

Attachment A

**Response to Recommended Conditions of
Consent**



City of Sydney
GPO Box 1591
Sydney NSW 2000

Attn: David Reynolds

2 August 2019

Re: D/2018/1615 – Recommended conditions of consent – 132-138 McEvoy Street, Alexandria

Dear David,

We refer to the planning report including the recommended conditions of consent. We have reviewed the recommended conditions of consent and have some significant concerns regarding the reasonableness of several conditions of consent. Considering the limited time, we have been provided to review and respond, we have focused on four (4) proposed conditions of consent which we believe are unreasonable and should not be imposed on the consent.

We also intend on speaking at the meeting of 7 August 2019.

SCHEDULE 1 - DEFERRED COMMENCEMENT CONDITIONS

(A) PART A - DEFERRED COMMENCEMENT CONDITIONS

- Condition 2 - SURRENDER OF CONSENT
- Condition 4 - DESIGN MODIFICATIONS
 - 4b Deep soil and tree plantings
 - 4c Facade changes:

(B) PART B – CONDITIONS OF CONSENT

- Condition 22 - HOURS OF OPERATION

A response to the recommended conditions of is attached for the Local Planning Panels consideration (see Response to recommended conditions of consent).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Tully', written over a horizontal line.

Michael Tully
Senior Planner

Encl.

Response to Recommended Conditions of Consent

D/2018/1615 –132-138 McEvoy Street, Alexandria

Condition 2 - SURRENDER OF CONSENT

The condition reads as follows:

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:

(a) Development consent D/2017/1073.

Response:

This condition is unreasonable, and removes the ability of the applicant to make a commercial decision on which consent is most viable based on economic and market conditions.

There is no legal constraint on the number of development applications that a person can make in respect to the same land. Further, there is no reason why both consents cannot exist or be operative at the same time. Whichever consent is activated, the other would subsequently not be possible and would ultimately lapse.

As there is no impediment to the consents being available, we request the Local Planning Panel delete the condition entirely.

Condition 4 - DESIGN MODIFICATIONS - 4b Deep soil and tree plantings

The condition reads as follows:

(i) One tree must be provided for every 4 car spaces not overhung by the building along the south-eastern boundary of the site, planted in bays with a minimum dimension of 2 metres and soil depth of 1 metre unencumbered deep soil. The bays must be provided with a raised kerb barrier and native ground cover planting.

(ii) All car parking spaces not overhung by the building along the south eastern boundary of the site must be provided with permeable paving.

Response

The condition undermines the remediation strategy for the land which is to cap and contain, retaining the existing hard stand in order to remediate the site. This is detailed in the Remedial Action Plan and Site Audit Statement, and referenced in Condition 67 – Land Remediation.

It is possible to provide additional canopy trees within the deep soil area of the Bowden Street setback, adjacent the driveway and within the deep soil area of the eastern side setback.

Therefore, we request that the Local Planning Panel delete the condition entirely or amend the condition to require additional tree plantings in the locations discussed above and delete any reference to unencumbered Deep Soil Planting being established.

Condition 4 - DESIGN MODIFICATIONS – 4c Facade changes:

The condition reads as follows:

(i) Adjustable, vertical louvres must be added to all openings on the south-eastern, north-eastern and north-western elevations at levels 1, 2 and 3, to provide protection from low altitude sunlight from spring equinox until autumn equinox.

(ii) The fixed vertical louvres shown on the north-eastern elevation must be shown as adjustable to account for low altitude morning sun.

(iii) Additional horizontal shading must be provided to the north-eastern elevation to account for northern mid-summer sun exposure

Response

The proposed condition requires amendments to the external façade of the building. Council's Assessment report justifies these amendments for the reason being they will aid energy reduction and achievement of the NABERS rating of 5.5 Stars.

A preliminary NABERS energy analysis (report) was conducted on the proposed development by ERBAS, Energy Consultants and submitted with the application. The report detailed that the development is estimated to achieve 4.5 Stars NABERS energy for the base building. To achieve a NABERS rating of 5.5 Stars, further electricity reduction was determined to be required. The report provided possible options to be pursued to achieve this, which included

- Introduction of solar panels on the roof of the building and/or;
- Increasing the performance of building insulation and glazing to reduce internal loads and energy demand from the building's Heating, Ventilating, and Air Conditioning (HVAC) system, and/or;
- More in-depth analysis on the impact of the buildings current external shading devices, and/or
- Monthly monitoring exercise via a BMS or EMS to inform building tuning processes and optimise operations of systems

The energy consultant's report did not state that additional shading devices should be investigated or required to aid further electricity reduction. The report also stated that accurate NABERS results can only be obtained after 12 months of operation conducted via an official NABERS assessment.

The required amendments will impact on the overall intent and integrity of the building design and are considered unnecessary and unreasonable.

The current building design achieves design excellence and any further amendments sought by the condition will potentially adversely impact achievement of the excellence of the design.

Further, the Commitment Agreement which the developer and NABERS details the specifics around the agreement, including timeframes to achieve the rating. Council's condition seeks to require achievement of the NABERS rating of 5.5 stars upon completion of the building and disregards the recommendations of the report which will be to the detriment of the building design.

Therefore, we request that the Local Planning Panel delete the condition, noting that the applicant accepts condition 107 that requires a NABERS rating of 5.5 Stars to be achieved without the screening proposed by condition 4(c).

Condition 22 - HOURS OF OPERATION

The condition reads as follows:

The hours of operation are restricted to between 9.00am and 5.30pm, Friday to Wednesday, and 9.00am and 8.00pm, Thursday

Response

The hours of operation are too restrictive considering the proposed ground floor uses which include 'Food and Drink Premises' and 'Shops'. The hours should be amended to commence at 6am Monday to Friday and cease at 10pm. The weekend trading hours are considered appropriate for an Employment Area which services a global city.

Note – we acknowledge the hours referenced in the condition were listed on the development application form, however they have been reviewed based on market conditions and considered unsuitable.