

Relevant Information for Local Planning Panel

FILE: D/2022/1278 **DATE:** 20 September 2023

TO: Local Planning Panel Members

FROM: Andrew Thomas, Executive Manager Planning and Development

SUBJECT: Information Relevant To Item 3 – Development Application: 50 Bray Street, Erskineville – D/2022/1278

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) consent be granted to Development Application No D/2022/1278, subject to the conditions set out in Attachment A to the subject report to the Local Planning Panel on 20 September 2023, subject to the following amendments (additions shown in **bold italics**, deletions shown in ~~strike through~~):

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2022/1278 dated 07/12/2022 and the following drawings prepared by Katris Architects:

Drawing Number	Drawing Name	Date
A002 Rev C	Ground Floor Plan/ Site Plan	21/08/2023
A003 Rev C	Level 1	21/08/2023
A004 Rev C	Attic Plan	21/08/2023

Drawing Number	Drawing Name	Date
A005 Rev C	Roof Plan	21/08/2023
A006 Rev C	Sections	21/08/2023
A007 Rev C	North & South Elevations	21/08/2023
A008 Rev C	East & West Elevations	21/08/2023
A008B Rev C	East & West North & Eastern Elevations without fencing	21/08/2023
A019 Rev C	Demolition Plan	21/08/2023

and the following drawings prepared by Greenland Design Landscape Architects:

Drawing Number	Drawing Name	Date
2644.GD.01 Rev B	Landscape Plan	29/05/2023
2644.GD.02 Rev B	Landscape Details & Specification	29/05/2023

and the following drawing prepared by Victor John Mansell:

Drawing Number	Drawing Name	Date
205618-3	Plan of Proposed Subdivision of Lot A D.P 110203	undated

and as amended by the conditions of this consent.

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

Reason

To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

(28) ~~PARTY-WALLS BETWEEN LOTS 1 AND 2~~

- (a) ~~The part(s) of the common boundaries between the lots in the subdivision occupied by the shared walls of the abutting buildings are to be shown as "Party Wall" on the final Plan of Subdivision in order to invoke the statutory provisions of Section 181B of the Conveyancing Act, 1919 and create the required Easements for Support. **Where the design of the building walls adjacent to the common boundary between Lots 1 and 2 depart from independent and unattached construction, and a shared structural wall is constructed, the final Plan of Subdivision shall note the wall as a party wall, to invoke the provisions of Section 88BB(1)(b) of the Conveyancing Act, 1919 and create cross-easements for support.**~~
- (b) ~~The party walls must be of masonry construction and extend at a minimum to the underside of the roof structure. **Where the walls are constructed independently, and not shared structurally, offsets from the walls to the boundaries must be shown on the subdivision plan, or, if there is no gap, the plan must be noted as "Separate Walls", pursuant to clause 63(e) of the Surveying And Spatial Information Regulation 2017.**~~

Reason

To ensure the orderly development of land, with the creation of the appropriate easements.

(32) FLOOD PLANNING LEVELS

The development must be constructed to comply with the recommended flood planning level of 14.3 AHD **for Building 1 and 2 and 14.2 AHD for Building 3** as indicated in the report titled "Flood Risk Management Report" prepared by Telford Civil dated October 2022 **as amended May 2023**.

Details must be submitted to the Registered Certifier prior to the issue of any Construction Certificate demonstrating that the development will comply with the recommended flood planning levels.

Reason

To ensure the development complies with the recommended flood planning levels.

(45) TREE PROTECTION ZONE

- (a) Before the commencement of works, Tree Protection Zone/s (TPZ) must be established around all trees to be retained not less than the distance indicated in the TPZ schedule below.

- (b) Tree protection must be installed and maintained in accordance with the Australian Standard 4970 Protection of Trees on Development Sites and with the following schedule:

TPZ Schedule

Tree No.	Species Name	Location	Radius (m) From Trunk
1 to 3	<i>Fraxinus graffithii</i> (Evergreen Ash)	Bray Street (Street Trees)	3.5
4	<i>Shinus molle</i> (Peppercorn Tree)	49 Devine Street (Rear Yard)	9.5 4

Note: Only applies to the TPZ within the subject development site and the public domain.

- (c) Ground surface protection must be installed if construction access is required through any TPZ of this condition where hard surface / paving is not existing. The ground protection must be:
- (i) Protected with boarding (ie scaffolding board or plywood sheeting or similar material), placed over a layer of mulch to a depth of at least 75mm and geotextile fabric;
 - (ii) The protective boarding must be left in place for the duration of the construction and development.
- (d) The following works must be excluded from within any TPZs **of trees 1-3 (street trees)**:
- (i) Excavation except for the localised siting of piers / demolition of the concrete slab;
 - (ii) Soil cut or fill including trenching;
 - (iii) Soil cultivation, disturbance or compaction;
 - (iv) Stockpiling, storage or mixing of materials;
 - (v) The parking (except existing on street parking), storing, washing and repairing of tools, equipment and machinery;
 - (vi) The disposal of liquids and refuelling;
 - (vii) The disposal of building materials;

- (viii) The siting of offices or sheds;
 - (ix) Any action leading to the impact on tree health or structure.
- (e) Any trenching works for services / hydraulics / drainage etc must not be undertaken within any TPZ. Alternative installation methods for services, such as directional boring/drilling, or redirection of services must be employed.
- (f) All work undertaken within or above the TPZ must be:
- (i) Carried out in accordance with a work methodology statement prepared by an Arborist (minimum AQF Level 5) and written approval is obtained from Council's Tree Management Officer before its implementation; and
 - (ii) Supervised by a Project Arborist (minimum AQF Level 5).

Reason

To ensure the protection and ongoing health of trees.

(60) TREE PROTECTION DURING CONSTRUCTION

~~All trees that will be affected by the development within the property and on any adjoining land, must be protected in accordance with the Australian Standard 4970 Protection of Trees on Development Sites and as follows:~~

- ~~(a) Stockpiling, storage or mixing of materials, washing of equipment, vehicle parking, disposal of liquids, machinery repairs and refuelling, disposal of building materials such as cement slurry, siting of offices or sheds and the lighting of fires, must not occur within 9.5 metres of the trunk of any tree to be retained (including trees within adjoining properties).~~
- ~~(b) Excavation (except for localised siting of piers) must not occur within 9.5 metres of the trunk of the trees (including trees within adjoining properties). If excavation is proposed within this zone, Council's Tree Management Officer must be contacted immediately and the excavation must be carried out in accordance with Council's direction.~~
- ~~(c) Excavations for the footings where they are within (insert distance) metres of any tree (including trees in adjoining properties) must be undertaken using non-destructive methods (such as by hand) to ensure no tree roots greater than 40mm diameter are damaged, pruned or removed.~~
- ~~(d) Footings must be relocated / realigned if any tree root greater than 40mm in diameter is encountered during excavations. A minimum of 150mm clearance must be provided between the tree root and footing.~~
- ~~(e) Tree trunk and major branch protection must be undertaken prior to the commencement of any works. The protection must be installed and certified by a qualified Arborist (minimum AQF 3) and must include:~~
 - ~~(i) Tree trunk/s and/or major branches must be protected by wrapped thick carpet underlay or similar padding material to limit damage;~~

- ~~(ii) Timber planks (50mm x 100mm must be placed around tree trunk/s. The timber planks must be spaced at 100mm intervals, and must be fixed against the trunk with tie wire, or strapping. The hessian and timber planks must not be fixed to the tree in any instance, or in any fashion;~~
- ~~(iii) Tree trunk and major branch protection is to remain in place for the duration of construction and development works, and must be removed at the completion of the project.~~
- ~~(f) The consent from Council's Tree Management Officer must be obtained prior to the undertaking of any tree pruning works, including tree roots greater than 40mm in diameter. Only minor pruning works will be approved by Council.~~

Reason

~~To ensure the protection and ongoing health of trees.~~

Background

The applicant has submitted email correspondence dated 14 September 2023 requesting that a number of conditions be amended.

Condition	Assessment
Condition 1 (Approved Development)	It is recommended that Condition 1 be amended to refer to the correct title of an elevation drawing.
Condition 2 (Design Modifications)	<p>Part (b) of Condition 2 requires the design of the building be modified so that “the patio of Building 2 must be reduced in width by 450mm at the eastern end.”</p> <p>This condition is recommended as the 1.8m high privacy screen of the patio of Building 2 is casting shadows to the private open space area of 39 Devine Street at 1pm at midwinter.</p> <p>The private open space area of 39 Devine Street currently receives solar access between 10am and 1pm of various amounts.</p> <p>The level of solar access between 10am and 12 midday is unchanged, however the shadow diagrams indicate that there is additional overshadowing at 1pm, which is a result of the 1.8m high privacy screen to the rear patio.</p> <p>The applicant has requested that Condition 2 be amended by deleting part (b) or alternatively by amending part (b) so that the patio of Building 2</p>

Condition	Assessment
	<p>be reduced in width by 225mm rather than 450mm.</p> <p>The applicant's correspondence requests that as the amount of solar access is increased by the proposal at 2pm and 3pm. However, the submitted shadow diagrams show that there is no increase in solar access to the private open space of 39 Devine Street between 2pm and 3pm at midwinter. In follow up discussions the applicant acknowledges that the statement in their correspondence is an error.</p> <p>Therefore, it is recommended that Condition 2(b) remains unchanged.</p>
Condition 28 (Party Walls)	<p>Condition 28 was originally recommended as there is a note on the plans referring to 'party walls'.</p> <p>The applicant has advised that the wall between lots 1 and 2 is not a party wall, and that an architectural framing system (AFS) will be used during construction. They advise that the slabs are designed to be independent between the buildings and tied to the walls, so each building is independently supported.</p> <p>The applicant requests amendments to Condition 28. The applicant's proposed amendments have been reviewed by the City's Specialist Surveyor and the proposed amendments are unclear, so alternate wording to Condition 28 is recommended.</p> <p>The proposed condition wording allows for construction as a party wall (in which case part (a) of the condition is to be followed) or construction as structurally independent walls (in which case part (b) of the condition is to be followed).</p> <p>The applicant has advised that the revised wording of Condition 28 is acceptable.</p>
Condition 32 (Flood Planning Levels)	<p>It is recommended that Condition 32 is amended to refer to the correct flood planning levels for Building 3 and to refer to the amended Flood Risk Management Report dated May 2023. The proposed amendments have been reviewed by the City's Public Domain Unit and are acceptable.</p>

Condition	Assessment
Condition 45 (Tree Protection Zone)	<p>The City's Tree Management unit has advised that the Tree Protection zone stated in the condition for Tree 4 (Peppercorn Tree) was initially calculated as 9.5m based upon the size of the trunk of the tree, however based upon further review of the tree they recommend the tree protection zone be reduced to 4 metres as this distance will be sufficient to ensure the protection of the tree during construction.</p> <p>Tree 4 is at a lower level than the subject site and it's roots are unlikely to be impacted by the proposal, and therefore the City's Tree Management unit have recommended that part (d) of Condition 45 be amended to specifically refer to Trees 1-3 (street trees).</p> <p>The amended conditions will ensure the adequate protection of the tree during construction, whilst ensuring that there is no conflict between the wording of the condition and the proposed development.</p>
Condition 60 (Tree Protection During Construction)	<p>The City's Tree Management unit has advised that Condition 60 should be deleted, as the condition is duplicating requirements for the protection of trees that are already covered through Condition 45 (Tree Protection Zone) and Condition 62 (Street Tree Protection).</p> <p>The City's Tree Management unit have advised that the 'Tree Protection During Construction' condition is typically used when there are multiple trees being impacted by a proposed development, and that the 'Tree Protection Zone' condition is used when the trees being impacted are specifically identified and tree protection zones specified, however they advise that these conditions should not both be used on the same development consent, and the 'Tree Protection During Construction' condition was originally recommended in error.</p>

Prepared by: Matthew Girvan, Area Coordinator

Attachments

Attachment A. Email Correspondence from the Applicant

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

Attachment A

Email Correspondence from the Applicant

Matthew Girvan

From: [REDACTED]
Sent: Thursday, 14 September 2023 6:22 PM
To: Matthew Girvan
Subject: TRIM CM: RE: LPP 20 September 2023 - 50 Bray Street, Erskineville - D/2022/1278

Follow Up Flag: Follow up
Flag Status: Completed

Caution: This email came from outside the organisation. Don't click links or open attachments unless you know the sender, and were expecting this email.

Noted thanks Matthew. I have also added Item 5 below to correct a typo.

That should be it from me for comments on consent conditions, subject to our architect or planner having any suggestions (which I don't anticipate).

Regards
Peter

From: Matthew Girvan <mgirvan@cityofsydney.nsw.gov.au>
Sent: Thursday, 14 September 2023 5:22 PM
To: [REDACTED]
Subject: RE: LPP 20 September 2023 - 50 Bray Street, Erskineville - D/2022/1278

Hi Peter,

Confirming that this has been received and will be reviewed.

Please note that I am on leave tomorrow and back on Monday.

Kind regards,

Matthew Girvan
Area Coordinator
Planning Assessments



Telephone: +612 9246 7756
cityofsydney.nsw.gov.au



The City of Sydney acknowledges the Gadigal of the Eora nation as the Traditional Custodians of our local area.

From: [REDACTED]
Sent: Thursday, September 14, 2023 4:53 PM
To: Matthew Girvan <mgirvan@cityofsydney.nsw.gov.au>
Subject: RE: LPP 20 September 2023 - 50 Bray Street, Erskineville - D/2022/1278

Caution: This email came from outside the organisation. Don't click links or open attachments unless you know the sender, and were expecting this email.

Hi Matthew,

Thank you for the email, the comprehensive work and time involved in completing the report, and the recommendations.

There are some brief matters if possible we would like to raise relating to the recommended consent conditions:

1. **Condition 2 (b)** states:

DESIGN MODIFICATIONS

The design of the building must be modified as follows:

.....

(b) The patio of Building 2 must be reduced in width by 450mm at the eastern end.

This is linked to pages 29-30 of the Report relating to 4.1.3.1 Solar access. Despite the proposed shadow diagram showing the 1.8m privacy screen at the eastern end of Building 2 patio casting a shadow at 1pm on 21 June over the private open space of No 39, the direct sunlight is still for a minimum 2 hours between 9am and 3pm thereby complying with the DCP. The proposal actually improves solar access to the private open space from that existing by removing a substantial 2 and 3 pm existing shadow replaced with a lesser shadow but only at 1pm.

Accordingly, we prefer condition 2 (b) is deleted to improve amenity for building 3 by the patio as designed. Otherwise, we request the reduction be halved to 225mm instead of 450mm.

2. **Condition 28** refers to abutted party walls between buildings 1 and 2. There are no party abutting walls – see box entitled *Construction materials note (BASIX)* on floor plans under *Party walls* that refers to a discontinuance air gap of 50mm between the buildings the centre of which is the boundary between the two lots. Accordingly, we request the first two lines of condition 28 (a) be reworded as follows (changes are in red font):

*In the event ~~The~~ part(s) of the common boundaries between the lots in the subdivision **are** occupied by ~~the~~ shared walls of ~~the~~ abutting buildings, **then they** are to be shown as.....*

3. **Condition 32** refers to recommended flood planning level of 14.3 AHD. At Council's request, a revised floor report was provided in May 2023 to support a recommended flood planning level of 14.2 AHD for building 3. Accordingly, we request the first paragraph of the condition be reworded as follows (changes are in red font):

*The development must be constructed to comply with the recommended flood planning level of 14.3 AHD **for Buildings 1 and 2 and 14.2 AHD for Building 3**, as indicated in the report titled "Flood Risk Management Report" prepared by Telford Civil dated October 2022 **as amended May 2023**.*

4. **Conditions 45 and 60** refer to a Tree Protection Zone for Tree 4 at a radius of 9.5m. This encroaches into the proposed building 3. Further, the tree canopy spread to the south shown on survey (and on proposed floor plans) is a 4m radius from centre of trunk and 3.6m from trunk. The current on site parking area, being the only area that can be used on site as a loading dock/bay during construction is substantially outside the tree canopy. There is a retaining wall and footings on the site boundary to the north and east that separate the soil root zone of tree 4 from the site. The existing hard stand area is at a higher level than the base of tree 4. This condition needs review and we request further discussion take place in order to bring about a more accurate detail and resolution.

5. **Condition 1 (a)** drawing name for drawing number A008B Rev C should be amended as follows (changes are in red font):

North & South ~~East & West~~ Elevations without fencing

We look forward to discussing this matter with you.

Regards
PELK Pty Ltd
Per: Peter El Khouri

From: Matthew Girvan <mgirvan@cityofsydney.nsw.gov.au>
Sent: Wednesday, 13 September 2023 4:39 PM
To: [REDACTED]
Subject: Local Planning Panel Meeting Notification - 20 September 2023

Good afternoon,

The following development applications are listed for the Local Planning Panel (LPP) meeting on 20 September 2023:

- Development Application: 50 Bray Street, Erskineville - D/2022/1278
- Development Application: 502-514 Elizabeth Street and 272-276 Cleveland Street, Surry Hills - D/2022/600
- Development Application: 19-21 Buckland Street, Chippendale - D/2022/1359

The LPP agenda will be available on the City's website today, 13 September 2023, from 5.00pm. Meeting papers will be available here: <https://meetings.cityofsydney.nsw.gov.au/ieListMeetings.aspx?Cid=186&Year=0> (select relevant LPP meeting date).

Anyone wishing to address the Panel on any agenda item must advise Secretariat – 9265 9702 or secretariat@cityofsydney.nsw.gov.au – by 10.00am on 20 September 2023 (**email is preferred**). Speakers need to indicate the context of their interest, for the information of the Panel; for example, speaking on behalf of the applicant, objecting to the development as an impacted neighbour, available for questions, etc).

Please provide a name, email address and mobile phone number for each speaker.

The 20 September 2023 LPP meeting will commence at 5.00pm and will be held in person in the Council Chamber at Level 1, Sydney Town Hall, 483 George Street, Sydney. The meeting will also be livestreamed on the City's website at: <https://webcast.cityofsydney.nsw.gov.au/>

Please also note that in accordance with the Operational Procedures, any written representation from proponents or other interested parties on the business paper must be submitted to Council by 5.00pm on the Friday prior to the LPP meeting (15 September 2023) and that if a Relevant To memo is prepared it will be available for public viewing prior to the meeting.

Addressing the Local Planning Panel meeting

- Applicants/submitters/objectors must register with Secretariat to address the LPP meeting. Email secretariat@cityofsydney.nsw.gov.au or phone 9265 9702 to register. **Email is preferred.**
- Name, email address and contact phone numbers are required in case of any agenda changes. Speaker phone numbers and email addresses will be securely stored, accessible only to Secretariat, and destroyed within one month of the meeting.
- If possible, nominate one or two people to represent and address the meeting on behalf of a group.
- Note that the meeting is livestreamed and members of the public can follow the livestream at <https://webcast.cityofsydney.nsw.gov.au/>

Webcasting information for those wishing to address the Panel

- LPP meetings are audio visually recorded and webcast live on the City of Sydney website.

- Members of the public attending the meeting may have their image, voice and personal information (including name and address) recorded, publicly broadcast and archived.
- By attending the meeting, you consent to this use of your image, voice and personal information. Your address to the Panel will be webcast live and recorded, and the recording will be publicly available on the City's website for up to a year following the meeting.

Kind regards,

Matthew Girvan
Area Coordinator
Planning Assessments



Telephone: +612 9246 7756
cityofsydney.nsw.gov.au



The City of Sydney acknowledges the Gadigal of the Eora nation as the Traditional Custodians of our local area.

This email and any files transmitted with it are intended solely for the use of the addressee(s) and may contain information that is confidential or subject to legal privilege. If you receive this email and you are not the addressee (or responsible for delivery of the email to the addressee), please note that any copying, distribution or use of this email is prohibited and as such, please disregard the contents of the email, delete the email and notify the sender immediately.

This email and any files transmitted with it are intended solely for the use of the addressee(s) and may contain information that is confidential or subject to legal privilege. If you receive this email and you are not the addressee (or responsible for delivery of the email to the addressee), please note that any copying, distribution or use of this email is prohibited and as such, please disregard the contents of the email, delete the email and notify the sender immediately.
