

Resolution of Local Planning Panel

20 September 2023

Item 3

Development Application: 50 Bray Street, Erskineville - D/2022/1278

The Panel:

- (A) upheld 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; and
- (B) granted consent to Development Application Number D/2022/1278 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~~):

(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
A005 Rev C	Roof Plan	21/08/2023
A006 Rev C	Sections	21/08/2023

Drawing Number	Drawing Name	Date
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.

(2) DESIGN MODIFICATIONS

The design of the building must be modified as follows:

- (a) Details of the balustrade and privacy screen to the first floor level are to be provided at a 1:50 scale which detail the dimensions of the height, spacing and size of these elements. The details should illustrate where the screen is positioned in relation to the balustrade and to the balcony hob and depict how these elements are fixed.
- (b) The patio of Building 2 must be reduced in width by 450mm at the eastern end.
- (c) Details of the privacy screen to the rear patio of Buildings 1 and 2 are to be provided at a 1:50 scale and must include materiality, finishes, and spacing between privacy blades.
- (d) Frosted glazing is to be provided to the ground floor WCs at Building 1 and 2.
- (e) Details of the retractable canvas awning are to be specified, including manufacturer's products, finishes/colours.
- (f) The blade wall of Building 1 on the western boundary is to be reduced in height by approximately 800mm so that it is no higher than the top of the adjoining boundary fence.
- (g) The rear fence must be 1.8m in height including where the fence steps in height.
- (h) The downpipes must be repositioned behind the screens on the Level 1 balconies of Buildings 1 and 2.
- (i) ***Operable fanlights are to be provided to the windows above the front doors of Buildings 1 and 2.***

The modifications are to be submitted to and approved by Council's Area Planning Manager prior to the issue of a Construction Certificate.

(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*.***

(32) FLOOD PLANNING LEVELS

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**.

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.

(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).

(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.~~

(75) NOISE – COMMERCIAL PLANT / INDUSTRIAL EQUIPMENT IN THE DEVELOPMENT

- (a) Noise from commercial plant and **equipment in the** industrial development must not exceed a project amenity/intrusiveness noise level or maximum noise level in accordance with relevant requirements of the NSW EPA [Noise Policy for Industry 2017 \(NPfI\)](#) unless agreed to by the City's Area Planning Manager. Further:
 - (i) Background noise monitoring must be carried out in accordance with the long-term methodology in [Fact Sheet B](#) of the NPfI unless otherwise agreed by the City's Area Planning Manager.
 - (ii) ~~Commercial~~ Plant is limited to heating, ventilation, air conditioning, refrigeration and energy generation equipment.
- (b) An $L_{Aeq,15 \text{ minute}}$ (noise level) emitted from the development must not exceed the $L_{A90, 15 \text{ minute}}$ (background noise level) by more than 3dB when assessed inside any habitable room of any affected residence or noise sensitive commercial premises at any time. Further:
 - (i) The noise level and the background noise level must both be measured with all external doors and windows of the affected residence closed.
 - (ii) Background noise measurements must not include noise from the development but may include noise from necessary ventilation at the affected premises.

- (c) Corrections in [Fact Sheet C](#) of the NPfl are applicable to relevant noise from the development measured in accordance with this condition, however duration corrections are excluded from commercial noise.

Reasons for Decision

The application was approved for the following reasons:

- (A) The proposal is generally consistent with the relevant objectives and controls of the Sydney Local Environmental Plan 2012 (LEP) and Sydney Development Control Plan 2012 (DCP).
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the Height of Buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney LEP 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the R1 General Residential zone and the Height of Buildings development standard.
- (C) The proposed development complies with the maximum floor space ratio development standard contained in clause 4.4 of the Sydney Local Environmental Plan 2012
- (D) The proposed development provides an appropriate contribution that is suitable in terms of its context, scale and built form which is consistent with the desired future character of the area, subject to conditions. As such, the proposed development exhibits design excellence in accordance with the requirements contained in clause 6.21C of the Sydney Local Environmental Plan 2012.
- (E) The development is generally consistent with the objectives of the Sydney Development Control Plan 2012.
- (F) Suitable conditions of consent are recommended, and the development is considered to be in the public interest.
- (G) Condition 1 was amended to refer to the correct title of an elevation drawing.
- (H) Condition 2 was amended in line with a Design Advisory Panel Residential Subcommittee recommendation, to improve amenity.
- (I) Condition 28 was amended to allow for construction as a party wall or construction as structurally independent walls.
- (J) Condition 32 was 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.
- (K) Condition 45 was amended to 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.

- (L) Condition 60 was deleted as the condition is duplicating requirements for the protection of trees that are already covered through Conditions 45 and 62.
- (M) Condition 75 was amended for clarity to address neighbouring residents' concerns.

Carried unanimously.

D/2022/1278