

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