

Relevant Information for Local Planning Panel

FILE: D/2021/893 **DATE:** 19 July 2023

TO: Local Planning Panel Members

FROM: Andrew Thomas, Executive Manager Planning and Development

SUBJECT: Information Relevant To Item 3 – Development Application: 28-30 Orwell Street, Potts Point – D/2021/893

Alternative Recommendation

It is resolved that:

- (A) the variation requested to the Height of Buildings development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act, 1979*, a deferred commencement consent be granted to Development Application Number D/2021/893, subject to the conditions set out in Attachment A to the subject report to the Local Planning Panel on 19 July 2023, subject to the following amendments in Section A (additions are shown in **bold italics**, and deletions shown in ~~**bold italicised strikethrough**~~):

(1) **FINAL STRUCTURAL DRAWINGS**

The following information is to be submitted to and approved by Council's Area Planning Manager:

- (a) ***The final structural design ~~Structural works~~*** related to the existing retained buildings is to be consistent with the TTW Structural report titled Structural Engineering Clarifications for DA dated 2 December 2022.
- (b) The final detailed structural drawings including all strengthening works proposed for existing retained fabric must be submitted.
- (c) The final detailed services (electrical, air-conditioning, plumbing, fire) layout that has been coordinated with architectural drawings must be submitted.

- (d) Confirmation of the thickness of the concrete slabs of Levels 3 and 4 must be submitted. Any change in thickness of these concrete slabs due to any structural design changes must not result in these slabs moving any closer to the heritage ceiling fabric.
- (e) A Demolition, Excavation and Construction Methodology Report that includes methodology for both demolition and construction for the subject site must be submitted. The report is to provide evidence that satisfactorily instructs how to support and maintain the retained structure and its footings in a detailed and systematic form.
- (f) A Final Geotechnical Report with additional cored borehole information and confirmation of the size and location of existing footings must be submitted (for any investigative works a relevant exemption should be obtained).
- (g) **~~The above solutions are to minimise the impact upon, and interference of, significant heritage fabric, enable significant ceilings and structural elements to be exposed to view and conserve the historic character of the interiors. A consolidated set of coordinated architectural, structural, and services drawings must be submitted.~~**
- (h) **~~A consolidated set of coordinated architectural, structural, and services drawings must be submitted. The final design submitted to Council must minimise the impact upon, and interference of, significant heritage fabric, enable significant ceilings and structural elements to be exposed to view and conserve the historic character of the interiors.~~**

Background

Applicant's request to delete the deferred commencement condition

The recommendation is for a deferred commencement consent, subject to the deferred commencement condition (1) Final Structural Drawings reproduced above.

The matters identified in the deferred commencement condition must be submitted to Council within 24 months of the date of determination.

The consent will not operate until such time that the Council notifies the applicant in writing that the deferred commencement consent condition has been satisfied.

The applicant's planner has written a letter dated 17 July 2023 requesting that this condition be deleted, and a full consent granted.

Section 4.47 of the Environmental Planning & Assessment Act 1979 (the Act) relates to development that is integrated development.

Section 4.47(3) of the Act states, in full, that:

“A consent granted by the consent authority must be consistent with the general terms of any approval proposed to be granted by the approval body in relation to the development and of which the consent authority is informed. For the purposes of this Part, the consent authority is taken to have power under this Act to impose any condition that the approval body could impose as a condition of its approval.”

The Act gives the consent authority power to impose any condition that the approval body (i.e., Heritage NSW as delegate for Heritage Council) could impose as a condition of its approval.

The information required by the condition is consistent with the General Terms of Approval.

The condition requires the submission of additional information including the final structural and services design, and coordination between the structural drawings, services and architectural drawings. The condition does not require specific changes to the design of the proposal.

The condition satisfies the requirements of the Newbury Principles, as it is for a planning purpose, fairly and reasonably relates to the development, and is reasonable having regard to the scope of development.

It is recommended that minor changes are made to the wording of deferred commencement condition (1) Final Structural Drawings in order to provide further clarity on the information required.

Background as to why this condition should be a deferred commencement

Following the Heritage Council Approvals Committee meeting on 6 September 2022, General Terms of Approval were issued by Heritage NSW on 27 September 2022.

The City requested additional information be submitted in a meeting held between the applicant and City staff on 24 October 2022 and correspondence issued on 25 October 2022.

The request for additional information included, amongst other things, that information be provided to address the requirements of Condition 3 of the General Terms of Approval, which was as follows:

DETAILS TO BE SUBMITTED FOR APPROVAL

3. The following information is to be submitted with the s60 application for approval by the Heritage Council of NSW (or delegate):
 - a. Revised construction methodology drawings and structural sequencing reflecting the updated proposal.
 - b. Structural adequacy report of the upper stalls/balcony and their ability to withstand additional load.
 - c. Detailed drawings providing further details on the facilities required to operate the entertainment venue including lighting, green rooms, backstage storage, sound, etc., to maintain as much of the original heritage fabric and form as possible.
 - d. Detailed drawings that consider compliance with building standards, safety and access.
 - e. Minimise the number of openings to reduce impact on eastern and western elevations. The openings should be articulated to be sympathetic to the style of the existing Interwar heritage facades.
 - f. Detailed inventory, condition and significance assessment of all existing fabric and a detailed schedule of conservation works.
 - g. Provide an inventory of significant fabric being salvaged for reuse within the building or used as part of interpretation.
 - h. An inventory of moveable heritage items associated to the significant historical occupancy of the building be recorded. The inventory should identify items, their storage (short and long term) and their eventual relocation within the site.
 - i. Submit an Archaeological Research Design and Excavation Methodology prepared by a suitably qualified and experienced historical archaeologist.
 - j. Nominate an Excavation Director(s) suitable to satisfy the Excavation Director Criteria of the Heritage Council of NSW for the proposed activity and significance level. The nomination(s) shall be supported by a response to the Excavation Director Criteria 2019.
 - k. Following the receipt of the Archaeological Research Design and Excavation Methodology, the Heritage Council of NSW reserves the right to issue further archaeological conditions as part of the section 60 approval to manage the archaeology. Matters such as (but not limited to) fieldwork methodology, artefact analysis, final reporting may be included as part of these archaeological conditions.

The applicant submitted a response on 8 December 2022, however most of the information was conceptual and indicative only as to the structural design.

A full and final set of structural drawings, services drawings coordinated with the architectural drawings has not been submitted. The applicant advised that the construction methodology will be further refined upon appointment of a contractor.

The deferred commencement condition requires critical information to be provided. It is acceptable that this information be provided prior to the consent becoming operative, however it is not appropriate that this condition be deleted, as discussed above, or delayed to prior to the issue of a construction certificate as it is imperative that the full and final scope of works has been documented prior to the consent becoming operative.

The deferred commencement condition also ensures that the final structural drawings be submitted to ensure that the design qualities of the proposal that exhibits design excellence under Clause 6.21C of the Sydney Local Environmental Plan 2012 will be retained.

The amended application was re-referred to Heritage NSW.

It is noted that in the final set of General Terms of Approval issued on 30 May 2023 retained the condition titled 'Details to be Submitted For Approval' with items (a) to (h) retained in full and items (i) to (k) relating to archaeology being deleted.

Prepared by: Matthew Girvan, Area Coordinator

Attachments

Attachment A. Letter from the Applicant

Approved

A handwritten signature in black ink, appearing to read 'A-T', positioned to the right of the 'Approved' text.

ANDREW THOMAS

Executive Manager Planning and
Development

Attachment A

Letter from the Applicant

The Chair
Local Planning Panel
City of Sydney Council
456 Kent Street
SYDNEY NSW 2000

RE: Item 3 - Development Application D/2021/893 - 28-30 Orwell Street, Potts Point

I refer to Item 3 presented to the City of Sydney Local Planning Panel for determination.

We have reviewed and generally support the officer's recommendation of approval. However, I wish to advise that the recommended **deferred commencement condition** is potentially in breach of Section 4.47(3) of the Environmental Planning & Assessment Act.

The development has been fully assessed by Heritage NSW and General Terms of Approval (GTAs) have been issued for the proposal, including consent conditions (which are not deferred commencement). Condition 1 of the GTAs requires comprehensive structural design details to be provided with the Section 60 Application under the Heritage Act 1977.

With respect to all heritage considerations, Heritage NSW and the Heritage Council are the only authority for buildings that are listed on the State Heritage Register. Under Section 4.47(3) of the Environmental Planning & Assessment Act 1979, all heritage related consent conditions:

*"must be **consistent** with the general terms of any approval proposed to be granted by the approval body (in this case, Heritage NSW) in relation to the development and of which the consent authority is informed".*

In this case, the LPP has been presented with a draft **deferred commencement consent** condition that imposes far more onerous heritage conditions than are contained in the GTAs. Specifically, the applicant is unable to activate the development consent until Council's Deferred Commencement Condition 1 is satisfied. This condition directly conflicts with and is far more onerous than the Heritage GTAs.

Council's Deferred Commencement Condition specifically requires detailed structural engineering design, services, demolition, excavation, geotechnical and construction methodology documentation. The stated reason and purpose for Council's Deferred Commencement Condition is for heritage reasons. Part G of the condition includes specific reference to the underlying heritage rationale.

This deferred commencement condition commits the applicant to several million dollars in design documentation expense before the consent can be activated. The condition is in direct conflict with the requirements of Heritage NSW and Section 4.47(3) of the Environmental Planning & Assessment Act 1979.

It is requested that this condition be deleted, and a full consent granted, given the GTAs already include detailed structural design details and that condition is not opposed.



Giovanni Cirillo

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17/07/23