

23 May 2018

At 5.00 pm

Information Relevant To Item 5 - Development Application: 524
Bourke Street, Surry Hills

Local Planning Panel

Item 5
At Local Planning
Panel
23 May 2018

Relevant Information for the Local Planning Panel

FILE: D/2017/1749

DATE: 21 May 2018

TO: Local Planning Panel Members

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

SUBJECT: Information Relevant To Item 5 – Development Application: 524 Bourke Street Surry Hills – At Local Planning Panel – 23 May 2018

Recommendation

That the Local Planning Panel note the information contained in this memo and support the conditions as recommended at Attachment A to the report.

Background

The applicant has prepared a response to the officer's report and recommended conditions, specifically requesting that conditions 2(a), 2(b) and 2(c) are deleted from the consent.

The conditions read as follows:

(2) DESIGN MODIFICATIONS

The design of the building must be modified as follows:

- (a) The basement is to be reduced in size such that it is confined to the footprint of the garage, with excavation setback 500mm from the boundaries adjoining nos. 522 and 526 Bourke Street.
- (b) A minimum 27sqm of deep soil planting is to be provided in the rear yard. Porous paving is permitted in this location with a maximum width of 1.2 metres providing there is a deep soil area on one side with the paved area.

(c) An advanced tree is to be provided in the rear yard of the site.

- (i) Written confirmation is to be obtained from Council's Area Planning Manager that all tree planting/s have been completed to Council's satisfaction (excluding tree maintenance) prior to the issue of an Occupation Certificate.
- (ii) Any newly planted tree that fails to establish within 2 years of the initial planting date must be replaced with a tree of comparable qualities.

(d) (The applicant is not seeking to delete condition (d))

The details must be submitted to and approved by the Area Planning Manager prior to any Construction Certificate being issued.

As detailed in the planner's report, the extent of the basement as proposed precludes the provision of deep soil and tree planting as required under the Sydney Development Control Plan 2012 and raises concerns regarding potential impacts to adjoining properties.

Deep soil

The applicant is seeking an exception to the deep soil controls under section 4.1.3.4 of the Sydney Development Control Plan 2012, which requires sites over 150sqm to provide deep soil equal to 15% of the site area. The control states that "the provision of a consolidated area of deep soil allows for effective planting and to assist with the detention of stormwater".

The applicant has identified three applications determined by the Local Planning Panel that the applicant states did not meet Council's minimum deep soil provisions. It is noted that these applications were for residential flat buildings and mixed use developments, which are not subject to section 4.1.3.4 of the Sydney DCP 2012 (they are instead subject to sections 4.2.3.6 and 5.8.2.5 of the Sydney DCP and objective 3E of the Apartment Design Guide). As such, these examples are not relevant to the subject application and the control in question.

Notwithstanding, variations to the deep soil provisions in those three cases were supported as:

- In the case of 137-153 Crown Street Surry Hills, the former Centrelink building (D/2017/17), the development retained the existing excavated basement and former building footprint, which occupied the extent of the site. The Apartment Design Guide provides dispensation in these circumstances where alternative forms of planting are provided, such as on the roof, as was approved.
- The development approved at 98-106 Kippax Street (D/2017/225) replaced an existing warehouse building that also occupied the full site. The approved building similarly occupied the same extent of the site in keeping with the character and appearance of the surrounding area, and provided alternative planting and stormwater detention in the basement in accordance with the Apartment Design Guide.

- The development approved at 444-450 Gardeners Road (D/2017/240) allocated 8.1% of the site to deep soil, exceeding the minimum 7% recommended under the Apartment Design Guide. An exception to section 5.8.2.5 of the Sydney DCP 2012 (controls specific to the Southern Employment Lands), whereby 10% of the site is recommended to be dedicated to deep soil, was considered acceptable as the deep soil area would provide for tree planting, drainage and was supplemented by additional roof top planting. It is also noted that the development increased the area of deep soil compared to the existing environment.

Section 1.1 of the Sydney DCP 2012 provides guidance on when an exception to a development control can be supported. The applicant is to demonstrate that an exception to the standard will result in a better outcome, meet all objectives of the Sydney DCP 2012 and will not adversely impact on local amenity. The applicant has not addressed Section 1.1 of the Sydney DCP 2012 and does not demonstrate how the proposed insufficient deep soil will result in a better outcome in accordance with the objectives of the DCP. In particular, the site and surrounding area are flood prone and providing deep soil will assist in stormwater detention. Permitting the large extent of the basement as proposed will inhibit the ability of the site to absorb stormwater and contribute to flooding in the surrounding area.

The applicant's consultant suggests that it is inequitable to require sites greater than 150sqm to provide deep soil equal to 15% of the site area, when sites less than 150sqm are not required to provide any deep soil. The applicant suggests a new approach not afforded under the control, whereby the overall provision of deep soil would reduce from 27sqm to 9.5sqm. Officers do not support the reinterpretation or reconstruction of a control to suit the circumstances of a particular application and is not consistent with the test to seek exception to a control under Section 1.1 of the Sydney DCP 2012.

Tree planting

The objective of Section 3.5.2 of the Sydney DCP 2012 is to "ensure that tree canopy cover is considered in all development and provided appropriately in each development". The applicant has misapplied Section 3.5.2(1), which states that landscape plans are not required for single dwellings, as justification for not complying with Section 3.5.2(2) (which requires at least 15% tree canopy coverage of a site within 10 years) and the objective of the control.

The applicant states that adequate space is provided within the proposal to plant a tree however insufficient information has been provided to support this claim and does not form part of the proposal.

Subject to reducing the extent of the basement and compliance with the deep soil control, the site is able to accommodate an advanced tree in the rear yard, similar to properties within the surrounding area. The exception to the control proposed by the applicant is not desirable or consistent with Section 1.1 of the Sydney DCP 2012 and the condition requiring tree planting is therefore reasonable.

Risk to neighbouring properties

Notwithstanding the extent of the basement as proposed precluding compliance with controls regarding deep soil and tree planting, officers are not satisfied that the extent of the proposed basement will not adversely impact the structural integrity of adjoining properties. The recommended condition ensures that the footings and foundations of buildings on neighbouring properties and their open spaces are provided sufficient distance to mitigate the risk of subsidence. Excavation is subject to updated geotechnical and structural engineers' reports prior to the issue of a Construction Certificate in accordance with Condition 3.

Other matters raised

The applicant states that these concerns were not raised during the assessment of the application and previous applications. It is noted that the location and extent of the proposed basement was only proposed under the subject application and not previous applications, and was therefore not relevant at that time. Furthermore this does not preclude the applicant from addressing relevant planning controls in the preparation of their application and the requirement to address Section 1.1 of the Sydney DCP 2012 where exceptions to controls are sought.

Prepared by: David Zabell, Specialist Planner

Attachments

Attachment A. Applicant's Letter to the Local Planning Panel, dated 18 May 2018

Attachment B. Submission from Adjoining Neighbour Objecting to Basement
Excavation

Approved



**GRAHAM JAHN, DIRECTOR CITY
PLANNING DEVELOPMENT AND
TRANSPORT**

Attachment A

**Applicant's Letter to the Local Planning
Panel, dated 18 May 2018**

18 May 2018

Our Ref: P-17307

The Chair and Members

City of Sydney Local Planning Panel
GPO Box 591
Sydney NSW 2001

Dear Chair and Members

**RE: ITEM 5 - LOCAL PLANNING PANEL MEETING 23 MAY 2018 - 524 BOURKE STREET,
SURRY HILLS - D/2017/1749**

We are writing on behalf of Andrew and Senta Hoyne, the applicants and owners for the above development application.

The purpose of this letter is to request that the recommended conditions of consent numbers 2(a), 2(b) and 2(c) be deleted from any determination of the application by the Local Planning Panel.

The effect of the conditions is to reduce the size of the proposed basement to increase the area of deep soil on the site, reduce the risk of adversely impacting on neighbouring properties and to require the planting of a canopy tree.

Our reasons for requesting the deletion of these conditions is as follows.

Deep soil

The deep soil requirement is derived from the *Sydney Development Control Plan 2012* (DCP). Section 4.1.3.4 (1) of the DCP provides that:

For lots greater than 150sqm, the minimum amount of deep soil is to be 15% of the site area. The deep soil area can include porous paving of up to 1.2m wide providing there is a deep soil area on one side level with the paved area.

The area of the subject lot is 184.4sqm.

Section 3.42 of the *Environmental Planning and Assessment Act 1979*, provides that the "*purpose of a development control plan is to provide guidance to the persons proposing to carry out development and to the consent authority*".

The reasons why we believe the strict application of the deep soil requirement contained within the DCP is not warranted or justified are that:

1. The deep soil requirements contained in the DCP are not applied consistently by Council.

A review of the relatively small number of applications that have been determined by the Local Planning Panel since it commenced on 28 March 2018 has identified three development applications for residential flat buildings or mixed-use developments which were approved but did not satisfy the DCP deep soil requirements. In each case the DCP deep soil requirement was not considered in the assessment report. Two of the proposals had no deep soil. The other proposal had less than the DCP deep soil requirement. Each of the proposals would be characterised as an application for a new structure, rather than alterations or additions justifying existing non-compliances according to the planning principle established by Moore SC in *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187*.

The three proposals were:

- 137-153 Crown Street, Surry Hills;
- 96-106 Kippax Street, Surry Hills; and
- 444-450 Gardeners Road, Alexandria.

2. The deep soil requirement for single dwellings, terraces and dual occupancies is inequitable. The requirement only applies to sites with an area greater than 150sqm. At 184.4sqm the area of subject site is not much greater than the threshold. A more equitable approach would be to apply the control to the site area greater than 150sqm - in which case a deep soil area of 5.16sqm would be required. According to our calculations the proposal includes 9.5sqm of deep soil.
3. The provision of more deep soil on the site will make no difference to the flooding characteristics in the catchment – particularly when deep soil is not required on sites with an area of less than 150sqm and Council is not consistently applying the control on larger sites where more substantial development is proposed.
4. Deep soil was not raised as an issue by Council at any stage of the assessment process – including the advice received before lodging the application and the two requests for information received during the assessment of the application.
5. As noted in the assessment report the site currently has substantially less deep soil than is required by the DCP. This is not uncommon in the locality and in fact the immediately neighbouring property has absolutely no deep soil in the rear yard.

Risk to neighbouring properties

As noted in the assessment report, geotechnical and structural engineer's reports were submitted with the application which demonstrate that the works can be undertaken without adverse impact to the amenity of neighbouring properties.

Because it was originally proposed to locate the basement underneath the terrace house, the geological conditions and the construction methodology have been outlined in these reports to a much greater level of detail than would ordinarily be the case.

Again, at no stage of the assessment process was a concern raised with the location of the proposed basement walls adjacent to the side boundaries.

Canopy tree

The requirement for a canopy tree is derived from Section 3.5.2 of the DCP. It states at point 2 of the provisions:

"Provide at least 15% canopy coverage of a site within 10 years from the completion of development."

At point 1, however, it states:

"Development applications are to include a Landscape Plan, except where they are for single dwellings, terraces and dual occupancies."

The inference being that the choice of landscaping should be at the prerogative of the owner in the case of single dwellings, terraces and dual occupancies.

The proposal includes adequate space to plant a tree, or other vegetation deemed appropriate by the owners. It is unnecessary and unwarranted to include a condition of consent to this effect.

Moreover, like the deep soil requirement, this provision has not been applied consistently by Council, and was not addressed at all in the three development applications mentioned earlier.

Conclusion

We look forward to the opportunity to address the Local Planning Panel on these matters and answering any questions you may have.

We trust that you will look favourable upon our request.

Yours sincerely



Stephen Kerr
Executive Director

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