

## Resolution of Local Planning Panel

**24 July 2024**

### Item 4

#### Development Application: 87 Lower Fort Street, Millers Point - D/2023/1036

The Panel:

- (A) upheld the variation requested to Clause 6.47(5) relating to the height of buildings in the Millers Point heritage conservation area in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012; and
- (B) granted consent to Development Application No D/2023/1036, subject to the conditions detailed in Attachment A to the subject report to the Local Planning Panel on 24 July 2024, subject to the following amendments (additions shown in ***bold italics***, deletions shown in ~~strikethrough~~):

#### **(20) SITES IN THE VICINITY OF A HERITAGE ITEM – MAJOR DEVELOPMENT**

- (a) A protection strategy for the duration of the construction works, is to be submitted to and approved by Council's Urban Design and Heritage Manager / Area Coordinator Planning Assessments / Area Planning Manager prior to the issue of any Construction Certificate. The Strategy is to detail how the proposed works will ensure that the buildings at 64 Argyle Place, 85 Lower Fort Street and **65, 67, 69, 71 and 73 Windmill Street, including the retaining wall running along the northern boundary adjoining the Windmill Street properties** are to be suitably protected and stabilized during the construction process including from any construction waste, dust, damp, water runoff, vibration or structural disturbance or damage.
- (b) Additionally the protection strategy is to include:
  - (i) Details of temporary hydraulic drainage works to ensure that all water both in ground and above ground is channelled to the street and that no such water is channelled onto the adjacent property fabric or interiors.

- (ii) Construction debris on neighbouring properties, in drainage lines or in cavities between the boundary walls of the adjacent buildings, is to be removed progressively as the works progress.
- (iii) A geotechnical report detailing the investigation of the location and depth of footings of the adjacent buildings. The report must address details of lateral ground movement, advice of any additional boundary offsets that may be required as a result of the location of footings and on the suitability of structural engineer's proposals for underpinning or other support to adjacent footings.

**Reason**

To ensure the protection of adjacent/nearby heritage items.

**(42) DILAPIDATION REPORT –EXCAVATION/DEMOLITION**

- (a) Subject to the receipt of permission of the affected landowner, dilapidation report/s, including a photographic survey of 85 Lower Fort Street, 64 Argyle Place and the retaining wall running along the northern boundary of the site (and any other properties identified by the qualified structural engineer engaged to undertake the report) are to be prepared by an appropriately qualified structural engineer prior to commencement of demolition/excavation works. A copy of the dilapidation report/s together with the accompanying photographs must be given to the above property owners, and a copy lodged with the Registered Certifier and the Council prior to the issue of a Construction Certificate.

**UPON COMPLETION OF EXCAVATION/DEMOLITION**

- (b) A second Dilapidation Report/s, including a photographic survey must then be submitted at least one month after the completion of demolition/excavation works. A copy of the second dilapidation report/s, together with the accompanying photographs must be given to the above property owners, and a copy lodged with the Principal Certifier and the Council prior to the issue of any Occupation Certificate.

Any damage to buildings, structures, lawns, trees, sheds, gardens and the like must be **addressed** ~~fully rectified~~ by the applicant or owner, **as soon as practicable**, at no cost to the affected property owner.

Note: Prior to the commencement of the building surveys, the applicant/owner must advise (in writing) all property owners of buildings to be surveyed of what the survey will entail and of the process for making a claim regarding property damage. A copy of this information must be submitted to Council.

**Reason**

To ensure that dilapidation reports are prepared and to identify damage to adjoining/nearby properties resulting from building work on the development site.

#### (44) USE OF A STRUCTURAL ENGINEER

A suitably qualified practising structural engineer, **with relevant experience**, is to be commissioned to **supervise** work ~~with the consultant team~~ throughout the design development, contract documentation and excavation stages of the project. The engineer is to be involved in the resolution of all matters relating to the excavation of the basement. The structural engineer is to be provided with full access to the site and authorised by the applicant to respond directly to Council where information or clarification is required regarding the resolution of excavation issues throughout the project.

##### **Reason**

To ensure the structural stability integrity of the subject site and neighbouring buildings **and structures**.

#### (45) EXCAVATION AND CONSTRUCTION METHODOLOGY

- (a) A Detailed Excavation and Construction Methodology is to be prepared by the builder engaged for the project. The methodology must be endorsed by the structural **consultant engineer** and submitted to the Principal Certifier prior to commencement of excavation or construction works whichever is the earlier.
- (b) ***The methodology must include details on the instrumentation used to monitor the structural stability of the retaining wall running along the northern boundary of the site shared with properties fronting Windmill Street.***
- (c-b) Excavation is to be carried out in accordance with the methodology required by (a) above.

##### **Reason**

To ensure the structural stability integrity of the subject site and neighbouring buildings.

#### (46) USE OF GEOTECHNICAL ENGINEER

- (a) A suitably qualified geotechnical engineer, **with relevant experience**, is to be commissioned to work with the consultant team throughout the design development, contract documentation and excavation stages of the project. The engineer is to be involved in the resolution of all matters relating to the excavation to extend the existing basement. The geotechnical engineer is to be provided with full access to the site and authorised by the applicant to respond directly to Council where information or clarification is required regarding the resolution of excavation issues throughout the project.

- (b) The recommendations of the Geotechnical Assessment must be implemented, and where relevant be included in the Detailed Excavation and Construction Methodology.

**Reason**

To ensure the structural stability / integrity of the subject site and neighbouring buildings **and structures**.

**Reasons for Decision**

The application was approved for the following reasons:

- (A) The proposal satisfies the objectives of the Environmental Planning and Assessment Act 1979 in that, subject to the imposition of appropriate conditions as recommended, it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Local Planning Panel.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that 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 development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 6.47(5) of the Sydney Local Environmental Plan 2012.
- (C) The proposal is consistent with the approved concept Development Application as required by the Sydney Local Environmental Plan 2012 and the application was accompanied by an approval issued by Heritage NSW in accordance with section 60 of the Heritage Act 1979.
- (D) The proposal is consistent with the objectives of the R1 - General Residential zone. The proposal also generally satisfies the objectives and provisions of the Sydney Local Environmental Plan 2102 and Sydney Development Control Plan 2012.
- (E) The proposed development is of a form that is sympathetic to the heritage significance of the Millers Point heritage conservation area in accordance with Clause 5.10 and 6.47(4)(a) of the Sydney Local Environmental Plan 2012, including the provision of appropriate setbacks from the curtilage of the heritage item.
- (F) The proposed development has a height and form suitable for the site and its context, satisfactorily addresses the heights and setbacks of neighbouring developments, is appropriate in the streetscape context and broader locality. The proposed development is unlikely to result in any significant adverse environmental or amenity impacts on surrounding properties, the public domain and the broader Millers Point locality, subject to conditions on the subsequent detailed design development application.
- (G) The public interest is served by the approval of the proposal, as amendments to the development application have addressed the matters raised by the City and the community, subject to recommended conditions imposed relating to heritage conservation, setbacks, views and privacy.

- (H) Condition 42 was amended to clarify rectification works in the event there is damage to buildings and adjoining properties.
- (I) Conditions 44 and 46 were amended to clarify the expertise required to ensure the structural integrity of the subject site and neighbouring buildings and structures.

Carried unanimously.

D/2023/1036