

Relevant Information for Central Sydney Planning Committee

FILE: D/2019/976 **DATE:** 25 June 2020

TO: The Central Sydney Planning Committee

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

SUBJECT: Information Relevant To Item 10 – Development Application: 94-104 Epsom Road, Zetland – D/2019/976

Alternative Recommendation

It is resolved that:

- (A) the variations requested to Clauses 4.3 'Height of Building' and 4.4 'Floor Space Ratio' in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld;
- (B) the requirement under Clause 7.20 of the Sydney Local Environmental Plan 2012 requiring the preparation of a development control plan is unreasonable or unnecessary in the circumstances; and
- (C) 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/2019/976, subject to the conditions detailed in Attachment B to the subject report to the Central Sydney Planning Committee on 25 June 2020, subject to the amendments shown at Attachment A to the subject Information Relevant To Memorandum (additions shown in ***bold italics***, deletions shown in ~~strikethrough~~).

Background

On 22 June 2020, the applicant sent correspondence (see Attachment B to this memo) to Council's planning officers requesting that several of the recommended conditions of consent be modified to facilitate the commencement of works upon determination of the application.

The requested modifications and Council's officer's comments are summarised in the table below.

Note the requested modifications that are supported do not alter the substance of those conditions arising from the independent assessment at Attachment A to the subject report to the Central Sydney Planning Committee on 25 June 2020.

No.	Requested Modification	Supported / Not Supported
2(e)	<p>DESIGN MODIFICATIONS</p> <p><i>Delete this condition. Colours and design details are provided on the submitted plans.</i></p>	<p>Not supported.</p> <p>As is addressed at paragraph 144 of the Independent Assessment Report, the colours and materials of the competitive design process winning scheme were considered by the Selection Panel to be integral to the winning design and were to be retained in the detailed design DA scheme. The detailed design DA scheme incorporates a different palette of colours and materials.</p> <p>The requested modification of the condition is not supported. However, it is recommended that the condition is modified to require the amended schedule of colours and materials to be submitted and approved prior to issue of a Construction Certificate for above ground works.</p>
2(f)	<p>DESIGN MODIFICATIONS</p> <p><i>Delete this condition. Any requirement for a music room should have been sought during the design competition and excluded from floor space calculations.</i></p>	<p>Not Supported.</p> <p>It was sought prior to the design competition. Being a large residential complex, in mid-September 2018, Meriton was requested to include a small sound isolated music practice rooms which doubles as common meeting rooms for the strata plans. This enables residents including children a place to practice musical instruments while apartment living. Many City developments include this. Although Meriton has agreed in other developments, on this occasion refused to include it in the brief. Rather than hold up the competition, the brief was released.</p>

No.	Requested Modification	Supported / Not Supported
3	<p>DESIGN MODIFICATIONS – PLENUM DESIGN</p> <p><i>As the information required to be submitted to satisfy the condition does not affect any works below ground level it is requested that the condition be modified to require the information is to be submitted and approved prior to above ground works.</i></p>	<p>Supported.</p> <p>Modification of the condition so that the required information is to be submitted to and approved by Council's Director City Planning, Development and Transport prior to the issue of a Construction Certificate for above ground works is supported.</p>
4	<p>DESIGN MODIFICATIONS – LANDSCAPING</p> <p><i>As the information required to be submitted to satisfy the condition does not affect any works above ground level it is requested that the condition be modified to require the information is to be submitted and approved prior to issue of a Construction Certificate for final fit out works.</i></p>	<p>Not supported.</p> <p>As is addressed at paragraph 217 of the Independent Assessment Report, the condition requires the reconfiguration of rooftop plant and communal open space areas.</p> <p>This will require redesign of rooftop areas including rooftop structures, services and drainage for green roofs. It is necessary for this to be resolved prior to issue of a Construction Certificate for above ground works.</p> <p>It is recommended that the condition is modified to require an amended design to be submitted and approved prior to issue of a Construction Certificate for above ground works.</p>
5	<p>DESIGN MODIFICATIONS – TREE MANAGEMENT</p> <p><i>Delete this condition. Compliance with this condition may require a total redesign which is unacceptable. The condition should only require the protection of trees during construction. No such similar condition was imposed on the development consent for 811 Elizabeth Street, Zetland (D/2019/258).</i></p>	<p>Not supported.</p> <p>An arboricultural assessment of the encroachment of the roots of street trees into the site was requested during the assessment of the subject and associated early works DAs (D/2019/976 and D/2019/1159). Information submitted in response to these requests did not satisfactorily address Council's requirements.</p>

No.	Requested Modification	Supported / Not Supported
7(a)(i)	<p>DESIGN QUALITY EXCELLENCE</p> <p><i>Delete references to contract documentation. Architects are not involved with contracts as they are sensitive business details.</i></p>	<p>Not supported.</p> <p>The same condition was imposed on the development consent for 811 Elizabeth Street, Zetland (D/2019/258) as it is for all DAs that go through a competitive design process. This is to ensure the winning architect is directly involved in all aspects of the development to completion of the project.</p>
10(b)	<p>PUBLIC ART</p> <p><i>The development consent for 811 Elizabeth Street, Zetland (D/2019/258) was modified (by a s4.55 application) to require final details of the proposed public artwork to be submitted prior to issue of a Construction Certificate for fit out works. It is requested that the same modification be made to the subject condition for consistency and given the time it takes to get public art approved.</i></p>	<p>Not supported.</p> <p>The proposed modifications would potentially reduce opportunities for the integration of public art into the built form and may affect its relationship with the public domain design. Such modifications should be subject to proper consideration through a s4.55 application as was the case with the modification of the development consent for 811 Elizabeth Street, Zetland (D/2019/258).</p>
10(c)	<p>PUBLIC ART</p> <p><i>The development consent for 811 Elizabeth Street, Zetland (D/2019/258) was modified (by a s4.55 application) to require that public art was installed prior to the issue of the first Occupation Certificate for the last building within the development. It is requested that the same modification be made to the subject condition for consistency and given the time it takes to get public art approved.</i></p>	<p>Not supported.</p> <p>The proposed modifications are considered to be premature as it is not currently known where public art is to be located and which may result in a missed opportunity for the integration of public art in the best location for the development. Such modifications should be subject to proper consideration through a s4.55 application as was the case with the modification of the development consent for 811 Elizabeth Street, Zetland (D/2019/258).</p>

No.	Requested Modification	Supported / Not Supported
11	<p>WASTE AND RECYCLING MANAGEMENT</p> <p><i>A Waste Management Plan was submitted. Why are we having to get approval again? Do we comply?</i></p>	<p>N/A</p> <p>As is addressed in the planning compliance table for DCP provision 4.2.6 on pages 71 to 72 of the Independent Assessment Report, the submitted Waste Management Plan does not satisfy the relevant requirements.</p>
13(a)	<p>EXPLORATORY ROOT INVESTIGATIONS</p> <p><i>It is requested that the condition be modified to require the information is to be submitted and approved prior to issue of a Construction Certificate for a shoring wall along the Epsom Road frontage.</i></p>	<p>Partly supported.</p> <p>It is recommended that the condition is amended to align with the more specific timing requirements of Condition (5) Design Modifications – Tree Management, which is for the required information to be submitted prior to any works commencing within the structural root zone (SRZ) of specified street trees adjacent to the existing property boundary with Epsom Road.</p>
20(a)	<p>STREET TREE PLANTING AND MAINTENANCE</p> <p><i>It is requested that the condition be modified to require the information is to be submitted and approved prior to issue of a Construction Certificate for the public domain.</i></p>	<p>Supported.</p> <p>This condition sets out requirements for new street tree plantings to be incorporated into the Public Domain Plan. While this condition requires the Public Domain Plan to be submitted and approved prior to issue of a Construction Certificate, Condition (121) Public Domain Plan, requires the public domain plan to be submitted and approved prior to issue of a Construction Certificate for the public domain or above ground building work, whichever is later.</p> <p>Proposed modifications to align the timing requirements of this condition with condition (121) are supported.</p>

No.	Requested Modification	Supported / Not Supported
21	<p>SECTION 7.11 CONTRIBUTIONS PAYABLE</p> <p><i>It is requested that the condition be modified to allow for payment to be made in instalments prior to issue of each Occupation Certificate. The conditions should be modified as requested given the COVID-19 pressure on financing projects and the State Government's clear guidance on this matter.</i></p>	<p>Not supported.</p> <p>The City of Sydney Contributions Plan 2015 clearly states that contributions are to be paid prior to issue of a Construction Certificate and makes no provision for staging of payments.</p> <p>Staff are aware that the Minister may be considering a Direction which may have the effect of deferring contribution payments for development consents. The City has a number of concerns about deferring contributions regarding delays to the delivery of local infrastructure and risks of contributions not being received.</p>
27	<p>LOADING DOCK MANAGEMENT PLAN</p> <p><i>It is requested that the condition be modified to allow for the loading dock management plan to be submitted and approved prior to issue of an Occupation Certificate as it is not related to construction.</i></p>	<p>Supported.</p> <p>Agreed, the loading dock management plan can be submitted and approved prior to issue of an Occupation Certificate without affecting construction.</p>
34	<p>ASSOCIATED ROADWAY COSTS</p> <p><i>It is requested that the condition be modified to reflect the terms of the VPA which states that all road construction is at the cost of Council.</i></p>	<p>Not supported.</p> <p>This is a standard condition that provides for any unforeseen road design / signage changes that come out of the detailed approval for road construction. It is considered premature to modify the condition as requested until the detailed road design has been prepared.</p>

No.	Requested Modification	Supported / Not Supported
35(b)	<p>BICYCLE PARKING AND END OF TRIP FACILITIES</p> <p><i>The development consent for 811 Elizabeth Street, Zetland (D/2019/258) was modified (by a s4.55 application) to require that the bicycle facilities design was to be submitted and approved prior to issue of the Construction Certificate for above ground works. It is requested that the condition is modified to require that the bicycle facilities design be submitted and approved prior to issue of the Occupation Certificate for the first building.</i></p>	<p>Partly supported.</p> <p>As bicycle parking is proposed at basement and ground levels it is recommended that the condition be modified to require the bicycle facilities design to be submitted and approved prior to issue of any Construction Certificate for the basement or ground level fit out, whichever is the earlier.</p>
43 and 44	<p>TRAFFIC WORKS and USE – SEPARATE DA REQUIRED</p> <p><i>Typographical error should be corrected.</i></p>	<p>Supported.</p> <p>Agreed, modifications for formatting errors to be corrected so these two conditions are separated.</p>
52(d)	<p>COMPLIANCE WITH THE ACOUSTIC REPORT</p> <p><i>It is requested that the condition be modified for the required information to be submitted and approved prior to issue of the Construction Certificate for fit out of the building that is next to Gunyama Park. This is because acoustic requirements do not relate to the structure of the building and only relates to the units directly facing the park.</i></p>	<p>Not supported.</p> <p>An assessment of impacts of plant noise and the use of Gunyama Park on the future intended occupants was requested during the assessment of DA. Information submitted in response to these requests did not satisfactorily address Council's requirements. The findings of the acoustic assessment may result in changes to facade construction. It is not agreed that the acoustic assessment only has implications for fitout requirements.</p>

No.	Requested Modification	Supported / Not Supported
53	<p>DEMOLITION, EXCAVATION AND CONSTRUCTION NOISE AND VIBRATION MANAGEMENT PLAN</p> <p><i>It is requested that the condition be modified for the required information to be submitted and approved prior to issue of the Construction Certificate for the basement. Council should already have a Demolition and Construction Noise Plan for the demolition and excavation of the site approved under the Gunyama Park and Aquatic Centre consent (D/2016/824) and as submitted under the early works DA (D/2019/1159).</i></p>	<p>Not supported.</p> <p>The proposed development involves excavation on the site beyond that approved by the Gunyama Park and Aquatic Centre consent (D/2016/824). A Demolition and Construction Noise Plan has not been submitted as part of the subject or the early works DA (D/2019/1159).</p> <p>The proposed modification is not supported.</p>
91	<p>DEMOLITION, EXCAVATION AND CONSTRUCTION MANAGEMENT</p> <p><i>Delete this condition. Council has already demolished buildings and excavated.</i></p>	<p>Not supported.</p> <p>The proposed development involves excavation beyond that approved by the Gunyama Park and Aquatic Centre consent (D/2016/824). Council contractors have not carried out any significant excavation works.</p> <p>The applicant must address the requirements of the condition that are relevant to their development.</p>
92	<p>DILAPIDATION REPORT – MAJOR EXCAVATION / DEMOLITION</p> <p><i>It is requested that the condition is modified to remove all references to Gunyama Park. The park is not completed and Council has built retaining walls encroaching on the site to be purchased.</i></p>	<p>Not supported.</p> <p>The requirement for preparation of a dilapidation report for the park should remain. The dilapidation report for the park is to document the current condition of the park. If works are delayed and construction of the park progresses, the dilapidation report may still provide a useful record of its condition.</p> <p>Any encroachments on the site are a civil matter to be resolved by the affected landowners.</p>

No.	Requested Modification	Supported / Not Supported
93	<p>EROSION AND SEDIMENT CONTROL</p> <p><i>Typographical error should be corrected.</i></p>	<p>Supported.</p> <p>Agreed, first two paragraphs can be deleted.</p>
126(a)	<p>STORMWATER AND DRAINAGE – MAJOR DEVELOPMENT</p> <p><i>The development consent for 811 Elizabeth Street, Zetland (D/2019/258) required drainage designs to be submitted and approved prior to issue of a Construction Certificate for excavation, civil, drainage or building works, whichever is earlier.</i></p> <p><i>It is requested that the condition be modified so that instead of requiring a drainage design to be submitted and approved prior to issue of ‘any’ Construction Certificate, it be required prior to issue of ‘a’ Construction Certificate, consistent with the 811 Elizabeth Street consent.</i></p>	<p>Not supported.</p> <p>The condition requires drainage and overland flow path designs to be finalised so that drainage conditions are established for the development of the site. It is not appropriate for the developer to select which Construction Certificate this requirement might apply to. The requested modification is not supported.</p>
129	<p>INSTALLATION OF ARTWORK AND IMAGES ON SCAFFOLDING</p> <p><i>Typographical error should be corrected.</i></p>	<p>Supported.</p> <p>Agreed, correction of formatting error is supported.</p>
132	<p>ROAD NETWORK AND GEOMETRIC ROAD DESIGN</p> <p><i>Typographical error should be corrected.</i></p>	<p>Supported.</p> <p>Agreed, correction of formatting error is supported.</p>

No.	Requested Modification	Supported / Not Supported
157(a)	<p>HOURS OF WORK AND NOISE – OUTSIDE CBD</p> <p><i>It is requested that the condition be modified to extend construction hours on Saturdays to 5.30pm for finishing concrete pours of large slabs and for washing of concrete pumps.</i></p>	<p>Not supported.</p> <p>On 31 March 2020, the Minister for Planning made the <i>Environmental Planning and Assessment (COVID-19 Development – Construction Work Days) Order 2020</i>. This order allows weekday construction hours on Saturday, Sunday and public holidays which in effect allows construction until 5.30pm on these days. The order does specify noise minimisation requirements but allows for those activities described in the applicant's submission. The City does not support extended constructions hours beyond the pandemic period.</p>

Prepared by: Ben Chamie, Senior Planner

Attachments

Attachment A. Amended Recommended conditions of consent

Attachment B. Meriton Email Requesting Modifications to Recommended Conditions of Consent

Approved



GRAHAM JAHN AM

Director City Planning, Development and Transport