

## Relevant Information for the Local Planning Panel

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**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

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### 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

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Approved



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