

Relevant Information for Local Planning Panel

FILE: D/2018/1615 **DATE:** 5 August 2019

TO: Local Planning Panel Members

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

SUBJECT: Information Relevant To Item 3 – Development Application: 132-138 McEvoy Street, Alexandria - D/2018/1615

Alternative Recommendation

It is resolved that:

- (A) That the Local Planning Panel note the information contained in this memorandum.
- (B) Pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, a deferred commencement consent be granted to Development Application No. D/2018/1615 subject to the conditions set out in Attachment A to the subject report to the Local Planning Panel on 7 August 2019 and subject to the following condition amendments:
 - (i) Deletion of Deferred Commencement Condition (2).
 - (ii) Deletion of Deferred Commencement Condition (4)(b).
 - (iii) Insertion of a new Condition (1A) in Schedule 1A of Part B of the Recommended Conditions of Consent as follows:

(1A) SURRENDER OF CONSENT

In accordance with Section 4.17(1)(b) and Section 4.17(5) of the *Environmental Planning and Assessment Act, 1979*, a notice of surrender of the following development consent must be provided to Council in writing by the owner of the land in accordance with Clause 97 of the *Environmental Planning and Assessment Regulation, 2000*, prior to the issue of any Construction Certificate:

- (a) Development consent D/2017/1073.
- (iv) Amendment of Condition (22) in Schedule 1A of Part B of the Recommended Conditions of Consent as follows:

(22) HOURS OF OPERATION

The hours of operation are restricted to between 7.00am and 10.00pm, Monday to Sunday.

- (v) Amendment of Condition (74) in Schedule 1B of Part B of the Recommended Conditions of Consent as follows:

(74) LANDSCAPED (GREEN) ROOFS

- (a) A detailed plan of the green roof, drawn to scale, by a qualified landscape architect or landscape designer, must be submitted to and approved by Council's Director City Planning, Development and Transport prior to the issue of any Construction Certificate. The plan must include:
- (i) A statement that includes details of proposed use of the green roof, general accessibility, as well as noise and privacy treatments.
 - (ii) Location of existing and proposed structures, services and hard landscaping on the rooftop, roof fixings and other structural elements that may interrupt waterproofing, including cross-sectional details of all components.
 - (iii) Details of earthworks including mounding and retaining walls and planter boxes (if applicable).
 - (iv) Details of the location, sizes and numbers of plants used with reference to NATSPEC (if applicable), with preference for drought resistant species.
 - (v) Details of the soil media/substrate type and depth.
 - (vi) Details of installation methodology e.g. safety considerations for working at height, location of maintenance hooks (if applicable) transport materials etc.
 - (vii) Details of accessible and inaccessible areas on the Green Roof. Where proposed to be inaccessible, Green Roofs are required to remain such during occupation of the property.
 - (viii) Details of drainage and irrigation systems, including overflow provisions and water retention cells in the drainage layer (if applicable).
- (b) Prior to the issue of any Construction Certificate, the following details are to be submitted to and approved by the Principal Certifier:
- (i) Evidence the green roof has been assessed as part of the structural certification provided for the development; and
 - (ii) Evidence the green roof has been assessed as part of the waterproofing certification provided for the development.
- (c) All landscaping in the approved plan is to be completed prior to the issue of any Occupation Certificate.

- (d) Prior to the issue of any Occupation Certificate, a maintenance plan for the green roof is to be submitted and approved by Council's Director City Planning, Development and Transport. A copy of the maintenance plan is to be kept on site at all times during construction and shall be produced to Council on request following completion. The Maintenance Manual shall include as a minimum:
 - (i) Frequency and methodology of different maintenance requirements including the removal of green waste.
 - (ii) Details of safety procedures.
 - (iii) Laminated copies of 'As Built' drawings.
 - (iv) Manufacturer's contact details and copies of manufacturers' typical details and specification;
 - (v) Copies of warranties and guarantees relating to all materials and plant used in construction; and
 - (vi) Decommissioning procedures.
- (e) Inaccessible green roofs are required to remain inaccessible during occupation of the property.

Background

On Friday, 2 August 2019, the City received correspondence from SJB Planning which raised concerns with four recommended conditions of consent and requested their deletion by the Panel prior to determination of the development application D/2018/1615 (refer to Attachment A).

A response to the concerns raised is provided below.

Deferred Commencement Condition (2) - Surrender of Consent

This deferred commencement condition requires the surrender of the existing development consent D/2017/1023 for the construction of a new self-storage facility, prior to this development consent D/2018/1615 becoming operational.

Section 4.17(1)(b) of the Environmental Planning and Assessment Act, 1979, permits a consent authority to impose a condition to require the surrender of a consent granted under the Act in relation to the land to which the subject development application relates.

The condition has been recommended for inclusion in the consent to preclude the two consents from operating together, on the basis that each consent comprises a significantly different built form and mix of land uses.

Both consents are subject to a deferred commencement condition requiring the execution and registration of a Voluntary Planning Agreement, prior to becoming operational.

It is considered that the proposed deferred commencement condition can be deleted, and instead, that a condition to require the surrender of the self-storage facility consent be included as a condition to be satisfied prior to the issue of a Construction Certificate.

This would not serve to significantly constrain the applicant from making a choice as to which consent is more viable at any point in time, given that the development consent has a 5 year period in which to satisfy the condition, and that such a choice as to viability can be made at any time prior to the satisfaction of the condition.

Deferred Commencement Condition (4)(b) - Design Modifications - Deep soil and tree plantings

The deferred commencement conditions require that:

- one tree be provided for every 4 car parking spaces that are not overhung by the building along the south-eastern boundary of the site; and
- all car parking spaces that are not overhung by the building along the south-eastern boundary of the site must be provided with permeable paving.

These conditions were recommended for imposition to address the objectives of, and the proposed non-compliance with the relevant provisions in Section 3.5.2(2), Section 3.5.2(7) and Section 5.8.2.5.1(1) of the Sydney Development Control Plan 2012. This is in relation to the achievement of a 15% site canopy coverage, provision of one tree for every 4 car parking spaces and provision of 15% of the site area as deep soil area.

In their correspondence, dated 2 August 2019, SJB Planning has stated that the imposition of this condition would undermine the remediation strategy of the site, which is stated as being to 'cap and contain' and retention of the existing hard stand slab. It is agreed that the Remediation Action Plan and Site Audit Statement submitted with the application do state a preference for a 'cap and contain' remediation strategy.

Given the constraints posed by the chosen contamination strategy and that the proposed conditions require the provision of a green roof to offset the non-compliances outlined above, on balance it is considered that the deletion of these conditions is acceptable. It is recommended that the conditions can be deleted, provided that Condition (74) is amended as recommended above to ensure that:

- the detail of the required green roof is provided to Council's Director City Planning, Development and Transport for approval prior to the issue of any Construction Certificate; and
- that a maintenance plan for the green roof is provided to Council's Director City Planning, Development and Transport for approval prior to the issue of any Occupation Certificate.

Deferred Commencement Condition (4)(c) - Design Modifications - Facade changes

The deferred commencement conditions require the provision of additional adjustable vertical and horizontal louvres to upper level openings on the north-western, north-eastern and south-eastern building facades.

In their correspondence, dated 2 August 2019, SJB Planning has stated that the justification for the conditions provided in Council's assessment report is that they will aid energy reduction and achievement of the NABERS rating of 5.5 stars.

This is noted, however, as discussed in the table on page 42 and at paragraphs 68 and 69 on pages 54 and 55 of Council's assessment report, the development does not provide adequate protection to the glazed openings to the building facades in accordance with the relevant provision in Section 4.2.3.4(2) of the Sydney Development Control Plan 2012.

This control requires external measures to protect glazing from the mid-summer sun and to avoid the use of high performance tinting or glazing.

The conditions have primarily been recommended to address the objective of, and proposed non-compliance with this control, in order to provide adequate passive shading to address the north-west orientation of the development and appropriate measures to address low altitude morning and afternoon sunlight in mid-summer.

It should also be noted that the City's Design Advisory Panel recommended the following in relation to this matter (refer to Attachment B):

"The external shading to the building should be reviewed, especially its north-west and north-east elevations. Both vertical and horizontal louvres should be tested to reduce heat load. Adjustable louvres are preferred."

It is considered that the provision of additional external shading devices will not significantly undermine the design intent or integrity of the proposed development, or affect its capacity to achieve design excellence in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012.

In light of these matters, the conditions are considered to be reasonable and the support of Council staff for the proposal, including compliance with the controls referred to above, is contingent on the imposition of these conditions.

Condition (22) - Hours of Operation

The condition as currently recommended restricts the hours of operation to between 9.00am and 5.30pm, Friday to Wednesday, and 9.00am and 8.00pm, Thursday.

The condition has been recommended to reflect the hours of operation that were requested by the applicant both on the application form and in their Statement of Environmental Effects.

In their correspondence, dated 2 August 2019, SJB Planning has stated that the hours conditioned are too restrictive for food and drink premises and shop uses. It has been requested that Condition 22 be amended to permit the hours of operation to be between 6.00am and 10.00pm, Monday to Friday.

Relevantly, the site is not located in a late night trading area in accordance with the definitions in Section 3.15 of the Sydney Development Control Plan 2012. Base hours available to the development under Table 3.7 in Section 3.15.4 of the Sydney Development Control Plan 2012 are from 7.00am to 12.00am midnight for unlicensed indoor premises and 7.00am to 10.00pm for category B licensed premises (potentially relevant to the ground floor food and drink premises).

In this instance, hours of operation between 7.00am and 10.00pm, Monday to Sunday inclusive could be supported and amendment of Condition 22 is recommended.

Prepared by:

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Attachments

Attachment A. Response to Recommended Conditions of Consent

Attachment B. Design Advisory Panel Minutes - 20 June 2019

Approved

GRAHAM JAHN AM

Director City Planning, Development and
Transport