details of the adjoining development submitted with the subject development application, including of adjoining window and balcony heights and locations;
- copies of all submissions were obtained from the City by the partner of the owner of the subject site following exhibition of the application; and
- CAD modelling of the proposed development had been completed by 24 January 2022.

A request for a view sharing assessment carried out in accordance with established practice is considered reasonable where view impacts are alleged to result from a proposed development.

View sharing and view loss is addressed in the LPP assessment report under:

- part (E) of the 'Reasons for Recommendation' on pages 8 and 9 of the LPP assessment report; and
- the 'View Sharing and View Loss' heading at paragraphs 107 to 140 on pages 73 to 84.

- (v) **Issue:** Proposal complies with height and provides greater setbacks than surrounding, with no amendment required to address view impacts.

Response: The height of the proposal, as it relates to view impacts, is addressed in the LPP assessment report under:

- part (E) of the 'Reasons for Recommendation' on pages 8 and 9; and
- the 'View Sharing and View Loss' heading at paragraphs 107 to 140 on pages 73 to 84.

- (vi) **Issue:** Lack of solar access to communal room results from overshadowing from Council's approval of the development at 15 Billyard Avenue.

Response: The design of the proposed rear addition could be amended to provide an internal communal space which receives solar access in accordance with the relevant provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009 and the Sydney Development Control Plan 2012.

Lack of solar access to the proposed communal rooms is addressed in the LPP assessment report under:

- part (F) of the 'Reasons for Recommendation' on pages 9 and 10; and
- the heading 'Boarding House Amenity' at part (a) of paragraph 151 under on page 87.

- (vii) **Issue:** Overshadowing arising from the proposal is acceptable, given its location, size, scale, volume and bulk, the submitted shadow diagrams are acceptable, and sun eye view diagrams are not required.

Response: Inadequate provision of overshadowing information is addressed in the LPP assessment report under:

- part (E) of the 'Reasons for Recommendation' on pages 8 and 9; and
- the 'Overshadowing' heading at paragraphs 141 to 146 on pages 84 to 86.

- (viii) **Issue:** Proposed setbacks are greater than surrounding development, allow for light and ventilation and do not result in view impacts.

Response: The incompatibility of the proposal's setbacks with the surrounding development are addressed in the LPP assessment report under:

- part (B) of the 'Reasons for Recommendation' on pages 6 and 7; and
- the 'Setbacks' subheading at part (b)(ii) of paragraph 65 on pages 50 and 51.

View impacts are addressed in the LPP assessment report under:

- part (E) of the 'Reasons for Recommendation' on pages 8 and 9 of the LPP assessment report; and

- the 'View Sharing and View Loss' heading at paragraphs 107 to 140 on pages 73 to 84.

(ix) **Issue:** Existing windows at 15 Billyard Avenue result in privacy impacts on 17 Billyard Avenue, proposed north-facing windows are designed for solar access and a privacy treatment can be applied.

Response: Inadequate provision of visual privacy information is addressed in the LPP assessment report under:

- part (E) of the 'Reasons for Recommendation' on pages 8 and 9; and
- the 'Privacy' heading at paragraphs 147 to 150 on pages 86 and 87.

(x) **Issue:** Proposed windows do not impact acoustic privacy amenity of adjacent boarding room windows.

Response: Inadequate provision of privacy information is addressed in the LPP assessment report under:

- part (F) of the 'Reasons for Recommendation' on pages 9 and 10; and
- the 'Privacy' heading at paragraphs 147 to 150 on pages 86 and 87.

(xi) **Issue:** Boarding room size acceptable, Council cannot assert some rooms are too small, require justification that some rooms are larger than the SEPP requires, and a Clause 4.6 variation request can be submitted if required.

Response: No boarding room sizes are assessed as being too small.

Non-compliant maximum boarding room size and the lack of a Clause 4.6 variation request is addressed in the LPP assessment report under:

- part (A) of the 'Reasons for Recommendation' on page 6; and
- the 'Boarding Room Size' heading at paragraphs 95 to 98 on pages 68 and 69.

(xii) **Issue:** Natural light, ventilation, security and amenity to proposed boarding rooms is acceptable, not reliant on door openings and can comply with the Building Code of Australia.

Response: Boarding room amenity, including access to natural light, ventilation and security is addressed in the LPP assessment report under:

- part (F) of the 'Reasons for Recommendation' on pages 9 and 10; and
- the 'Boarding House Amenity' heading at part (g)(ii) of paragraph 151 on page 88.

(xiii) **Issue:** Proposed boarding rooms comply with the minimum wardrobe and kitchen spaces.

Response: Non-compliant boarding room wardrobe and kitchen sizes are addressed in the LPP assessment report under:

- part (F) of the 'Reasons for Recommendation' on pages 9 and 10; and
- the 'Boarding House Amenity' heading at part (d) of paragraph 151 on page 87.

(xiv) **Issue:** The proposal includes communal open spaces, and communal living areas with a communal kitchen above that required under the Housing SEPP.

Response: No objection is raised in relation to the quantum of proposed communal open space, living and kitchen facilities.

(xv) **Issue:** An external drying area and additional washing machines and dryers can be conditioned.

Response: It is unclear as to where an external drying area and additional washing machines and dryers would be accommodated within the proposed development.

Lack of adequate laundry and drying facilities is addressed in the LPP assessment report under:

- part (F) of the 'Reasons for Recommendation' on pages 9 and 10; and
- the 'Boarding House Amenity' heading at part (e) of paragraph 151 on page 87.

(xvi) **Issue:** No predominant materiality in surrounding area, proposal provides durable, low maintenance, neutral, dark glazed backdrop to existing house recess the new addition, with side walls in light colour face brick.

Response: The incompatibility of the proposed materiality with the surrounding development is addressed in the LPP assessment under:

- part (C) of the 'Reasons for Recommendation' on page 7 and 8;
- part (D) of the 'Reasons for Recommendation' on page 8; and
- the 'Materials' heading at part (b)(v) of paragraph 65 on page 52.

(xvii) **Issue:** Light spill from fire stairs can be attenuated by glass lenses and louvres, phase-change glass to be opaque at night.

Response: Inadequate provision of information relating to light spill impacts is addressed in the LPP assessment report under:

- part (E) of the 'Reasons for Recommendation' on pages 8 and 9 of the LPP assessment report; and
- the 'Materials' heading at part (b)(v) of paragraph 65 on page 52.

- (xviii) **Issue:** There is no consistent local character context, materiality or colour and a single dark coloured glazed wall is proposed to provide a neutral, dark backdrop with light coloured side walls.

Response: The incompatibility of the proposal with the character of the local area is addressed in the LPP assessment report under:

- part (B) of the of the 'Reasons for Recommendation' on pages 6 and 7; and
- the 'Clause 30A Character of the local area' heading at paragraphs 59 to 65 on pages 47 to 52.

- (xix) **Issue:** Many buildings in the City of Sydney Local Government Area cantilever more over heritage buildings and proposed cantilever is minor in comparison.

Response: The impacts of the proposed cantilevered form on the significance of the surrounding heritage conservation area are addressed in the LPP assessment report under:

- part (C) of the 'Reasons for Recommendation' on pages 7 and 8; and
- the 'Heritage Conservation' heading at paragraphs 99 to 103 on pages 69 to 71.

- (xx) **Issue:** Some rooms are of much later construction, are not consistent with the existing house and the building is improved with their removal.

Response: No objection is raised in relation to the proposed demolition of rooms of later construction.

- (xxi) **Issue:** At the junction of the new and old buildings on the rear facade there is a shadow line incorporated to differentiate between the two.

Response: The inadequate separation between the existing and proposed buildings on the site, and consequent impact on the significance of the surrounding heritage conservation area are addressed in the LPP report under:

- part (C) of the 'Reasons for Recommendation' on pages 7 and 8; and
- the 'Heritage Conservation' heading at paragraphs 99 to 103 on pages 69 to 71.

- (xxii) **Issue:** The proposed front facade design is intended as a neutral backdrop.

Response: The impact of the design, articulation and materiality of the proposal on the significance of the surrounding heritage conservation area are addressed in the LPP report under:

- part (C) of the 'Reasons for Recommendation' on pages 7 and 8; and
- the 'Heritage Conservation' heading at paragraphs 99 to 103 on pages 69 to 71.

(xxiii) **Issue:** The existing building is not a heritage item and has undergone innumerable changes, many of which the current owner has reversed.

Response: Noted. While the subject building is not a heritage item, it is identified as being located within the Elizabeth and Rushcutters Bay heritage conservation area (C20) on Sheet HER_021 of the Heritage Map in the Sydney Local Environmental Plan 2012 and as a contributing building on Sheet 021 of the Building contributions map in the Sydney Development Control Plan 2012.

The relevant heritage controls in the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 apply to the assessment of the proposed development as a result.

(xxiv) **Issue:** The proposal will have minimal and acceptable impacts on the significance of the surrounding heritage conservation and none on that of any nearby heritage items.

Response: The proposed development is assessed as having a detrimental impact on the significance of the Elizabeth and Rushcutters Bay heritage conservation area, for the reasons set out under the 'Reasons for Recommendation' heading in part (C) on pages 7 and 8 of the LPP assessment report.

(xxv) **Issue:** There is a retained but limited area of deep soil on the site, including some Kentia Palm trees which are retained and not impacted.

Response: Impacts to existing trees on the site are addressed in the LPP assessment report in the table section under the heading 'Section 3 – General Provisions' and the 'Urban Ecology' provision on pages 58 and 59.

(xxvi) **Issue:** 15% canopy coverage is required but not possible given the site is occupied by a house or is an exposed rock shelf, no other development in the surrounding area meets this requirement and it is discriminatory to require proposed affordable housing to meet this requirement when no other building complies.

Response: The objective at Section 3.5.2(a) and the provision at Section 3.5.2(2) of the Sydney Development Control Plan 2012 requiring appropriate future tree canopy coverage apply to all significant proposed development within the City of Sydney Local Government Area, regardless of the type of land use proposed. The planning controls accord with the City's Urban Forest Strategy 2013.

Inadequate landscape design, as it relates to future tree canopy cover of the subject site, is addressed in the LPP assessment report under:

- part (G) of the 'Reasons for Recommendation' on pages 10 and 11; and
- the table section under the heading 'Section 3 – General Provisions' and the 'Urban Ecology' provision on pages 58 and 59.

(xxvii) **Issue:** The cliff face can be retained and maintained given the setback that is proposed and deep soil cannot be provided on the sandstone shelf at the rear of the building.

Response: Inadequate geotechnical information, on the existing site conditions and potential excavation impacts associated with the proposed development on the adjacent sandstone cliff face, is addressed in the LPP assessment report under:

- part (C) of the 'Reasons for Recommendation' on pages 7 and 8; and
- the 'Heritage Conservation' heading at paragraphs 99 to 103 on pages 69 to 71.

(xxviii) **Issue:** Communal open space is provided in the front terrace of the existing building, which provides amenity and for future residents.

Response: Inadequate assessment of noise generated by the boarding house use, from use of the proposed external communal and private open spaces is addressed in the LPP assessment report under:

- part (E) of the 'Reasons for Recommendation' on pages 8 and 9; and
- the 'Privacy' heading at paragraphs 147 to 150 on pages 86 and 87.

(xxix) **Issue:** A green wall is proposed to the west elevation, which is desirable for adjacent neighbours and all technical aspects can be complied with.

Response: Insufficient information submitted with the application to demonstrate the design and viability of the green wall is addressed in the LPP assessment report under:

- part (G) of the 'Reasons for Recommendation' on pages 10 and 11; and
- the 'Design Excellence' heading at part (h) of paragraph 105 on page 73.

(xxx) **Issue:** Acoustic monitoring and report prepared by an acoustic engineer confirms the compliant acoustic requirements and provides sufficient information.

Response: Inadequate assessment of noise generated by the boarding house use, either from building plant and equipment, or the use of the proposed external communal and private open spaces is addressed in the LPP assessment report under:

- part (E) of the 'Reasons for Recommendation' on pages 8 and 9; and
- the 'Privacy' heading at paragraphs 147 to 150 on pages 86 and 87.

(xxxi) **Issue:** A geotechnical assessment can be provided as a condition of consent.

Response: The lack of geotechnical and structural information submitted with the application, as it relates to potential excavation impacts associated with the development on the adjacent contributory buildings and sandstone cliff face, is addressed in the LPP assessment report under:

- part (C) of the 'Reasons for Recommendation' on pages 7 and 8; and
- the 'Heritage Conservation' heading at paragraphs 99 to 103 on pages 69 to 71.

(xxxii) **Issue:** The site is constrained but there is no requirement for a construction management plan to be provided.

Response: Insufficient information relating to the likely impacts of the proposal, including those relating to site access and construction management impacts, is addressed in the LPP assessment report under:

- part (J) of the 'Reasons for Recommendation' on pages 11 and 12; and
- the 'Other Impacts of the Development' heading at paragraphs 153 to 157 on page 88.

(xxxiii) **Issue:** A waste management plan has been provided, waste collection would be by a private contractor and sufficient provisions are made for their operations.

Response: Insufficient information and non-compliant servicing provision is addressed in the LPP assessment report under:

- part (H) of the 'Reasons for Recommendation' on page 11; and
- the 'Design Excellence' heading at part (g) of paragraph 105 on page 73.

(xxxiv) **Issue:** The proposal is not monolithic given its size in comparison to the solid, expansive buildings in the surrounding areas, and its four differentiated facades, providing a neutral backdrop to the existing building.

Response: The visual impact of the proposal is addressed in the LPP assessment report under:

- part (B) of the 'Reasons for Recommendation' on pages 6 and 7;
- part (C) of the 'Reasons for Recommendation' on pages 7 and 8;
- part (D) of the 'Reasons for Recommendation' on page 8;
- part (E) of the 'Reasons for Recommendation' on pages 8 and 9;
- the 'Clause 30A Character of the local area' heading at paragraphs 59 to 65 on pages 47 to 52;
- the 'Heritage Conservation' heading at paragraphs 99 to 103 on pages 69 to 71; and
- the 'Design Excellence' heading at paragraphs 104 to 106 on pages 72 and 73.

(xxxv) **Issue:** The existing and inspected meters and fire boosters do not intrude into existing deep soil areas.

Response: Noted.

(xxxvi) **Issue:** All boarding room windows are compliant with the Building Code of Australia in terms of light and ventilation and provide outlook and views and spatial requirements for handrails and fire egress have been checked and comply.

Response: Compliance with the Building Code of Australia is addressed in the LPP assessment report under the 'Other Impacts of the Development' heading at paragraph 153.

(xxxvii) **Issue:** 2.95 metre floor to floor heights do not compromise ceiling heights, floors are resilient finishes on a 0.2 metre concrete slab giving a ceiling height of the habitable areas of the rooms at 2.7 metres, with the underside of the concrete slab exposed as thermal mass to improve thermal comfort of the rooms.

Response: Noted. No objection to the proposed floor to floor or floor to ceiling heights is raised in the LPP assessment report.

(xxxviii) **Issue:** The need for a Clause 4.6 variation request is rejected as the design of the kitchens is a priority in providing larger rooms for some residents.

Response: The LPP cannot grant consent to the development application in the absence of a Clause 4.6 variation request.

Non-compliant maximum boarding room size and the lack of a Clause 4.6 variation request is addressed in the LPP assessment report under:

- part (A) of the 'Reasons for Recommendation' on page 6; and
- the 'Boarding Room Size' heading at paragraphs 95 to 98 on pages 68 and 69.

(xxxix) **Issue:** Attic stair is within the manager's dwelling, not boarding room N10.

Response: Noted.

(xl) **Issue:** The accessibility has been checked and complies.

Response: The lack of accessible car parking and allocation to adaptable boarding rooms is addressed in the LPP assessment report under:

- part (F) of the 'Reasons for Recommendation' on pages 9 and 10; and
- the 'Boarding House Amenity' heading at part (b) of paragraph 151 on page 87.

(xli) **Issue:** The environmental performance of the proposed glazing does not require any external horizontal sun shading, as 33% of the facade is provided with transparent double glazing, with the remainder having an R value of 3+.

Response: Noted.

As discussed elsewhere in this memorandum, a BASIX certificate is no longer required for the proposed development.

(xlii) **Issue:** There are many Australian technical papers that support awning windows for ventilation, the facade faces east / northeast towards the harbour, with buildings in front at the elevation of more than 20 meters above AHD, with the awning windows exposed to winds of high velocity, every room is fitted with a ceiling fan, and individual air conditioning units are proposed.

Response: Noted. No objection to the design of the proposed awning windows, as it relates to natural ventilation, is raised in the LPP assessment report.

(xliii) **Issue:** The undercroft communal area is compromised in winter but provides respite in summer, and supplements the main communal area at the front of the site.

Response: The design quality of the rear communal open space is addressed in the LPP assessment report under:

- part (G) of the 'Reasons for Recommendation' on pages 10 and 11; and
- the 'Design Excellence' heading at part (h) of paragraph 105 on page 73.

(xliv) **Issue:** The privacy issues raised for rooms N01 and N06, having a shared verandah, misunderstand the nature of communal style living for social housing, in a shared boarding house, where sharing is more common and acceptable, and where being a member of a community is placed at a higher priority.

Response: Inadequate provision of measures to address privacy impacts between boarding rooms is addressed in the LPP assessment report under:

- part (F) of the 'Reasons for Recommendation' on pages 9 and 10; and
- the 'Boarding House Amenity' heading at paragraphs 151 and 152 on pages 87 and 88.

(xlv) **Issue:** The subcommittee makes an assertion that private outdoor space needs to be provided to 30% of the rooms, but fails to identify which SEPP or LEP this may have been generated.

Response: The requirement for the provision of private open space to 30% of boarding rooms is in Section 4.4.1.4(5) of the Sydney Development 2012.

The provision of private open space is addressed in the LPP assessment report under the 'Advertising and Notification' heading at part (n) of paragraph 170 on pages 92 and 93.

Prepared by: David Reynolds, Area Coordinator

Attachments

Attachment A. Applicant's Response to Preliminary Assessment Letter

Approved

Handwritten signature in black ink, consisting of the letters 'A', 'J', and 'T' in a stylized, cursive-like font.

ANDREW THOMAS

Executive Manager Planning and
Development