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| JRPP No. | 2012SYE087 |
| DA No. | DA494/2011 |
| Proposed Development | To extend the Australian Catholic University (ACU) library opening hours to Saturday 9.00am-5.00pm and Sunday 12noon-5.00pm. |
| Applicant | HASSELL on behalf of the Australian Catholic University (ACU) |
| Report By | Regional Panels Secretariat |
| Report Date | 17 September 2012 |

Review Report and Recommendation

This Crown development application (DA) has been referred to the Sydney East Joint Regional Planning Panel (regional panel) under section 89(1)(b) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The applicant is taken to be the Crown for the purposes of Part 4, Division 4, of the EP&A Act, as it is an Australian university within the meaning of the *Higher Education Act 2001*. The ACU is listed as an Australian university in Part 1, Schedule 1 of the *Higher Education Act 2001*.

Section 89(1)(b) of the EP&A Act states that a consent authority must not impose a condition on its consent to a Crown DA, except with the approval of the applicant or the Minister.

In this case, council has resolved to impose a condition on the DA that the applicant has not provided their approval to. The condition relates to a restriction on the hours of use for the library, which will prevent opening on Sundays.

1. EXECUTIVE SUMMARY

A development application (DA) was lodged on 13 December 2011 by HASSELL on behalf of ACU (the applicant) to extend the university library opening hours, initially only for Sunday from 8.30am to 5pm. The application was subsequently amended to include Saturday mornings which the library currently operates without formal approval.

The DA was recommended for approval by council assessment staff subject to amended Saturday and Sunday hours (Saturday 9.00am-5.00pm and Sunday 12noon-5.00pm). However, council resolved not to grant consent to the Sunday hours. The amended proposed change of hours is summarised as follows:

| | Monday to Friday | Saturday | Sunday |
|--------------------|------------------|------------------|------------------|
| Existing approval | 8.00am – 8.00pm | 12 noon – 5.00pm | Closed |
| Current operations | 8.00am – 8.00pm | 9.00am – 5.00pm | Closed |
| Proposed* | 8.00am – 8.00pm | 9.00am – 5.00pm | 12 noon – 5.00pm |
| Council resolution | 8.00am – 8.00pm | 9.00am – 5.00pm | Closed |

*Proposed – hours agreed upon by applicant and council assessment staff

The proposed development is permissible with consent under the North Sydney Local Environmental Plan 2001.

The Regional Panels Secretariat (secretariat) has reviewed the application for the regional panel's consideration. The council's resolution to exclude Sunday opening hours for the library is not supported. Council's concerns relating to adverse residential amenity impacts resulting from the use of the library on Sunday have been adequately addressed via conditions of consent. The reasons for refusing the Sunday opening hours are not substantiated, and are in conflict with the council assessment report and the review undertaken by the secretariat.

Accordingly, it is recommended the DA be approved, subject to the conditions recommended by council (attached at **Schedule 1**).

2. BACKGROUND

On 13 December 2011, HASSELL on behalf of the ACU submitted a DA to North Sydney Council seeking approval for extended library opening hours on Sundays between 8.30am-5pm.

Following notification of the DA, council advised the ACU that no formal approval had been obtained for the current Saturday opening hours (9.00am-5pm). Since 2002, the library has operated on Saturday between 9.00am-5pm. The original development consent for the University campus was granted by the Land & Environment Court and restricted opening hours for the University to 8.00am-8.00pm Monday to Friday and 12 noon-5.00pm Saturday (library only).

The ACU amended the application to seek consent for the current Saturday opening hours between 9.00am-5pm as well as Sunday between 8.30am-5pm.

The assessment report on the DA, dated 16 March 2012, recommended approval, subject to the Sunday opening hours being reduced to 12noon-5pm. The report was considered at a council meeting held on 26 March 2012 where council resolved to grant consent to the application and impose a further restriction in the conditions to prevent Sunday operations.

On 10 July 2012, the applicant wrote to council requesting a review of council's decision, indicating the reduced Sunday hours (12noon-5pm) recommended by council's assessment report were acceptable to the ACU.

Council prepared a further assessment report on the DA, dated 16 July 2012, recommending the library opening hours be approved and extended to Saturdays 9.00am-5pm and Sundays 12noon-5pm, as agreed by the applicant.

At a council meeting held on 23 July 2012, council resolved to grant consent to the application and impose a condition to prevent Sunday operations.

The DA was referred to the regional panel on 27 August 2012.

3. DOCUMENTS REVIEWED

In preparing this report, the secretariat has reviewed the following documents:

- Revised Statement of Environmental Effects prepared by HASSELL (dated 10 February 2012) including all attachments (**Attachment 1**);
- North Sydney Council's Report to General Manager (Development Assessment Report) including Draft Conditions of Development Approval and public submissions – DA494/2011 - Item 01 (dated 16 March 2012) (**Attachment 2**);
- North Sydney Council's letter to ACU advising of council's resolution (dated 29 March 2012) (**Attachment 3**);
- Letter to North Sydney Council from HASSELL, requesting a review of council's decision (dated 10 July 2012) (**Attachment 4**);
- North Sydney Council's Review Report to General Manager (Review Development Assessment Report) including Draft Conditions of Development Approval & minutes of council meeting 26 March 2012 – DA494/2011 - Item 08 (dated 16 July 2012) (**Attachment 5**);
- Letter from North Sydney Council to ACU advising of council's resolution (dated 26 July 2012) (**Attachment 6**); and
- Letter to Regional Panel Secretariat from HASSELL outlining the applicant's concerns regarding refusal of Sunday opening hours (dated 27 August 2012) (**Attachment 7**).

4. SITE DESCRIPTION AND PROPOSED DEVELOPMENT

The site is located at 40 Edward Street, North Sydney, in the North Sydney local government area. The library is housed in the James Carroll building across two levels. Refer to **Figure 1**.

Refer to council's assessment report at **Attachment 2** for a full description of the site and surrounding locality and a description of the proposal.



Figure 1 – Site Location

Source: NSW Land & Property Information – spatial information exchange 2012

5. ENVIRONMENTAL PLANNING INSTRUMENTS

North Sydney Local Environmental Plan 2001 (NSLEP 2001)

The site is zoned Special Use (Educational Establishment) and is listed as an item of local heritage significance (Rockleigh Grange) in Schedule 3 of NSLEP 2001. The proposed development is permissible with consent as an ancillary use to the Australian Catholic University. For detailed assessment of the application against the objectives of the Special Use and Residential A2 zones refer to council's assessment report at **Attachment 2**.

Draft North Sydney Local Environmental Plan 2009 (DNSLEP 2009)

The DNSLEP 2009 was on public exhibition from 20 January to 31 March 2011 and the final adoption of this plan is considered neither imminent nor certain by council.

The zoning of the site remains Special Use under the DNSLEP 2009.

North Sydney Development Control Plan 2002 (NSDCP 2002)

The NSDCP 2002 identifies the site as being within the Edward Street Conservation Area. Council's assessment report considers that the proposed development complies with the relevant controls in the DCP and all likely impacts have been considered in the assessment report.

6. PUBLIC EXHIBITION

The application was originally notified between 13 January 2012 and 27 January 2012 in accordance with council's notification policy. After receiving the amended proposal, the application was re-notified between 24 February 2012 and 9 March 2012.

In total, 9 submissions were received.

Key issues raised in the submissions include:

- intensification of use
- insufficient car parking
- traffic congestion
- loss of residential amenity
- adverse noise impacts
- Insufficient DA documentation

In particular, council considers for these amenity impacts to occur on a Sunday to be unreasonable. Sunday is thought to be a day of respite for residents from the University activities. Notwithstanding, these impacts can be adequately addressed via conditions of consent to limit opening hours, ensure adequate off-street carparking and restrict student access to courtyards thus minimising noise impacts for residents.

7. CONSIDERATION OF SECTION 79C(1) OF THE EP&A ACT

Council's assessment officer has undertaken an assessment of the application with regard to the provisions of the EP&A Act and all matters specified under section 79C(1).

The views of council assessment staff, elected council and the applicant are summarised below.

North Sydney Council - Assessment Report

The council assessment report recommended the application be approved, subject to conditions.

The report identified that the proposed development is generally consistent with the aims and objectives of the NSLEP 2001.

Council's assessment considered the concerns raised by residents during the notification period. The concerns have been addressed via draft conditions of consent and council considers them to not warrant refusal of the application.

The proposal is considered acceptable with regard to parking and amenity impacts and the library opening hours will be restricted to 12noon to 5pm on Sundays.

North Sydney Council – Elected Council

After considering the DA at a council meeting on 26 March 2012, elected council resolved to approve the DA but to delete the Sunday operating hours.

The applicant did not agree to the conditions of consent and council considered a further assessment report at a council meeting held on 23 July 2012. At this meeting, council resolved as follows:

1. **That** condition 11 be amended to delete reference to Sunday opening hours.
2. **That** Council reinforce its desire that the ACU proceed with developing a Master plan.
3. **That** if the matter is taken to the JRPP, Council urges the Panel to delete Sunday opening hours to preserve residential amenity.

Applicant – Australian Catholic University

The applicant has provided a detailed response to council's resolution to refuse the library Sunday operating hours. Refer to **Attachment 8**. The applicant's responses are summarised in **Section 8** of this report.

The applicant reviewed the conditions of consent recommended in council's assessment report, and advised that they agree with the proposed conditions. The recommended conditions of consent are included in **Schedule 1** for the regional panel's review should the application be approved.

8. DISCUSSION OF KEY ISSUES

The council's resolution to refuse the Sunday opening hours is based on the potential for adverse amenity impacts on adjoining residential properties as a result of the increased use of the university library.

The following section of this report considers the council resolution having regard to the amenity impact issues raised in submissions, issues addressed within council's assessment report and the response provided by the applicant. The key issues with potential to impact residential amenity are the loss of on-street car parking spaces and adverse noise impacts from student activity on Sundays.

It is noted that item 2 of council's resolution refers to the cumulative impact of multiple DAs contributing to the intensification of the ACU operations over time. Whilst a master plan for the site would be beneficial in understanding ACU's future plans, it is beyond the scope of this DA to require such documentation.

On-street carparking

Council's assessment report estimates that 128 students would visit the library on Sundays which equates to 1 parking space per 2 students. This is considered adequate if the remaining 50% of students use public transport. Further, the report provides that if student parking on the street becomes problematic for residents, council may consider further restricting on-street carparking through other mechanisms.

The applicant has provided data relating to student visitation levels from gate count surveys collected over three years by library staff. Last year, over 21 Saturdays, an average of 128 students visited the library for the day and had access to 62 off-street carparking spaces (Levels 1 & 3 of the James Carroll building). Further, information obtained from the *Commencing Student Survey, Undergraduate Students, July 2011* (ACU) shows that 84% of North Sydney students travel to the campus by public transport.

Council's assessment report and comments from the applicant concur that the existing library carparking facilities including 46 underground spaces on level 1 and 18 spaces (including 2 disabled spaces) on level 3 are adequate to accommodate students on Sundays without adversely impacting the availability of on-street carparking spaces available to residents.

Noise impacts

Council's assessment report acknowledges that a degree of noise impact is likely to occur from students accessing the library courtyards on Sundays. The recommended conditions of consent have been agreed upon by the ACU and will limit acoustic impacts to adjoining residents by:

- limiting the library opening hours to 12noon-5pm on Sundays.
- restricting access to the lower courtyard on weekends, which is adjacent to residential properties at Riley Street.
- requiring security personnel to be utilised to ensure noise from the upper courtyard is minimal or students remain within the library.
- the use of the upper courtyard will also be restricted to areas away from residents.

The applicant states that the proposal involves a minor variation to the current library opening hours that will have a negligible impact on residential amenity. In addition, the applicant has agreed to accept the conditions of consent discussed above.

Council's assessment report and comments from the applicant concur that adequate measures will be undertaken and enforced via appropriate conditions of consent to maintain a reasonable level of residential amenity to nearby neighbours.

9. CONCLUSION

Council has undertaken a comprehensive assessment of the DA, and recommended the DA be approved, subject to conditions of consent as included in **Schedule 1**.

The concerns raised by nearby residents during the notification period do not warrant refusal of the application and have been addressed by council's recommended conditions of consent.

Council's reasons for wanting to limit the operating hours to exclude Sunday hours are not substantiated, and are in conflict with the council assessment report and the review undertaken by the secretariat.

10. RECOMMENDATION

It is recommended that the regional panel:

- (A) **consider** all relevant matters prescribed under the *Environmental Planning and Assessment Act 1979*, as contained in the DA and its associated documents, North Sydney Council's assessment report and resolution, the applicant's response to council's resolution and the findings and recommendations of this report; and
- (B) **approve** the application, subject to conditions set out in **Schedule 1 (Attachment 9)**, pursuant to section 80(1)(b) of the *Environmental Planning and Assessment Act 1979*, having considered all relevant matters in accordance with (A) above.

Prepared by:

Endorsed by:

Tim Kearney
Planning Officer
Regional Panels Secretariat

Shayne Watson
Director
Assessment Systems

LIST OF ATTACHMENTS

1. Statement of Environmental Effects prepared by HASSELL (dated 13 December 2011) including all attachments
2. Revised Statement of Environmental Effects prepared by HASSELL (dated 10 February 2012) including all attachments
3. North Sydney Council's Report to General Manager (Development Assessment Report) including Draft Conditions of Development Approval and public submissions – DA494/2011 - Item 01 (dated 16 March 2012)
4. North Sydney Council's letter to ACU advising of council's resolution (dated 29 March 2012)
5. Letter to North Sydney Council from HASSELL, requesting a review of council's decision (dated 10 July 2012)
6. North Sydney Council's Review Report to General Manager (Review Development Assessment Report) including Draft Conditions of Development Approval & minutes of council meeting 26 March 2012 – DA494/2011 - Item 08 (dated 16 July 2012)
7. Letter from North Sydney Council to ACU advising of council's resolution (dated 26 July 2012)
8. Letter to Regional Panel Secretariat from HASSELL outlining the applicant's concerns regarding refusal of Sunday opening hours (dated 27 August 2012)
9. Schedule 1 - Conditions of Consent