

Relevant Information for Local Planning Panel

FILE: D/2022/911 **DATE:** 16 May 2023

TO: Local Planning Panel Members

FROM: Andrew Thomas, Executive Manager, Planning and Development

SUBJECT: Information Relevant To Item 5 – Development Application 169-173
Darlinghurst Road, Darlinghurst – D/2022/911

Alternative Recommendation

It is resolved that:

- (A) 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/2022/911, subject to the conditions detailed in Attachment A to the subject report to the Local Planning Panel on 17 May 2023, subject to the inclusion of a reason for each condition and the following amendments to deferred commencement condition (1) and condition (5) (additions shown in **bold italics**, deletions shown in ~~strike through~~):

(1) PLANNING AGREEMENT

(a) The Voluntary Planning Agreement between the COUNCIL OF THE CITY OF SYDNEY and PG WEALTH PTY LTD and JC DECAUX AUSTRALIA TRADING PTY LTD shall be executed and submitted to Council.
and

~~(b) The Voluntary Planning Agreement, as executed, must be registered on the title of the land.~~

(5) ~~POSITIVE COVENANT AND ADVERTISING DEED~~

Prior to any Occupation Certificate being issued, ~~a positive covenant, in the form specified in the Planning Agreement, is to be registered on title of the land to which this consent relates requiring all **the** operators of the advertisement **must** to enter into an Advertising Deed with the Council **in the form specified in the Planning Agreement**. The covenant must be created at no cost to Council.~~

Background

Reasons

An error occurred in the drafting and publishing of the recommended conditions of consent in Attachment A to Item 5 – Development Application: 169-173 Darlinghurst Road, Darlinghurst - D/2022/911 in that the associated reason for each condition was not attached to the relevant condition.

The updated recommended conditions of consent, with reasons, is contained in Attachment A.

Deferred Commencement Condition 1 and Condition 5

In response to the draft conditions in the applicant has requested changes to deferred commencement condition (1) and condition (5). Both deferred commencement condition (1) and condition (5) were originally recommended for inclusion by the City's Planning Agreements Team to ensure the community benefit, approved as part of the proposal, continues to be delivered. The City's Planning Agreements Team has been consulted in relation to the proposed condition amendments.

The condition amendments are supported, given the original intent of each of the conditions is retained in relation to ensuring the VPA is binding and its public benefits are delivered accordingly.

Deferred Commencement condition (1)

Ideally the applicant is seeking the deletion of the deferred commencement condition and that the requirements of that condition be met prior to the issue of a construction certificate. Notwithstanding this preference they have also suggested deferred commencement condition (1) be amended to delete part (b) which requires the VPA to be registered on the title of the land as part of the deferred commencement.

The following comments have been provided by the applicant in relation to the proposed condition amendment in relation to deferred commencement condition (1):

In the first instance, it would be preferable to see the matters listed as conditions of consent, requiring the provision of the VPA in executed form to the Council prior to grant of a Construction Certificate. That said, an updated condition would be workable.

The issue is that under the VPA, it is actually the City which takes the steps necessary to register the VPA on title, not JCD. Thus clause 1(b) is not really within our control. Registration is only security for the performance of the obligations in the VPA and should not be a pre-condition to commencement.

Under clause 7.1 of the VPA, it is the City that is the party who will be taking the necessary steps to register the VPA on the title of the land. The Developer also cannot compel the City to execute the VPA. Both of these are not in the control of the Developer. Thus the deferred commencement clause should simply require the Developer to provide to the City a VPA executed by the Owner and the Developer.

The use of deferred commencement conditions for VPAs is the City's general practice. In this regard the request to provide the VPA in executed form to the Council prior to grant of

a construction certificate is not supported. Maintaining the requirement for the VPA to be executed prior to the consent becoming operative is appropriate.

The applicants' comments concerning registration are noted and are considered reasonable. In this instance the proposed deletion of part (b) of the condition is supported.

Condition 5

The applicant has requested the amendment of Condition 5 to delete the requirement for a positive covenant. The applicant argues that as part of the VPA negotiations the parties agreed that the requirement for the Positive Covenant would be removed.

Councils Planning Agreements Team has confirmed that a positive covenant is not required. The proposed amendments to Condition 5 are supported.

Prepared by: James Cooper, Specialist Planner

Attachments

Attachment A. Updated Recommended Conditions of Consent

Attachment B. Applicant's Email Requesting Changes to Draft Conditions

Approved



ANDREW THOMAS

Executive Manager, Planning and
Development