

Relevant Information for Local Planning Panel

FILE: D/2022/600 **DATE:** 20 September 2023

TO: Local Planning Panel Members

FROM: Andrew Thomas, Executive Manager Planning & Development

SUBJECT: Information Relevant To Item 4 – Development Application: 502-514 Elizabeth Street and 272-276 Cleveland Street, Surry Hills

Alternative Recommendation

It is resolved that:

- (1) 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
- (2) the variation requested to the floor space ratio development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (3) 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/2022/600 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 ~~strikethrough~~):

(33) ALLOCATION OF PARKING

The number of car parking spaces to be provided for the development, **with the exception of the small rigid vehicle loading dock**, must ~~comply with~~ **not exceed** the table below. Details confirming the parking numbers must be submitted to the satisfaction of the Registered Certifier prior to the issue of a Construction Certificate.

Car Parking Type	Number
Office and business parking	16
Accessible office and business parking	2
Retail parking	8
Subtotal	26
Motorcycle parking	3
Small Rigid Vehicle loading dock(s)	1
Total	30

Reason

To ensure the allocation of parking is in accordance with the Council's DCP.

(94) TREE ROOT INVESTIGATION

Prior to determining the final location of the underground car park and the design of the footing along the boundary:

- (a) Exploratory root investigation must be undertaken by a qualified Arborist (minimum AQF Level 5) along the north alignment. This shall consist of carefully removing the asphalt and hand digging a trench along the boundary to expose tree roots to a minimum depth of 800mm below the existing grade. An assessment of tree root size, number and condition must be provided (including photos) in a report and submitted to Council's Area Planning Manager for approval prior to installation of the driveway and crossover.
- (b) In the event any large structural roots (greater than 40mm diameter) are identified as a result of the exploratory root investigation, the underground carpark is likely to require ~~five~~ **5.5** metres setback from the boundary to ensure the street tree is not compromised as a result of the works.
- (c) In the event any large structural roots (greater than 40mm diameter) are identified as a result of the exploratory root investigation. The design of the northern footing must be constructed without the use of a continuous strip footing. The construction method shall include pier and beam footing or other root sensitive methods, to ensure tree roots greater than 40mm in diameter are not damaged, pruned or removed during construction of the wall.
- (d) Any root pruning approved by Council must be undertaken by a qualified Arborist with a minimum AQF level 3.

Reason

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

Background

In response to the draft conditions in Attachment A to Item 4 – Development Application: 502-514 Elizabeth Street and 272-276 Cleveland Street, Surry Hills, the applicant's planning consultant has requested changes to Condition 2 'Design Modifications' and Condition 33 'Allocation of Car Parking'. The applicant has also requested the insertion of a new condition 'Staging of Construction Certificates (CC's)', and changes to multiple conditions to reflect the proposed staging.

Condition 2 'Design Modifications' Condition 94 'Tree Root Investigation'

The applicant has requested the wording of Condition 2 be amended as follows:

(2) DESIGN MODIFICATIONS

The design of the building must be modified as follows:

- (a) The basement carpark ***design is to be amended and*** must be setback ***up to 5.5*** metres from the northern property boundary (Goodlet Street) to allow for the retention of the existing paperbark street trees. ***The basement setback may be reduced if the proponent can demonstrate to the satisfaction of Council's Area Planning Manager that the basement will not have an adverse impact on the health or structural stability of the street trees.***
- (b) The signage zone shown on the corner of Goodlet and Elizabeth Street is not approved and is to be deleted from the plans.
- (c) The letterboxes are to be relocated to a secure location.
- (d) The design of the footpath awning on Cleveland Street is to be amended so that the clearance height between the footpath and the kerb is no less than 3.2m at any given point.
- (e) The architectural plans are to be amended to include markups and additional annotations regarding requirements and output capacity for PV systems. To maintain consistency with sustainability reporting in the development application; annotations are required to clearly identify a photovoltaic system, totalling a peak capacity in line with previously reported 45 kWp.

The modifications are to be submitted to and approved by Council's Area Coordinator Planning Assessments / Area Planning Manager Planning prior to the issue of a construction certificate.

Reason

To require amendments to the approved plans and supporting documentation following assessment of the development.

The submitted justification for the proposed change is as follows:

Condition (2) (a) and (94) (b) are inconsistent. (2) (a) refers to 5.5 metres, (94) (b) refers to 5 metres. The request is that both require 5 metres for consistency.

The sequence of commencing construction and then stopping and seeking to modify the basement during construction is a major concern. The planning report foreshadows the potential for a modification to reduce the setback and provides a clear way forward. However, to minimise program delays and avoid a formal modification application, it is requested this is included in the condition.

Council Response

The inconsistency between Condition 2 'Design Modifications' and Condition 94 'Tree Root Investigation' is acknowledged and appears to have arisen due to a typographical error. The Tree Management Unit have recommended a minimum setback of 5.5m to protect the street trees on Goodlet Street. Accordingly, the prudent course of action is to amend Condition 94 'Tree Root Investigation' to reflect the recommendation of Tree Management Unit, rather than amend Condition 2 'Design Modifications' for the sake of consistency with a typographical error.

The proposed insertion of the words "*up to*" prior to 5.5m renders the condition ineffective, as the applicant may choose any setback between 0 and 5.5m and still comply.

The proposed insertion of the words "*The basement setback may be reduced if the proponent can demonstrate to the satisfaction of Council's Area Planning Manager that the basement will not have an adverse impact on the health or structural stability of the street trees*" to part (a) does not provide sufficient certainty and is not supported.

The plans should be amended prior to the issue of a construction certificate and, as anticipated in the Assessment Report, may be amended by way of an application to modify the development consent under the provisions of Section 4.55 of the *Environmental Planning and Assessment Act 1979* at a later date if the required root mapping demonstrates it is safe to do so.

It is recommended that Condition 2 'Design Modifications' is not amended in the manner the applicant has requested and remains unchanged.

It is recommended that Condition 94 'Tree Root Investigation' is amended to correct the identified typographical error, ensuring consistency with Condition 2 and aligning with the recommendations of the City's Tree Management Unit.

Condition 33 'Allocation of Car Parking'

The applicant's planning consultant has requested the wording of Condition 33 be amended as follows:

(33) ALLOCATION OF PARKING

The number of car parking spaces to be provided for the development must ~~comply with~~ **not exceed** the table below. Details confirming the parking numbers must be submitted to the satisfaction of the Registered Certifier prior to the issue of a Construction Certificate.

Car Parking Type	Number
Office and business parking	16
Accessible office and business parking	2
Retail parking	8
Subtotal	26
Motorcycle parking	3
Small Rigid Vehicle loading dock(s)	1
Total	30

Reason

To ensure the allocation of parking is in accordance with the Council's DCP.

The submitted justification for the proposed change is as follows:

The condition as drafted requires the development to comply with the number of spaces in the table. Through the process of modifying the basement in response to Condition 2 'Design Modifications', the number of car parks will be reduced. Given Council's rates are maximums, it is requested that Condition 33 be amended to allow for a lower number of car parking spaces without the need to modify the development consent.

Council Response

Except as it relates to the provision of a small rigid vehicle loading dock, the proposed amendment is reasonable and is supported.

It is recommended that Condition 33 'Allocation of Parking' be amended, except as it relates to the loading dock, in accordance with the request.

Insertion of new condition 'Staging Construction Certificates'

The applicant's planning consultant has recommended a new condition be inserted as follows:

STAGING CONSTRUCTION CERTIFICATES

Prior to commencement of any construction works associated with the approved development, it is mandatory to obtain a Construction Certificate. Plans, specifications and relevant documentation

accompanying the Construction Certificate must include any requirements imposed by the conditions of this Development Consent.

It is acknowledged that staged Construction Certificates may be obtained in accordance with the following;

Stage 1 – Demolition;

Stage 2 – Basement excavation, retention and shoring;

Stage 3 – Construction of basement slab including in-ground services;

Stage 4 – Construction of structure including services;

Stage 5 – Completion of works, landscaping and public art;

Conditions within this Development Approval should be read as being applicable to the relevant Construction Certificate and to be confirmed by the Principle Certifying Authority.

The submitted justification for the proposed new condition is as follows:

The ability to stage construction certificates makes a significant impact during the construction phase and will enable the developer to commence earlier.

The current draft conditions contemplate staged CC's due to the use of varying language through-out - i.e 'any Construction Certificate', 'The Construction Certificate' 'any relevant Construction Certificate', 'a construction certificate', 'any Construction Certificate for excavation, civil construction, drainage or building work (whichever is earlier) prior to commencement of demolition/excavation works', 'prior to the construction of any public domain works' etc. However, Certifiers require absolute clarity on this issue and need the concept of 'Staged CC's' to be expressly drafted in the conditions.

The applicant's planning consultant has also requested several conditions be amended to reflect the proposed staging.

Council Response

The development application did not seek development consent for staged construction. The conditions of consent reflect standard wording, rather than anticipating staged construction. The proposed staging has not been considered by the relevant sections of Council that recommended the imposition of the subject conditions, and there is insufficient time to consider the potential ramifications of the request.

If staged construction is required, this can easily be remedied by way of an application to modify the development consent under the provisions of Section 4.55 of the *Environmental Planning and Assessment Act 1979* at a later date.

It is recommended that the proposed condition is not included, and other conditions requiring satisfaction prior to a construction certificate remain unchanged.

Prepared by: Christopher Ashworth, Area Planning Coordinator

Attachments

Attachment A. Correspondence from Applicant's Planning Consultant

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 & Development

Attachment A

**Correspondence from Applicant's Planning
Consultant**

From: [Michael Rowe](#)
To: [Christopher Ashworth](#)
Cc: [Mercedes Janecek](#); [Michael Grassi](#)
Subject: RE: D/2022/600, 502-514 Elizabeth Street and 272-276 Cleveland Street, Surry Hills
Date: Friday, 15 September 2023 5:55:29 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[Applicant minor Amendments Attachment A - Recommended Conditions of Consent.docx](#)

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 Chris,

Thank you for all your efforts getting the DA to the Panel. We've read the report and conditions and appreciate the thorough job you've done.

We do have a few minor requested amendments to the conditions that we'd really appreciate if Council could consider and do a 'Further to' ahead of the LPP meeting rather than need to discuss them on the night or have to submit a modification. The minor amendments are an attempt to clarify any inconsistencies and allow the project to commence in a timely manner after the Deferred Commencement condition is satisfied. These are listed below and shown in the attached mark-up.

Basement Setback

Condition (2)a and (94)b are inconsistent. (2)a refers to 5.5 meters, (94)b refers to 5 meters. Can we kindly amend so they are consistent and both read 5 meters?

The sequence of commencing construction and then stopping and seeking to modify the basement during construction is a major concern. We appreciate you've foreshadowed the potential for a modification to reduce the setback in the Planning Report and given a clear way forward. However, in order to minimise the program delays and avoid a formal modification application, we would appreciate if you would consider incorporating what you suggested in the report into the condition itself.

Accordingly, we kindly request the below minor amendments.

(2) DESIGN MODIFICATIONS

a)The basement carpark **design is to be amended and** must be setback up to **5.5** metres from the northern property boundary (Goodlet Street) to allow for the retention of the existing paperbark street trees. **The basement setback may be reduced if the proponent can demonstrate to the satisfaction of Council's Area Planning Manager that the basement will not have an adverse impact on the health or structural stability of the street trees.**

Notwithstanding the above minor amendment, Council and the existing paperbark trees still have the full protection of (93).

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Car Parking

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The car parking condition as drafted requires the development must comply with the number of spaces in the table under (33). Through the process of modifying the basement in (2), the number of car parks will be reduced. Given Council's rates are maximums, can we amend (33) to ensure it doesn't cause an internal conflict between conditions?

(33) ALLOCATION OF PARKING

The number of car parking spaces to be provided for the development must ~~comply with the~~ **not exceed** the table below. Details confirming the parking numbers must be submitted to the satisfaction of the Registered Certifier prior to the issue of a Construction Certificate.

-

Staging of Construction Certificates (CC's)

-

The ability to stage CCs makes a significant impact during the construction phase and will enable Podia to get on site earlier and start demolition and commence tree root investigations etc.

The current draft Conditions contemplate staged CC's due to the use of varying language through-out - i.e 'any Construction Certificate', 'The Construction Certificate' 'any relevant Construction Certificate', 'a construction certificate', 'any Construction Certificate for excavation, civil construction, drainage or building work (whichever is earlier) prior to commencement of demolition/excavation works', 'prior to the construction of any public domain works' etc. However, in this day and age Certifiers require absolute clarity on this issue and need the concept of 'Staged CC's' to be expressly drafted in the conditions.

Is it possible to have a condition to the effect of that proposed below to enable the staged CCs to occur?

Prior to commencement of any construction works associated with the approved development, it is mandatory to obtain a Construction Certificate. Plans, specifications and relevant documentation accompanying the Construction Certificate must include any requirements imposed by the conditions of this Development Consent.

It is acknowledged that staged Construction Certificates may be obtained in accordance with the following;

Stage 1 – Demolition;

Stage 2 – Basement excavation, retention and shoring;

Stage 3 – Construction of basement slab including in-ground services;

Stage 4 – Construction of structure including services;

Stage 5 – Completion of works, landscaping and public art;

Conditions within this Development Approval should be read as being applicable to the relevant Construction Certificate and to be confirmed by the Principle Certifying Authority.

Additionally, some conditions require a minor redrafting to link the deliverable under the condition to the relevant CC. We have indicated these minor amendments in the attached mark-up and applied careful consideration to each condition to ensure the critical conditions to be

satisfied before construction commencement are still maintained.

Thank you for considering these minor amendments which will assist in the orderly development of the project. If you have any questions please reach out to Mercedes or I next week.

Have a great weekend,

Michael Rowe

Regional Director
New South Wales



W. ethosurban.com

Level 4, 180 George St
Sydney NSW 2000
(Gadigal Land)

Ethos Urban acknowledges Traditional Owners of Country throughout Australia and recognises the continuing connection to lands, waters and communities. We pay our respect to Aboriginal and Torres Strait Islander cultures; and to Elders past and present.

We pledge our support to the Uluru Statement from the Heart and embrace the call to walk with the Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

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From: Christopher Ashworth <CAshworth@cityofsydney.nsw.gov.au>

Sent: Wednesday, September 13, 2023 1:36 PM

To: belinda.aspinal [REDACTED]

Cc: Mercedes Janecek [REDACTED]; Michael Rowe

[REDACTED]; Michael Grassi [REDACTED]

Subject: D/2022/600, 502-514 Elizabeth Street and 272-276 Cleveland Street, Surry Hills

Dear Belinda,

D/2022/600, 502-514 ELIZABETH STREET AND 272-276 CLEVELAND STREET, SURRY HILLS

Please be advised that the abovementioned Development Application (DA), will be considered by the Local Planning Panel (LPP) on Wednesday 20 September 2023.

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 <mailto: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).