

Relevant Information for Local Planning Panel

FILE: D/2022/229 **DATE:** 19 July 2023

TO: Local Planning Panel Members

FROM: Andrew Thomas, Executive Manager, Planning and Development

SUBJECT: Information Relevant To Item 4 – Development Application: 2 Avenue Road, Glebe – D/2022/229

Alternative Recommendation

It is resolved that:

- (A) the variation requested to the Height of Buildings development standard, in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) development consent be granted to Development Application No. D/2022/229 subject to the conditions set out in Attachment A to the subject report and **subject to the following amendments** (additions shown in **bold italics**, deletions shown in ~~strikethrough~~):

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2022/229 dated 22 March 2022 and the following drawings prepared by DJRD Architects:

Drawing Number	Drawing Name	Date
DA-000 Rev 12	Cover Sheet	24.04.2023
DA-010 Rev 8	Extg Level 2 Plan - Demolition	24.04.2023
DA-011 Rev 9	Extg Level 3 Plan – Demolition	24.04.2023

Drawing Number	Drawing Name	Date
DA-012 Rev 8	Extg Level 4 Plan – Demolition	24.04.2023
DA-100 Rev 16	Proposed Level 2 Plan (D-Lower Ground)	24.04.2023
DA-101 Rev 16	Proposed Level 3 Plan (D-Ground)	24.04.2023
DA-102 Rev 16	Proposed Level 4 Plan (D-Level 1)	24.04.2023
DA-103 Rev 16	Proposed Level 5 Plan (D-Level 2 & Roof)	24.04.2023
DA-200 Rev 14	Elevations Sheet 1	24.04.2023
DA-201 Rev 14	Elevations Sheet 2	24.04.2023
DA-250 Rev 13	Sections	24.04.2023
DA-255 Rev 2	Rail Tunnel Section	24.04.2023
DA-950 Rev 9	Materials Schedule	24.04.2023
DA-951 Rev 1	Finishes Schedule	24.04.2023 10.20.20

As well as the following drawings prepared by Jane Irwin Landscape Architecture:

Drawing Number	Drawing Name	Date
L-DA-001 Rev E	Legend + Schedule	26.04.2023
L-DA-002 Rev F	General Arrangement	26.04.2023
L-DA-090 Rev G	Tree Management Plan	26.04.2023

Drawing Number	Drawing Name	Date
L-DA-091 Rev B	Tree Canopy Cover	26.04.2023
L-DA-101 Rev F	Levels and Finishes Plan 01	26.04.2023
L-DA-102 Rev F	Levels and Finishes Plan 02	26.04.2023
L-DA-103 Rev B	Level 5 Roof Terrace Plan	26.04.2023
L-DA-400 Rev D	Planting Plan + Schedule	26.04.2023
L-DA-401 Rev D	Detail Planting Plan 01	26.04.2023
L-DA-402 Rev D	Detail Planting Plan 02	26.04.2023
L-DA-403 Rev D	Detail Planting Plan 03	26.04.2023
<i>L-DA-404 Rev B</i>	<i>L5 Roof Terrace Planting Plan</i>	<i>26.04.2023</i>
L-DA-501 Rev D	Landscape Section 01	26.04.2023
L-DA-502 Rev E	Landscape Section 02	26.04.2023
L-DA-503 Rev C	Landscape Section 03	26.04.2023
L-DA-504 Rev C	Landscape Section 04	26.04.2023

and as amended by the conditions of this consent.

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

Reason

To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

(3) DESIGN MODIFICATIONS

The design of the building must be modified to ensure the air condition compressor units located to the rear of the Administration Building (**also known as Building A**) are appropriately screened.

The modifications are to be submitted to and approved by Council's Area Coordinator Planning Assessments / Area Planning Manager prior to the issue of a Construction Certificate.

Reason

To require amendments to the approved plans and supporting documentation following assessment of the development.

(5) GENERAL HERITAGE

- (a) The proposed works are to be carried out in a manner that minimises demolition, alterations and new penetrations/fixings to the significant fabric of the existing building which is listed as a Heritage Item.
- (b) The fabric and features to be retained by the proposal must be properly protected during the process of demolition and construction. The protection measures are to be specified in the construction management plan.
- (c) All conservation and adaptation works are to be in accordance with the Articles of the Australian ICOMOS Burra Charter 2013.
- (d) New services in the *Administration Building* and *Wych Wood* are to be surface mounted rather than chased-in to existing walls to minimise impact on heritage fabric.
 - (i) New services must use existing service runs;
 - (ii) Where this is not possible, details of an alternative solution must be shown on drawings at a suitable scale and submitted and approved by ~~Council's Urban Design and Heritage Manager / Area Planning Manager~~ **a suitably qualified and experienced heritage practitioner or historian** prior to the issue of any Construction Certificate.
- (e) Appropriately qualified tradespersons (as appropriate) are to be commissioned who are skilled in traditional building and engineering trades to carry out the proposed scope of works.
- (f) The new windows and doors on the existing building must match the original material, which is timber joinery.
- (g) The face brickwork/stone/tiles must not be rendered, painted or coated.
- (h) Where internal partitions meet external walls they must abut window mullions, columns or other such building elements and not glazing.

Reason

To ensure that the development does not result in adverse heritage impacts.

(7) REDUCTION OF RISING DAMP AND SALT ATTACK IN BUILDINGS CONSTRUCTED PRIOR TO 1920

- (a) To avoid potential damage caused by rising damp and migrating salts the following is to apply to the ground floor.
 - (i) No concrete slab is to be laid directly on the ground within the heritage buildings;
 - (ii) Expansion strips should be used in conjunction with external walls; and
 - (iii) External slabs must be set down from internal levels to improve cross ventilation.
- (b) The existing suspended timber floors at ground floor level **are to be retained or replaced where necessary**, and the ventilated subfloor space is to be retained in the *Administration Building* and *Wych Wood*.

Reason

To avoid potential damage caused by rising damp and migrating salts.

(11) LANDSCAPING OF THE SITE

- (a) Detailed landscape design including plans and details drawn to scale, and technical specification must be submitted to and approved by Council's Area Planning Manager/ Area Coordinator Planning Assessments prior to the issue of any Construction Certificate. These documents must be in accordance with the approved landscape drawings in Condition 1 of this consent and be prepared by Jane Irwin Landscape Architecture.
- (b) A drawing set must demonstrate full coordination with plans prepared by the architect, engineers, arborist for works near existing trees and heritage brick wall. These documents must include:
 - (i) Location of existing and proposed planting on the site including existing and proposed trees, planting in natural ground, and planting on structure.
 - (ii) Location and details of existing and proposed structures on the site including, but not limited to, paving, walls, services, furniture, shade structures, lighting and other features
 - (iii) Details of earthworks and soil depths including finished levels and any mounding. The minimum soil depths for planting on structure must be 1000mm for trees, 450mm for shrubs and 200mm for groundcovers, excluding mulch and drainage layers.
 - (iv) Coordination and details of stormwater pits and pipes in garden beds near existing retained trees and the heritage brick wall to Avenue Road that comply with the tree conditions provided in Part C of this consent.

- (v) Planting details, and location, numbers, type and supply size of plant species, with reference to Australian Standards and preference for drought resistant species that contribute to habitat creation and biodiversity.
 - (vi) Details of drainage, waterproofing and watering systems.
 - (vii) Landscape maintenance plan. This plan is to be complied with during occupation of the property.
- (c) All landscaping in the approved plan is to be complete prior to an Occupation Certificate being issued **for the new multi-purpose building (also known as Building D)**.

Reason

To ensure the development is supported by a good quality, buildable landscape scheme that meets the City's controls.

(21) USE OF HERITAGE CONSULTANT - MAJOR DEVELOPMENT

- (a) An experienced heritage consultant is to be commissioned to work with the consultant team throughout the design development, contract documentation and construction stages of the project. The conservation architect is to be involved in the resolution of all matters where existing significant fabric and spaces are to be subject to preservation, restoration, reconstruction, adaptive reuse, recording and demolition. The heritage consultant is to be provided with full access to the site and authorised by the applicant to respond directly to Council where information or clarification is required regarding the resolution of heritage issues throughout the project.
- (b) Evidence and details of the above commission on the above terms are to be provided to Council prior to the issue of any Construction Certificate or commencement of work on site whichever is the earlier.
- (c) Throughout the documentation and construction stages of the approved works the experienced heritage consultant is to:
 - (i) Undertake site inspections of not less than fortnightly intervals **during construction works relating to the Administration Building and Wych Wood**.
 - (ii) Maintain a diary of site inspections that includes photographs of the works, details of heritage advice and decisions arising out of each inspection and any further physical evidence uncovered during the works.
 - (iii) Compile a final report, including the diary, verifying how the heritage conditions have been satisfied, and the works completed in accordance with the Conservation Management Plan.

- (d) Upon completion of the works, the final report is to be submitted for approval by Council's Urban Design and Heritage Manager / Area Coordinator Planning Assessments / Area Planning Manager prior to the issue of any Occupation Certificate or the commencement of the use, whichever is earlier.

Reason

To ensure that the implementation of the approved development is carried out in a manner that does not have adverse heritage impacts.

Background

In response to the recommended conditions of consent as shown at Attachment A to Item 4 – Development Application: 2 Avenue Road, Glebe – D/2022/229, the applicant has requested changes to:

- Condition 1 – Approved Development
- Condition 2 – Affordable Housing Contribution – Residual Land or Central Sydney – Payment in Lieu of Floor Space Contribution – Prior to Construction Certificate
- Condition 3 – Design Modifications
- Condition 5 – General Heritage
- Condition 7 – Reduction of Rising Damp and Salt Attack in Buildings Constructed Prior to 1920
- Condition 11 – Landscaping of the Site
- Condition 21 – Use of a Heritage Consultant – Major Development

The following section provides a summary of the applicant's proposed amendments, the applicant's justification for the amendments and a response confirming whether the proposed amendments are supported by City staff.

Condition 1 – Approved Development

Applicant's proposed amendments:

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2022/229 dated 22 March 2022 and the following drawings prepared by DJRD Architects:

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L-DA-503 Rev C	Landscape Section 03	26.04.2023
L-DA-504 Rev C	Landscape Section 04	26.04.2023

and as amended by the conditions of this consent.

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

Reason

To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

Applicant's justification:

There are two inconsistencies between the plans and the plans referenced in Condition 1.

City Staff comment:

The amendments are supported to address these two inconsistencies.

Condition 2 – Affordable Housing Contribution – Residual Land or Central Sydney – Payment in Lieu of Floor Space Contribution – Prior to Construction Certificate

Applicant's proposed amendments:

The applicant has proposed the deletion of the condition in its entirety. Notwithstanding, the applicant has requested that should the LPP be of mind to impose this condition, it is requested this condition be amended to require the payment of the contribution prior to Occupation Certificate.

- (2) ~~**AFFORDABLE HOUSING CONTRIBUTION – RESIDUAL LAND OR CENTRAL SYDNEY – PAYMENT IN LIEU OF FLOOR SPACE CONTRIBUTION – PRIOR TO CONSTRUCTION CERTIFICATE**~~
- (a) ~~In accordance with the City of Sydney Affordable Housing Program and prior to the issue of a Construction Certificate, the applicant must provide evidence that a monetary contribution towards the provision of affordable housing has been paid to the City of Sydney Council.~~
 - (b) ~~The contribution is \$92,479.48 (indexed at 1 March 2023). This is calculated by establishing the sum of the equivalent monetary contribution \$10,611.53 multiplied by 0.5% of the total floor area for non-residential development (1,743sqm).~~
 - (c) ~~If the contribution is paid after the indexation period in which the consent is granted, being 1 March 2023 to 29 February 2024, the above contribution will be adjusted according to the Sydney LGA median strata dwelling price ('MDP') using the following formula.~~
 - (d) ~~Contribution payable at Time of Payment = $C \times MDP2 / MDP1$, where:~~
 - (i) ~~C is the original total contribution amount payable to the City of Sydney as shown above;~~
 - (ii) ~~MDP2 is the Median Strata Dwelling Price in Sydney LGA taken from the most recent NSW Government Rent and Sales Report at the time of indexation of the equivalent monetary contribution rate; and~~

- (iii) ~~MDP1 is the Median Strata Dwelling Price in Sydney LGA taken from the NSW Government Rent and Sales Report used to establish the current equivalent monetary contribution rate, being 1 March 2023 to 29 February 2024.~~

~~Contact Council's Planning Assessment Unit at planningsystemsadmin@cityofsydney.nsw.gov.au for written confirmation of the amount payable, with indexation as necessary, prior to payment.~~

Reason

~~To ensure development contributions are paid to contribute to the provision of essential affordable rental housing infrastructure.~~

Applicant's justification:

Pursuant to Clause 7.13 of the Sydney LEP 2012, the site is on residual land, however does not involve a change of use of existing floor area from "other than residential accommodation to residential accommodation or tourist and visitor accommodation".

Notwithstanding that Clause 7.13 of the LEP does not apply, Council's assessment report has based the inclusion of this condition on Section 7.32 of the Act. Specifically, sub-clause 1(c) which states:

(c) the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site.

The site is zoned R1 which is a prescribed zone and consequently permissible with development consent under Section 3.36(1) of State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP). Educational Establishments are also permissible with development consent in the R1 zone, under the provisions of the LEP.

The proposed development is 'allowed' under the T&I SEPP and the LEP and is not reliant on the 'initial zoning' or a rezoning of the site.

City staff comment:

Section 7.32 of the Act outlines that the consent authority may grant consent to a development application subject to a condition requiring dedication of part of the land for the purpose of providing affordable housing, or payment of a monetary contribution to be used for the purpose of providing affordable housing where the section of the Act applies.

The Act applies with respect to a development application for consent to carry out development within an area if a State environmental planning policy identifies that there is a need for affordable housing within the area and:

- (a) *the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area, or*
- (b) *the consent authority is satisfied that the proposed development will create a need for affordable housing within the area, or*
- (c) *the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site, or*

- (d) *the regulations provide for this section to apply to the application.*

Contrary to the applicant's position, City staff are of the opinion that the proposal is consistent with the criteria under part (c) that is, the proposed development comprises an educational establishment which is permissible under the initial zoning of the site.

As such, an affordable housing condition may be imposed under Section 7.32(3) of the Act if:

- (a) *the condition complies with all relevant requirements made by a State environmental planning policy with respect to the imposition of conditions under this section, and*
- (b) *the condition is authorised to be imposed by a local environmental plan, and is in accordance with a scheme for dedications or contributions set out in or adopted by such a plan, and*
- (c) *the condition requires a reasonable dedication or contribution, having regard to the following— the condition requires a contribution for affordable housing is provided, having regard to the following:*
- (i) *the extent of the need in the area for affordable housing,*
 - (ii) *the scale of the proposed development,*
 - (iii) *Any other dedication or contribution required to be made by the applicant under this section or Section 7.11.*

In reference to section 7.32(3)(a), section 14 of State Environmental Planning Policy (Housing) 2021 identifies there is a need for affordable housing within each area of the State.

In reference to section 7.32(3)(b) and (c), the condition is authorised to be imposed by Section 7.13 of the SLEP 2012 and is in accordance with the City of Sydney Affordable Housing Program (Affordable Housing Program). There is a demonstrated need for affordable housing within the City of Sydney Local Government Area. The scale of development is significant having a development cost of \$12,813,303. No other dedication or contribution is required to be made by the applicant under Section 7.32 or Section 7.11 of the Act.

The Affordable Housing Program identifies that an affordable housing contribution amounting to more than 15% of the agreed cost of construction is unreasonable. The affordable housing contribution amount is \$92,479 which equates to 0.72% of the proposed cost of works (\$12,813,303). In this respect, the contribution amount is not considered unreasonable.

Having regard to the provisions of Section 7.32 of the Act, the imposition of an affordable housing contribution is reasonable.

The deletion of the condition which requires the payment of an affordable housing contribution is not supported.

Condition 3 – Design Modifications

Applicant's proposed amendments:

(3) DESIGN MODIFICATIONS

The design of the building must be modified to ensure the air condition compressor units located to the rear of the Administration Building (**also known as Building A**) are appropriately screened.

The modifications are to be submitted to and approved by Council's Area Coordinator Planning Assessments / Area Planning Manager prior to the issue of a Construction Certificate.

Reason

To require amendments to the approved plans and supporting documentation following assessment of the development.

Applicant's justification:

The condition should be amended to refer to the building coding so the applicant and certifier are clear on what is required.

City staff comment:

The amendment is supported.

Condition 5 – General Heritage

Applicant's proposed amendments:

(5) GENERAL HERITAGE

- (a) The proposed works are to be carried out in a manner that minimises demolition, alterations and new penetrations/fixings to the significant fabric of the existing building which is listed as a Heritage Item.
- (b) The fabric and features to be retained by the proposal must be properly protected during the process of demolition and construction. The protection measures are to be specified in the construction management plan.
- (c) All conservation and adaptation works are to be in accordance with the Articles of the Australian ICOMOS Burra Charter 2013.
- (d) New services in the *Administration Building* and *Wych Wood* are to be surface mounted rather than chased-in to existing walls to minimise impact on heritage fabric.
 - (i) New services must use existing service runs;

- (ii) Where this is not possible, details of an alternative solution must be shown on drawings at a suitable scale and submitted and approved by ~~Council's Urban Design and Heritage Manager / Area Planning Manager~~ **a suitably qualified and experienced heritage practitioner or historian** prior to the issue of any Construction Certificate.
- (e) Appropriately qualified tradespersons (as appropriate) are to be commissioned who are skilled in traditional building and engineering trades to carry out the proposed scope of works.
- (f) The new windows and doors on the existing building must match the original material, which is timber joinery.
- (g) The face brickwork/stone/tiles must not be rendered, painted or coated.
- (h) Where internal partitions meet external walls they must abut window mullions, columns or other such building elements and not glazing.

Reason

To ensure that the development does not result in adverse heritage impacts.

Applicant's justification:

No justification provided.

City staff comment:

The condition has been reviewed by the City staff and is supported.

Condition 7 – Reduction of Rising Damp and Salt Attack in Buildings Constructed Prior to 1920

Applicant's proposed amendments:

- (7) **REDUCTION OF RISING DAMP AND SALT ATTACK IN BUILDINGS CONSTRUCTED PRIOR TO 1920**
 - (a) To avoid potential damage caused by rising damp and migrating salts the following is to apply to the ground floor.
 - (i) No concrete slab is to be laid directly on the ground within the heritage buildings;
 - (ii) Expansion strips should be used in conjunction with external walls; and
 - (iii) External slabs must be set down from internal levels to improve cross ventilation.
 - (b) The existing suspended timber floors at ground floor level, **are to be retained or replaced where necessary** and the ventilated subfloor space is to be retained in the *Administration Building* and *Wych Wood*.

Reason

To avoid potential damage caused by rising damp and migrating salts.

Applicant's justification:

The submitted architectural plans state the timber floor is to be maintained or replaced as required. The condition currently requires retention only. The condition is to be amended to provide flexibility.

City staff comment:

The condition has been reviewed by the City staff and is supported.

Condition 11 – Landscaping of the Site

Applicant's proposed amendments:

(11) LANDSCAPING OF THE SITE

- (a) Detailed landscape design including plans and details drawn to scale, and technical specification must be submitted to and approved by Council's Area Planning Manager/ Area Coordinator Planning Assessments prior to the issue of any Construction Certificate. These documents must be in accordance with the approved landscape drawings in Condition 1 of this consent and be prepared by Jane Irwin Landscape Architecture.
- (b) A drawing set must demonstrate full coordination with plans prepared by the architect, engineers, arborist for works near existing trees and heritage brick wall. These documents must include:
 - (i) Location of existing and proposed planting on the site including existing and proposed trees, planting in natural ground, and planting on structure.
 - (ii) Location and details of existing and proposed structures on the site including, but not limited to, paving, walls, services, furniture, shade structures, lighting and other features
 - (iii) Details of earthworks and soil depths including finished levels and any mounding. The minimum soil depths for planting on structure must be 1000mm for trees, 450mm for shrubs and 200mm for groundcovers, excluding mulch and drainage layers.
 - (iv) Coordination and details of stormwater pits and pipes in garden beds near existing retained trees and the heritage brick wall to Avenue Road that comply with the tree conditions provided in Part C of this consent.
 - (v) Planting details, and location, numbers, type and supply size of plant species, with reference to Australian Standards and preference for drought resistant species that contribute to habitat creation and biodiversity.

- (vi) Details of drainage, waterproofing and watering systems.
- (vii) Landscape maintenance plan. This plan is to be complied with during occupation of the property.
- (c) All landscaping in the approved plan is to be complete prior to an Occupation Certificate being issued **for the new multi-purpose building (Building D)**.

Reason

To ensure the development is supported by a good quality, buildable landscape scheme that meets the City's controls.

Applicant's proposed justification:

No justification provided.

City staff comment:

The amendment is supported.

Condition 21 – Use of Heritage Consultant – Major Development

Applicant's proposed amendments:

(21) USE OF HERITAGE CONSULTANT - MAJOR DEVELOPMENT

- (a) An experienced heritage consultant is to be commissioned to work with the consultant team throughout the design development, contract documentation and construction stages of the project. The conservation architect is to be involved in the resolution of all matters where existing significant fabric and spaces are to be subject to preservation, restoration, reconstruction, adaptive reuse, recording and demolition. The heritage consultant is to be provided with full access to the site and authorised by the applicant to respond directly to Council where information or clarification is required regarding the resolution of heritage issues throughout the project.
- (b) Evidence and details of the above commission on the above terms are to be provided to Council prior to the issue of any Construction Certificate or commencement of work on site whichever is the earlier.
- (c) Throughout the documentation and construction stages of the approved works the experienced heritage consultant is to:
 - (i) Undertake site inspections of not less than fortnightly intervals **during construction works relating to the Administration Building and Wych Wood**.
 - (ii) Maintain a diary of site inspections that includes photographs of the works, details of heritage advice and decisions arising out of each inspection and any further physical evidence uncovered during the works.
 - (iii) Compile a final report, including the diary, verifying how the heritage conditions have been satisfied, and the works completed in accordance with the Conservation Management Plan.

- (d) Upon completion of the works, the final report is to be submitted for approval by Council's Urban Design and Heritage Manager / Area Coordinator Planning Assessments / Area Planning Manager prior to the issue of any Occupation Certificate or the commencement of the use, whichever is earlier.

Reason

To ensure that the implementation of the approved development is carried out in a manner that does not have adverse heritage impacts.

Applicant's proposed justification:

No justification provided.

City staff comment:

The condition has been reviewed by the City staff and is supported.

Prepared by: Lotti Wilkinson, Senior Planner

Attachments

Attachment A. Email from Applicant

Approved



ANDREW THOMAS

Executive Manager, Planning and
Development