

Relevant Information for Local Planning Panel

FILE: D/2022/1021 **DATE:** 22 November 2023

TO: Local Planning Panel Members

FROM: Andrew Thomas, Executive Manager Planning & Development

SUBJECT: Information Relevant to Item 3 - Development Application: 11-15 Collins Street, Beaconsfield – D/2022/1021

Alternative Recommendation

It is resolved that 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/2022/1021 subject to the conditions set out in Attachment A to the subject report, subject to the following amendments (additions shown in ***bold italics***, deletions shown in ~~strikethrough~~):

(18) SITE AUDIT STATEMENT

Prior to the issue of a construction certificate associated with the built form of the development (excluding building work directly related to remediation ***and any construction certificate associated with demolition or site preparation***), a Section A Site Audit Statement must be obtained from a NSW Environment Protection Authority accredited Site Auditor and submitted to the Council's Area Planning Manager at email address:-

hbapplications@cityofsydney.nsw.gov.au

The Site Audit Statement must confirm that the site has been remediated in accordance with the approved Remedial Action Plan and clearly state that site is suitable for the proposed use.

- (a) In circumstances where the Site Audit Statement is subject to conditions that require ongoing review by the Auditor or Council, these must be reviewed and must be approved by the Council's Health and Building Unit in writing through the Area Planning Manager before the Site Audit Statement is issued.

- (b) In circumstances where the Site Audit Statement conditions (if applicable) are not consistent with the consent, the development must not proceed until the inconsistency has been resolved to the satisfaction of Council (such as via a S4.55 modification of the consent pursuant to the provisions of the *Environmental Planning & Assessment Act 1979*).
- (c) **No Occupation Certificate is to be issued** by the Principal Certifier unless a Site Audit Statement has been submitted to and approved by Council in accordance with this condition.

Reason

To ensure that the site is appropriately remediated.

(19) REVISED REMEDIATION ACTION PLAN

Prior to the issue of any Construction Certificate associated with the built form of the development (***excluding building work directly related to remediation and any construction certificate associated with demolition or site preparation***), any variations to the approved Remediation Action Plan (RAP) must be submitted to Council and approved by the NSW EPA Site Auditor and Councils Area Planning Manager.

Reason

To ensure that the site is appropriately remediated.

(42) LAND REMEDIATION (Where Site Auditor engaged)

The site is to be remediated and validated in accordance with the Remedial Action Plan (RAP) prepared by EIA Australia dated 21st July 2023, referenced: E25501.E06, Council Ref: 2023/108600, and any subsequent RAP following the additional investigations required in the RAP, and the Letter of Interim Advice prepared by NSW Environment Protection Authority accredited Site Auditor Julie Evans dated 4th August 2023, referenced: E070, Council Ref: 2023/108600-21. All remediation work carried out shall be conducted in accordance with the guidelines in force from time to time under the Contaminated Land Management Act 1997.

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination must be immediately notified to the Council's Area Planning Manager, the Site Auditor and the Principal Certifier.

Any variations to the approved Remediation Action Plan must be approved in writing by the Site Auditor and Council's ~~Area Coordinator Planning Assessments~~ Area Planning Manager prior to the commencement of such work.

Reason

To ensure that the site is appropriately remediated.

(43) ~~NOTIFICATION – NEW CONTAMINATION EVIDENCE~~

~~Council's Area Planning Manager and the Principal Certifier must be notified of any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination.~~

~~Reason~~

~~To ensure that the site is appropriately remediated.~~

Background

On 21 November 2023, an LPP panel member requested further information and clarification in relation to the wording of recommended conditions of consent that are related specifically to proposed site decontamination works.

In preparing the following response to questions raised, Council's assessing officer has obtained the advice of the City's health and building specialist.

The relevant contamination conditions are provided in Attachment A, and are entitled:

- Condition 18 (SITE AUDIT STATEMENT);
- Condition 19 (REVISED REMEDIATION ACTION PLAN);
- Condition 42 (LAND REMEDIATION (Where Site Auditor engaged));
- Condition 43 (NOTIFICATION – NEW CONTAMINATION EVIDENCE); and
- Condition 63 (SITE AUDIT STATEMENT - ENVIRONMENTAL MANAGEMENT PLAN).

Condition 18 and condition 19

Question: Whether Condition 18 and Condition 19 should be amended to provide further clarity, including that the Site Audit Statement and Revised Remediation Action Plan must be prepared prior to the issue of a construction certificate relating to above ground works whilst also allowing for the issue of construction certificates relating to preparatory site works, including demolition, shoring, slab removal and excavation.

Response: it is recommended that the wording of Conditions 18 and 19 be amended as per the question from the LPP, and as reflected by the recommended amended wording above. The recommended wording will allow greater flexibility for the applicant and greater clarity for the accredited certifier during the early phases of construction.

Condition 18

Question: Whether Condition 18 should be amended to provide greater clarification that a capping environmental management plan will be triggered by part (a) of the condition, as this may be unclear for an accredited certifier.

Response: Whilst it is noted that the various contamination related conditions contained in the notice of determination contain some duplication it is not considered necessary to amend the wording of Condition 18.

This is on the basis this issue is dealt with effectively by existing condition 63 (Site Audit Statement - Environmental Management Plan (EMP)), which requires ongoing compliance with the EMP.

An example of where this condition would be applied is where a worker digs through the marker layer, and then must abide by a set of work procedures that are specified by the relevant EMP.

The overlapping/duplication of wording in the various conditions is appropriate given that accredited certifiers will be reviewing contamination conditions at various stages of construction, such as prior to the issue of construction certificates and again, prior to the issue of occupation certificates.

Condition 19

Question: Whether Condition 19 should be amended to provide greater clarification that the Remedial Action Plan (RAP) needs revising with additional information, as Condition 19 currently does not mandate a review of the RAP.

Response: There are a number of contamination related conditions contained in the notice of determination, reflecting different stages of construction. Condition 42 mandates a review of the RAP. As such, it is not considered necessary to amend the wording of Condition 19.

Overlapping Conditions 42, 43, 18 and 19

Question: Noting overlapping, should Condition 43 be omitted, and condition 63 talk to Condition 18?

Response: It is recommended Condition 43 be deleted and Condition 63 remain unchanged.

Condition 43 relates to unexpected finds and is a standard condition that is applied to sites where there is a possibility of that occurrence. The condition has work to do in circumstances (for example), where an underground storage tank is found on the site during excavation works.

The wording regarding unexpected finds in Condition 43 is essentially a duplication of the wording in Condition 42, which requires that any new information (unexpected finds) be reported to Council the Site Auditor and the Principal Certifier. As such, it is reasonable that Condition 43 be deleted.

The overlaps in conditions 18 and 63 are related to different timelines. Condition 18 is a condition related to the issue of a construction certificate whereas condition 63 relates to ongoing/future uses of the site.

It is further recommended that condition 42 be amended to reflect that any variations to the approved Remediation Action Plan must be approved in writing by the Site Auditor and Council's Area Planning Manager prior to the commencement of such work rather than by Council's Area Coordinator Planning Assessments.

Prepared by: Adrian McKeown, Senior Planner.

Attachments

Attachment A. Extracted Conditions of Consent (Contamination)

Approved

ANDREW THOMAS

Executive Manager Planning & Development

Attachment A

**Extracted Conditions of Consent
(Contamination)**

The following contamination related conditions are extracted from Attachment A to the Planning report, and are relevant to questions received from the LPP:

- Condition 18 (SITE AUDIT STATEMENT);
- Condition 19 (REVISED REMEDIATION ACTION PLAN);
- Condition 42 (LAND REMEDIATION (Where Site Auditor engaged));
- Condition 43 (NOTIFICATION – NEW CONTAMINATION EVIDENCE); and
- Condition 63 (SITE AUDIT STATEMENT - ENVIRONMENTAL MANAGEMENT PLAN).

(18) SITE AUDIT STATEMENT

Prior to the issue of a construction certificate associated with the built form of the development (excluding building work directly related to remediation), a Section A Site Audit Statement must be obtained from a NSW Environment Protection Authority accredited Site Auditor and submitted to the Council's Area Planning Manager at email address:-

hbapplications@cityofsydney.nsw.gov.au

The Site Audit Statement must confirm that the site has been remediated in accordance with the approved Remedial Action Plan and clearly state that site is suitable for the proposed use.

- (a) In circumstances where the Site Audit Statement is subject to conditions that require ongoing review by the Auditor or Council, these must be reviewed and must be approved by the Council's Health and Building Unit in writing through the Area Planning Manager before the Site Audit Statement is issued.
- (b) In circumstances where the Site Audit Statement conditions (if applicable) are not consistent with the consent, the development must not proceed until the inconsistency has been resolved to the satisfaction of Council (such as via a S4.55 modification of the consent pursuant to the provisions of the *Environmental Planning & Assessment Act 1979*).
- (c) **No Occupation Certificate is to be issued** by the Principal Certifier unless a Site Audit Statement has been submitted to and approved by Council in accordance with this condition.

Reason

To ensure that the site is appropriately remediated.

(19) REVISED REMEDIATION ACTION PLAN

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Reason

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(42) LAND REMEDIATION (Where Site Auditor engaged)

The site is to be remediated and validated in accordance with the Remedial Action Plan (RAP) prepared by EIA Australia dated 21st July 2023, referenced: E25501.E06, Council Ref: 2023/108600, and any subsequent RAP following the additional investigations required in the RAP, and the Letter of Interim Advice prepared by NSW Environment Protection Authority accredited Site Auditor Julie Evans dated 4th August 2023, referenced: E070, Council Ref: 2023/108600-21. All remediation work carried out shall be conducted in accordance with the guidelines in force from time to time under the Contaminated Land Management Act 1997.

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination must be immediately notified to the Council's Area Planning Manager, the Site Auditor and the Principal Certifier.

Any variations to the approved Remediation Action Plan must be approved in writing by the Site Auditor and Council's Area Coordinator Planning Assessments / Area Planning Manager prior to the commencement of such work.

Reason

To ensure that the site is appropriately remediated.

(43) NOTIFICATION – NEW CONTAMINATION EVIDENCE

Council's Area Planning Manager and the Principal Certifier must be notified of any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination.

Reason

To ensure that the site is appropriately remediated.

(63) SITE AUDIT STATEMENT - ENVIRONMENTAL MANAGEMENT PLAN

Where the ongoing land use suitability and release of the Final (Section A) Site Audit Statement is dependent upon the implementation of an Environmental Management Plan (EMP) in relation to any residual contamination remaining onsite, the EMP must be approved by the Site Auditor and Council's Area Planning Manager prior to the issue of the final Site Audit Statement.

The owner of the land is required to comply with the ongoing obligations of any EMP which form part of the final Site Audit Statement for the site.

A covenant must be registered on the title of the land binding the owners and future owners to be responsible for ongoing maintenance and any future rehabilitation works required in terms of the encapsulated/remaining contaminated materials, including the discharge or prevention of discharge from any contaminants or for any works subsequently required by the NSW Environment Protection Authority

A copy of the revised certificate of land title recording the covenant must be submitted to Council's Area Planning Manager and the Principal Certifier prior to the issue of any Occupation Certificate.

Reason

To ensure that contamination is appropriately managed.