

Relevant Information for Local Planning Panel

FILE: D/2022/846 **DATE:** 27 June 2023

TO: Local Planning Panel Members

FROM: Bill Mackay , Acting Executive Manager Planning Assessments

SUBJECT: Information Relevant To Item 4 – Development Application: 8 Coneill Place, Forest Lodge – D/2022/846

Alternative Recommendation

It is resolved that consent be granted to Development Application No D/2022/846, subject to the conditions detailed in Attachment A to the subject report to the Local Planning Panel on 28 June 2023, subject to the following amendments (additions shown in ***bold italics***, deletions shown in ~~strikethrough~~):

(24) TREE PROTECTION ZONE

- (a) Before the commencement of works, Tree Protection Zone/s (TPZ) must be established around all trees to be retained not less than the distance indicated in the TPZ schedule below.
- (b) Tree protection must be installed and maintained in accordance with the Australian Standard 4970 Protection of Trees on Development Sites and with the following schedule:

TPZ Schedule

Tree No.	Species Name	Location	Radius (m) From Trunk
1-2	<i>Celtis australis</i> (<i>Southern Hackberry</i>)	Street tree – front	10.0

4	<i>Elaeocarpus reticulatus</i> (Blueberry Ash)	Neighbouring property – South boundary	2.5
15	<i>Phoenix canariensis</i> (Canary Island Date Palm)	Rear yard – South west corner	44.0 3.5
16	<i>Magnolia grandiflora</i> (Southern Magnolia)	Neighbouring property – South boundary	6.0
17	<i>Callistomen viminalis</i> (Weeping Bottlebrush)	Neighbouring property – South boundary	6.0

Note: Only applies to the TPZ within the subject development site and the public domain.

- (c) Ground surface protection must be installed if construction access is required through any TPZ of this condition where hard surface / paving is not existing. The ground protection must be:
- (i) Protected with boarding (ie scaffolding board or plywood sheeting or similar material), placed over a layer of mulch to a depth of at least 75mm and geotextile fabric;
 - (ii) The protective boarding must be left in place for the duration of the construction and development.
- (e) The following works must be excluded from within any TPZs:
- (i) Excavation; - except for the localised siting of piers / demolition of the concrete slab
 - (ii) Soil cut or fill including trenching;
 - (iii) Soil cultivation, disturbance or compaction;
 - (iv) Stockpiling, storage or mixing of materials;
 - (v) The parking (except existing on street parking), storing, washing and repairing of tools, equipment and machinery;
 - (vi) The disposal of liquids and refuelling;
 - (vii) The disposal of building materials;
 - (viii) The siting of offices or sheds;

- (ix) Any action leading to the impact on tree health or structure.
- (f) Any trenching works for services / hydraulics / drainage etc must not be undertaken within any TPZ. Alternative installation methods for services, such as directional boring/drilling, or redirection of services must be employed.
- (g) All work undertaken within or above the TPZ must be:
 - (i) Carried out in accordance with a work methodology statement prepared by an Arborist (minimum AQF Level 5) and written approval is obtained from Council's Tree Management Officer before its implementation; and
 - (ii) Supervised by a Project Arborist (minimum AQF Level 5).

Reason

To ensure the protection and ongoing health of trees.

Background

In response to the draft conditions in Attachment A to Item 4 – Development Application: 8 Coneill Place, Forest Lodge, the applicant has requested the following changes to Condition 2(a) 'Design Modifications', Condition 3 'Affordable Housing Contributions', and Condition 24 'Tree Protection Zone'. These are discussed below:

Condition 2 – Design Modifications

The applicant requests that condition 2(a) relating to the first-floor setback be deleted or the wording be changed to: "The weighted setback from the southern boundary is to be increased to 2.5m for the first floor".

The following comments are provided by the applicant in relation to the proposed condition (2)(b):

The building bulk has been reduced and the first floor amended twice. The development complies with planning controls relating to overshadowing, privacy and floor space ratio.

The proposed first floor setbacks have an average of 2.2m and exceed the existing setbacks in the area.

If the above request is not agreed, it is then requested the wording be changed to: "The weighted setback from the southern boundary is to be increased to 2.5m for the first floor".

Council Response

The condition was recommended by Council's urban designer to address the bulk and scale impacts of the first-floor setbacks to the neighbouring dwelling at 9 Coneill Place.

The proposed development is a large 7-bedroom dwelling with a generous void space and courtyard at the centre. The development could be reduced to allow for the increased first floor setbacks without compromising the internal amenity of 8 Coneill Place.

The applicant has submitted a summary of the setbacks within the area to demonstrate that the proposed development provides a greater setback than the surrounding dwellings within the area. The summary is inaccurate as it does not distinguish between the ground and first floor setbacks and refers to DA plans for properties which do not have development consent for a two-storey dwelling. The first-floor setbacks of the surrounding development vary at the first floor for each site to respond to irregular site boundaries. Further, the neighbouring dwelling at 9 Coneill Place is the only site on Coneill Place where the private open space located at the side boundary, rather than the rear of the site.

To provide further clarification, an analysis of the first-floor setbacks prepared by Council is submitted in **Attachment B**, with the relevant plans submitted in **Attachment C**. The first floor setbacks vary within Coneill Place and there are examples of dwellings that contain a first floor building line that is setback closer to the boundary than the proposed development, as indicated by the applicant. However, the subject development is different from the surrounding development in that it is the only site that has a neighbouring development where the private open space is located along the side boundary, rather than the rear of the site. This has been considered in the assessment of the proposal and is discussed under the 'Amendments' heading (pages 13 – 15) and the 'Overbearing and Bulk' heading (page 35) of the delegated report.

The first-floor setback along the southern boundary would be acceptable if the private open space for 9 Coneill Place were located at the rear of that site, rather than the side boundary.

It is recommended that the condition is retained to address the Bulk and Scale to the private open space for 9 Coneill Place.

Condition 3 – Affordable Housing Contribution

The following is the response from the applicant on condition (3):

It is requested that the required contribution of \$213,000 be reconsidered given that the proposal is for a replacement single dwelling, and no credit has been provided for the existing dwelling.

The Affordable Housing Contribution program is aimed at increasing demand for affordable housing and increases in density, and the dwelling density is unchanged by the proposal.

The definition of Total Floor Area (TFA) is different to Gross Floor Area (GFA) in that the calculations include voids and wall thickness. If the voids were excluded the contribution would be significantly reduced.

Council Response

Forest Lodge, is located in the 'residual lands' for affordable housing purposes and attracts a 3% contribution rate on the total residential floor space. In the residual lands, this rate applies to all "new or more intensively used floor area". The proposal involves the demolition of an existing dwelling and the construction of a new dwelling.

The affordable housing provisions in Sydney Local Environmental Plan (SLEP) 2012 (cl. 7.13(1)) apply to specified development types and scales. This includes development

involving “the demolition of existing floor area and the subsequent creation, whether for the same or different purpose, of more than 200sqm of GFA”. The SLEP 2012 also notes (cl. 7.13(5)) “it does not matter whether the floor area ... was in existence before, or is created after, the commencement of this clause, or whether or not the floor area concerned replaces a previously existing area”. The Affordable Housing Program (the Program) then clarifies that in the residual lands, the requirement applies to new or more intensely used floor space. The example given on page 11 of the Program states that “existing floor area that is demolished and replaced is not ‘credited’ against the contribution requirement.

The Program does exempt developments from making a contribution where the total contribution amount is unreasonable given the nature of the development. The only exemptions from an affordable housing contribution are listed in Section 2.2 of the Program. This is defined as when the affordable housing contribution would be more than 15% of the agreed cost of construction.

The cost of construction for the subject development application is \$2,718,842.00, and 15% of the cost of construction is \$407,826.30. As the required contribution is less than 15% of the cost of works, it is approximately 7.8%, the development is not exempt from making the necessary contribution.

The [City of Sydney Affordable Housing Program](#) provides a clear justification for how development of this kind reduces the availability of affordable housing in the area and therefore justifies the requirement for a contribution towards affordable housing (refer to pages 35-37).

Floor space used to calculate an affordable housing levy contribution is based on Total Floor Area, not Gross Floor Area, and has consistently been applied in this way. This is a requirement of the Clause 7.13 of the SLEP 2012.

Condition 24 – Tree Protection Zone

The following comments have been provided by the applicant in relation to the proposed amendment to condition (24):

The 11m tree protection zone radius for Tree 15 (a Canary Island Palm) is over calculated in terms of applicable Australian Standard.

The above comment was discussed with Council's tree officer who recommended the tree protection zone radius. It has been confirmed that the 11m radius was added in error, as the height of the tree is 11m. Council's tree officer has advised that a 3.5m radius is appropriate for this tree.

It is therefore recommended that the condition be amended to require a 3.5m tree protection zone for Tree 15.

Prepared by: Chelsea Thompson, Planner

Attachments

Attachment A. Letter from Applicant

Attachment B. First Floor Setback Summary

Attachment C. Approved and Proposed Floor Plans

Approved



BILL MACKAY

Executive Manager Planning Assessments