

Relevant Information for Local Planning Panel

FILE: D/2018/1615 **DATE:** 5 August 2019

TO: Local Planning Panel Members

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

SUBJECT: Information Relevant To Item 3 – Development Application: 132-138 McEvoy Street, Alexandria - D/2018/1615

Alternative Recommendation

It is resolved that:

- (A) That the Local Planning Panel note the information contained in this memorandum.
- (B) Pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, a deferred commencement consent be granted to Development Application No. D/2018/1615 subject to the conditions set out in Attachment A to the subject report to the Local Planning Panel on 7 August 2019 and subject to the following condition amendments:
 - (i) Deletion of Deferred Commencement Condition (2).
 - (ii) Deletion of Deferred Commencement Condition (4)(b).
 - (iii) Insertion of a new Condition (1A) in Schedule 1A of Part B of the Recommended Conditions of Consent as follows:

(1A) SURRENDER OF CONSENT

In accordance with Section 4.17(1)(b) and Section 4.17(5) of the *Environmental Planning and Assessment Act, 1979*, a notice of surrender of the following development consent must be provided to Council in writing by the owner of the land in accordance with Clause 97 of the *Environmental Planning and Assessment Regulation, 2000*, prior to the issue of any Construction Certificate:

- (a) Development consent D/2017/1073.
- (iv) Amendment of Condition (22) in Schedule 1A of Part B of the Recommended Conditions of Consent as follows:

(22) HOURS OF OPERATION

The hours of operation are restricted to between 7.00am and 10.00pm, Monday to Sunday.

- (v) Amendment of Condition (74) in Schedule 1B of Part B of the Recommended Conditions of Consent as follows:

(74) LANDSCAPED (GREEN) ROOFS

- (a) A detailed plan of the green roof, drawn to scale, by a qualified landscape architect or landscape designer, must be submitted to and approved by Council's Director City Planning, Development and Transport prior to the issue of any Construction Certificate. The plan must include:
- (i) A statement that includes details of proposed use of the green roof, general accessibility, as well as noise and privacy treatments.
 - (ii) Location of existing and proposed structures, services and hard landscaping on the rooftop, roof fixings and other structural elements that may interrupt waterproofing, including cross-sectional details of all components.
 - (iii) Details of earthworks including mounding and retaining walls and planter boxes (if applicable).
 - (iv) Details of the location, sizes and numbers of plants used with reference to NATSPEC (if applicable), with preference for drought resistant species.
 - (v) Details of the soil media/substrate type and depth.
 - (vi) Details of installation methodology e.g. safety considerations for working at height, location of maintenance hooks (if applicable) transport materials etc.
 - (vii) Details of accessible and inaccessible areas on the Green Roof. Where proposed to be inaccessible, Green Roofs are required to remain such during occupation of the property.
 - (viii) Details of drainage and irrigation systems, including overflow provisions and water retention cells in the drainage layer (if applicable).
- (b) Prior to the issue of any Construction Certificate, the following details are to be submitted to and approved by the Principal Certifier:
- (i) Evidence the green roof has been assessed as part of the structural certification provided for the development; and
 - (ii) Evidence the green roof has been assessed as part of the waterproofing certification provided for the development.
- (c) All landscaping in the approved plan is to be completed prior to the issue of any Occupation Certificate.

- (d) Prior to the issue of any Occupation Certificate, a maintenance plan for the green roof is to be submitted and approved by Council's Director City Planning, Development and Transport. A copy of the maintenance plan is to be kept on site at all times during construction and shall be produced to Council on request following completion. The Maintenance Manual shall include as a minimum:
 - (i) Frequency and methodology of different maintenance requirements including the removal of green waste.
 - (ii) Details of safety procedures.
 - (iii) Laminated copies of 'As Built' drawings.
 - (iv) Manufacturer's contact details and copies of manufacturers' typical details and specification;
 - (v) Copies of warranties and guarantees relating to all materials and plant used in construction; and
 - (vi) Decommissioning procedures.
- (e) Inaccessible green roofs are required to remain inaccessible during occupation of the property.

Background

On Friday, 2 August 2019, the City received correspondence from SJB Planning which raised concerns with four recommended conditions of consent and requested their deletion by the Panel prior to determination of the development application D/2018/1615 (refer to Attachment A).

A response to the concerns raised is provided below.

Deferred Commencement Condition (2) - Surrender of Consent

This deferred commencement condition requires the surrender of the existing development consent D/2017/1023 for the construction of a new self-storage facility, prior to this development consent D/2018/1615 becoming operational.

Section 4.17(1)(b) of the Environmental Planning and Assessment Act, 1979, permits a consent authority to impose a condition to require the surrender of a consent granted under the Act in relation to the land to which the subject development application relates.

The condition has been recommended for inclusion in the consent to preclude the two consents from operating together, on the basis that each consent comprises a significantly different built form and mix of land uses.

Both consents are subject to a deferred commencement condition requiring the execution and registration of a Voluntary Planning Agreement, prior to becoming operational.

It is considered that the proposed deferred commencement condition can be deleted, and instead, that a condition to require the surrender of the self-storage facility consent be included as a condition to be satisfied prior to the issue of a Construction Certificate.

This would not serve to significantly constrain the applicant from making a choice as to which consent is more viable at any point in time, given that the development consent has a 5 year period in which to satisfy the condition, and that such a choice as to viability can be made at any time prior to the satisfaction of the condition.

Deferred Commencement Condition (4)(b) - Design Modifications - Deep soil and tree plantings

The deferred commencement conditions require that:

- one tree be provided for every 4 car parking spaces that are not overhung by the building along the south-eastern boundary of the site; and
- all car parking spaces that are not overhung by the building along the south-eastern boundary of the site must be provided with permeable paving.

These conditions were recommended for imposition to address the objectives of, and the proposed non-compliance with the relevant provisions in Section 3.5.2(2), Section 3.5.2(7) and Section 5.8.2.5.1(1) of the Sydney Development Control Plan 2012. This is in relation to the achievement of a 15% site canopy coverage, provision of one tree for every 4 car parking spaces and provision of 15% of the site area as deep soil area.

In their correspondence, dated 2 August 2019, SJB Planning has stated that the imposition of this condition would undermine the remediation strategy of the site, which is stated as being to 'cap and contain' and retention of the existing hard stand slab. It is agreed that the Remediation Action Plan and Site Audit Statement submitted with the application do state a preference for a 'cap and contain' remediation strategy.

Given the constraints posed by the chosen contamination strategy and that the proposed conditions require the provision of a green roof to offset the non-compliances outlined above, on balance it is considered that the deletion of these conditions is acceptable. It is recommended that the conditions can be deleted, provided that Condition (74) is amended as recommended above to ensure that:

- the detail of the required green roof is provided to Council's Director City Planning, Development and Transport for approval prior to the issue of any Construction Certificate; and
- that a maintenance plan for the green roof is provided to Council's Director City Planning, Development and Transport for approval prior to the issue of any Occupation Certificate.

Deferred Commencement Condition (4)(c) - Design Modifications - Facade changes

The deferred commencement conditions require the provision of additional adjustable vertical and horizontal louvres to upper level openings on the north-western, north-eastern and south-eastern building facades.

In their correspondence, dated 2 August 2019, SJB Planning has stated that the justification for the conditions provided in Council's assessment report is that they will aid energy reduction and achievement of the NABERS rating of 5.5 stars.

This is noted, however, as discussed in the table on page 42 and at paragraphs 68 and 69 on pages 54 and 55 of Council's assessment report, the development does not provide adequate protection to the glazed openings to the building facades in accordance with the relevant provision in Section 4.2.3.4(2) of the Sydney Development Control Plan 2012.

This control requires external measures to protect glazing from the mid-summer sun and to avoid the use of high performance tinting or glazing.

The conditions have primarily been recommended to address the objective of, and proposed non-compliance with this control, in order to provide adequate passive shading to address the north-west orientation of the development and appropriate measures to address low altitude morning and afternoon sunlight in mid-summer.

It should also be noted that the City's Design Advisory Panel recommended the following in relation to this matter (refer to Attachment B):

"The external shading to the building should be reviewed, especially its north-west and north-east elevations. Both vertical and horizontal louvres should be tested to reduce heat load. Adjustable louvres are preferred."

It is considered that the provision of additional external shading devices will not significantly undermine the design intent or integrity of the proposed development, or affect its capacity to achieve design excellence in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012.

In light of these matters, the conditions are considered to be reasonable and the support of Council staff for the proposal, including compliance with the controls referred to above, is contingent on the imposition of these conditions.

Condition (22) - Hours of Operation

The condition as currently recommended restricts the hours of operation to between 9.00am and 5.30pm, Friday to Wednesday, and 9.00am and 8.00pm, Thursday.

The condition has been recommended to reflect the hours of operation that were requested by the applicant both on the application form and in their Statement of Environmental Effects.

In their correspondence, dated 2 August 2019, SJB Planning has stated that the hours conditioned are too restrictive for food and drink premises and shop uses. It has been requested that Condition 22 be amended to permit the hours of operation to be between 6.00am and 10.00pm, Monday to Friday.

Relevantly, the site is not located in a late night trading area in accordance with the definitions in Section 3.15 of the Sydney Development Control Plan 2012. Base hours available to the development under Table 3.7 in Section 3.15.4 of the Sydney Development Control Plan 2012 are from 7.00am to 12.00am midnight for unlicensed indoor premises and 7.00am to 10.00pm for category B licensed premises (potentially relevant to the ground floor food and drink premises).

In this instance, hours of operation between 7.00am and 10.00pm, Monday to Sunday inclusive could be supported and amendment of Condition 22 is recommended.

Prepared by:

David Reynolds, Senior Planner

Attachments

Attachment A. Response to Recommended Conditions of Consent

Attachment B. Design Advisory Panel Minutes - 20 June 2019

Approved

GRAHAM JAHN AM

Director City Planning, Development and
Transport

Attachment A

**Response to Recommended Conditions of
Consent**



City of Sydney
GPO Box 1591
Sydney NSW 2000

Attn: David Reynolds

2 August 2019

Re: D/2018/1615 – Recommended conditions of consent – 132-138 McEvoy Street, Alexandria

Dear David,

We refer to the planning report including the recommended conditions of consent. We have reviewed the recommended conditions of consent and have some significant concerns regarding the reasonableness of several conditions of consent. Considering the limited time, we have been provided to review and respond, we have focused on four (4) proposed conditions of consent which we believe are unreasonable and should not be imposed on the consent.

We also intend on speaking at the meeting of 7 August 2019.

SCHEDULE 1 - DEFERRED COMMENCEMENT CONDITIONS

(A) PART A - DEFERRED COMMENCEMENT CONDITIONS

- Condition 2 - SURRENDER OF CONSENT
- Condition 4 - DESIGN MODIFICATIONS
 - 4b Deep soil and tree plantings
 - 4c Facade changes:

(B) PART B – CONDITIONS OF CONSENT

- Condition 22 - HOURS OF OPERATION

A response to the recommended conditions of is attached for the Local Planning Panels consideration (see Response to recommended conditions of consent).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Tully', written over a horizontal line.

Michael Tully
Senior Planner

Encl.

Response to Recommended Conditions of Consent

D/2018/1615 –132-138 McEvoy Street, Alexandria

Condition 2 - SURRENDER OF CONSENT

The condition reads as follows:

In accordance with Section 4.17(1)(b) and Section 4.17(5) of the Environmental Planning and Assessment Act, 1979, a notice of surrender of the following development consent must be provided to Council in writing by the owner of the land in accordance with Clause 97 of the Environmental Planning and Assessment Regulation, 2000:

(a) Development consent D/2017/1073.

Response:

This condition is unreasonable, and removes the ability of the applicant to make a commercial decision on which consent is most viable based on economic and market conditions.

There is no legal constraint on the number of development applications that a person can make in respect to the same land. Further, there is no reason why both consents cannot exist or be operative at the same time. Whichever consent is activated, the other would subsequently not be possible and would ultimately lapse.

As there is no impediment to the consents being available, we request the Local Planning Panel delete the condition entirely.

Condition 4 - DESIGN MODIFICATIONS - 4b Deep soil and tree plantings

The condition reads as follows:

(i) One tree must be provided for every 4 car spaces not overhung by the building along the south-eastern boundary of the site, planted in bays with a minimum dimension of 2 metres and soil depth of 1 metre unencumbered deep soil. The bays must be provided with a raised kerb barrier and native ground cover planting.

(ii) All car parking spaces not overhung by the building along the south eastern boundary of the site must be provided with permeable paving.

Response

The condition undermines the remediation strategy for the land which is to cap and contain, retaining the existing hard stand in order to remediate the site. This is detailed in the Remedial Action Plan and Site Audit Statement, and referenced in Condition 67 – Land Remediation.

It is possible to provide additional canopy trees within the deep soil area of the Bowden Street setback, adjacent the driveway and within the deep soil area of the eastern side setback.

Therefore, we request that the Local Planning Panel delete the condition entirely or amend the condition to require additional tree plantings in the locations discussed above and delete any reference to unencumbered Deep Soil Planting being established.

Condition 4 - DESIGN MODIFICATIONS – 4c Facade changes:

The condition reads as follows:

(i) Adjustable, vertical louvres must be added to all openings on the south-eastern, north-eastern and north-western elevations at levels 1, 2 and 3, to provide protection from low altitude sunlight from spring equinox until autumn equinox.

(ii) The fixed vertical louvres shown on the north-eastern elevation must be shown as adjustable to account for low altitude morning sun.

(iii) Additional horizontal shading must be provided to the north-eastern elevation to account for northern mid-summer sun exposure

Response

The proposed condition requires amendments to the external façade of the building. Council's Assessment report justifies these amendments for the reason being they will aid energy reduction and achievement of the NABERS rating of 5.5 Stars.

A preliminary NABERS energy analysis (report) was conducted on the proposed development by ERBAS, Energy Consultants and submitted with the application. The report detailed that the development is estimated to achieve 4.5 Stars NABERS energy for the base building. To achieve a NABERS rating of 5.5 Stars, further electricity reduction was determined to be required. The report provided possible options to be pursued to achieve this, which included

- Introduction of solar panels on the roof of the building and/or;
- Increasing the performance of building insulation and glazing to reduce internal loads and energy demand from the building's Heating, Ventilating, and Air Conditioning (HVAC) system, and/or;
- More in-depth analysis on the impact of the buildings current external shading devices, and/or
- Monthly monitoring exercise via a BMS or EMS to inform building tuning processes and optimise operations of systems

The energy consultant's report did not state that additional shading devices should be investigated or required to aid further electricity reduction. The report also stated that accurate NABERS results can only be obtained after 12 months of operation conducted via an official NABERS assessment.

The required amendments will impact on the overall intent and integrity of the building design and are considered unnecessary and unreasonable.

The current building design achieves design excellence and any further amendments sought by the condition will potentially adversely impact achievement of the excellence of the design.

Further, the Commitment Agreement which the developer and NABERS details the specifics around the agreement, including timeframes to achieve the rating. Council's condition seeks to require achievement of the NABERS rating of 5.5 stars upon completion of the building and disregards the recommendations of the report which will be to the detriment of the building design.

Therefore, we request that the Local Planning Panel delete the condition, noting that the applicant accepts condition 107 that requires a NABERS rating of 5.5 Stars to be achieved without the screening proposed by condition 4(c).

Condition 22 - HOURS OF OPERATION

The condition reads as follows:

The hours of operation are restricted to between 9.00am and 5.30pm, Friday to Wednesday, and 9.00am and 8.00pm, Thursday

Response

The hours of operation are too restrictive considering the proposed ground floor uses which include 'Food and Drink Premises' and 'Shops'. The hours should be amended to commence at 6am Monday to Friday and cease at 10pm. The weekend trading hours are considered appropriate for an Employment Area which services a global city.

Note – we acknowledge the hours referenced in the condition were listed on the development application form, however they have been reviewed based on market conditions and considered unsuitable.

Attachment B

**Design Advisory Panel Minutes – 20 June
2019**

Project	132-138 McEvoy Street, Alexandria
Review Date	20 June 2019
Panel Present	Peter Mould (Chair) Elizabeth-Ann McGregor Che Wall Kerry Clare James Weirick
COI Declaration	NA
Council Officer	David Reynolds
Advice	<p>The Panel was presented with the amended DA for the site. The Panel noted and recommended the following:</p> <ul style="list-style-type: none"> • The Panel supported all the directions recommended by the Council Officer to address issues. The developer is to be congratulated on meeting recommendations already made. • Design changes that have already resulted in an increase in deep soil are commended (deletion of egress to McEvoy Street). • A condition that requires compliance with the DCP to provide a tree every four car spaces is supported to further improve the outcome. A requirement for permeable surfaces to the car park to further increase deep soil area is also supported. • It was noted that Sydney Water requires no structure above the Sheas Creek culvert. The whole corner bay of the grid frame structure must be deleted. DAP recommend deleting the whole square of the grid rather than cutting at a diagonal. • A minor redesign of driveway may be required to keep a tree, this was noted and supported. • The external shading to the building should be reviewed, especially its north-west and north-east elevations. Both vertical and horizontal louvres should be tested to reduce heat load. Adjustable louvres are preferred. • The width of the ramp for pedestrian access on McEvoy Street frontage needs to be increased to comply. The Panel believe that this can be solved with some design amendments to the ramp and terrace configuration.