

Relevant Information for Local Planning Panel

FILE: D/2022/1278 **DATE:** 20 September 2023

TO: Local Planning Panel Members

FROM: Andrew Thomas, Executive Manager Planning and Development

SUBJECT: Information Relevant To Item 3 – Development Application: 50 Bray Street, Erskineville – D/2022/1278

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) consent be granted to Development Application No D/2022/1278, subject to the conditions set out in Attachment A to the subject report to the Local Planning Panel on 20 September 2023, subject to the following amendments (additions shown in **bold italics**, deletions shown in ~~strike through~~):

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2022/1278 dated 07/12/2022 and the following drawings prepared by Katris Architects:

Drawing Number	Drawing Name	Date
A002 Rev C	Ground Floor Plan/ Site Plan	21/08/2023
A003 Rev C	Level 1	21/08/2023
A004 Rev C	Attic Plan	21/08/2023

Drawing Number	Drawing Name	Date
A005 Rev C	Roof Plan	21/08/2023
A006 Rev C	Sections	21/08/2023
A007 Rev C	North & South Elevations	21/08/2023
A008 Rev C	East & West Elevations	21/08/2023
A008B Rev C	East & West North & Eastern Elevations without fencing	21/08/2023
A019 Rev C	Demolition Plan	21/08/2023

and the following drawings prepared by Greenland Design Landscape Architects:

Drawing Number	Drawing Name	Date
2644.GD.01 Rev B	Landscape Plan	29/05/2023
2644.GD.02 Rev B	Landscape Details & Specification	29/05/2023

and the following drawing prepared by Victor John Mansell:

Drawing Number	Drawing Name	Date
205618-3	Plan of Proposed Subdivision of Lot A D.P 110203	undated

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.

(28) ~~PARTY-WALLS BETWEEN LOTS 1 AND 2~~

- (a) ~~The part(s) of the common boundaries between the lots in the subdivision occupied by the shared walls of the abutting buildings are to be shown as "Party Wall" on the final Plan of Subdivision in order to invoke the statutory provisions of Section 181B of the Conveyancing Act, 1919 and create the required Easements for Support. **Where the design of the building walls adjacent to the common boundary between Lots 1 and 2 depart from independent and unattached construction, and a shared structural wall is constructed, the final Plan of Subdivision shall note the wall as a party wall, to invoke the provisions of Section 88BB(1)(b) of the Conveyancing Act, 1919 and create cross-easements for support.**~~
- (b) ~~The party walls must be of masonry construction and extend at a minimum to the underside of the roof structure. **Where the walls are constructed independently, and not shared structurally, offsets from the walls to the boundaries must be shown on the subdivision plan, or, if there is no gap, the plan must be noted as "Separate Walls", pursuant to clause 63(e) of the Surveying And Spatial Information Regulation 2017.**~~

Reason

To ensure the orderly development of land, with the creation of the appropriate easements.

(32) FLOOD PLANNING LEVELS

The development must be constructed to comply with the recommended flood planning level of 14.3 AHD **for Building 1 and 2 and 14.2 AHD for Building 3** as indicated in the report titled "Flood Risk Management Report" prepared by Telford Civil dated October 2022 **as amended May 2023**.

Details must be submitted to the Registered Certifier prior to the issue of any Construction Certificate demonstrating that the development will comply with the recommended flood planning levels.

Reason

To ensure the development complies with the recommended flood planning levels.

(45) 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 to 3	<i>Fraxinus graffithii</i> (Evergreen Ash)	Bray Street (Street Trees)	3.5
4	<i>Shinus molle</i> (Peppercorn Tree)	49 Devine Street (Rear Yard)	9.5 4

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.
- (d) The following works must be excluded from within any TPZs **of trees 1-3 (street trees)**:
- (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.
- (e) 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.
- (f) 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.

(60) TREE PROTECTION DURING CONSTRUCTION

~~All trees that will be affected by the development within the property and on any adjoining land, must be protected in accordance with the Australian Standard 4970 Protection of Trees on Development Sites and as follows:~~

- ~~(a) Stockpiling, storage or mixing of materials, washing of equipment, vehicle parking, disposal of liquids, machinery repairs and refuelling, disposal of building materials such as cement slurry, siting of offices or sheds and the lighting of fires, must not occur within 9.5 metres of the trunk of any tree to be retained (including trees within adjoining properties).~~
- ~~(b) Excavation (except for localised siting of piers) must not occur within 9.5 metres of the trunk of the trees (including trees within adjoining properties). If excavation is proposed within this zone, Council's Tree Management Officer must be contacted immediately and the excavation must be carried out in accordance with Council's direction.~~
- ~~(c) Excavations for the footings where they are within (insert distance) metres of any tree (including trees in adjoining properties) must be undertaken using non-destructive methods (such as by hand) to ensure no tree roots greater than 40mm diameter are damaged, pruned or removed.~~
- ~~(d) Footings must be relocated / realigned if any tree root greater than 40mm in diameter is encountered during excavations. A minimum of 150mm clearance must be provided between the tree root and footing.~~
- ~~(e) Tree trunk and major branch protection must be undertaken prior to the commencement of any works. The protection must be installed and certified by a qualified Arborist (minimum AQF 3) and must include:~~
 - ~~(i) Tree trunk/s and/or major branches must be protected by wrapped thick carpet underlay or similar padding material to limit damage;~~

- ~~(ii) Timber planks (50mm x 100mm must be placed around tree trunk/s. The timber planks must be spaced at 100mm intervals, and must be fixed against the trunk with tie wire, or strapping. The hessian and timber planks must not be fixed to the tree in any instance, or in any fashion;~~
- ~~(iii) Tree trunk and major branch protection is to remain in place for the duration of construction and development works, and must be removed at the completion of the project.~~
- ~~(f) The consent from Council's Tree Management Officer must be obtained prior to the undertaking of any tree pruning works, including tree roots greater than 40mm in diameter. Only minor pruning works will be approved by Council.~~

Reason

~~To ensure the protection and ongoing health of trees.~~

Background

The applicant has submitted email correspondence dated 14 September 2023 requesting that a number of conditions be amended.

Condition	Assessment
Condition 1 (Approved Development)	It is recommended that Condition 1 be amended to refer to the correct title of an elevation drawing.
Condition 2 (Design Modifications)	<p>Part (b) of Condition 2 requires the design of the building be modified so that “the patio of Building 2 must be reduced in width by 450mm at the eastern end.”</p> <p>This condition is recommended as the 1.8m high privacy screen of the patio of Building 2 is casting shadows to the private open space area of 39 Devine Street at 1pm at midwinter.</p> <p>The private open space area of 39 Devine Street currently receives solar access between 10am and 1pm of various amounts.</p> <p>The level of solar access between 10am and 12 midday is unchanged, however the shadow diagrams indicate that there is additional overshadowing at 1pm, which is a result of the 1.8m high privacy screen to the rear patio.</p> <p>The applicant has requested that Condition 2 be amended by deleting part (b) or alternatively by amending part (b) so that the patio of Building 2</p>

Condition	Assessment
	<p>be reduced in width by 225mm rather than 450mm.</p> <p>The applicant's correspondence requests that as the amount of solar access is increased by the proposal at 2pm and 3pm. However, the submitted shadow diagrams show that there is no increase in solar access to the private open space of 39 Devine Street between 2pm and 3pm at midwinter. In follow up discussions the applicant acknowledges that the statement in their correspondence is an error.</p> <p>Therefore, it is recommended that Condition 2(b) remains unchanged.</p>
Condition 28 (Party Walls)	<p>Condition 28 was originally recommended as there is a note on the plans referring to 'party walls'.</p> <p>The applicant has advised that the wall between lots 1 and 2 is not a party wall, and that an architectural framing system (AFS) will be used during construction. They advise that the slabs are designed to be independent between the buildings and tied to the walls, so each building is independently supported.</p> <p>The applicant requests amendments to Condition 28. The applicant's proposed amendments have been reviewed by the City's Specialist Surveyor and the proposed amendments are unclear, so alternate wording to Condition 28 is recommended.</p> <p>The proposed condition wording allows for construction as a party wall (in which case part (a) of the condition is to be followed) or construction as structurally independent walls (in which case part (b) of the condition is to be followed).</p> <p>The applicant has advised that the revised wording of Condition 28 is acceptable.</p>
Condition 32 (Flood Planning Levels)	<p>It is recommended that Condition 32 is amended to refer to the correct flood planning levels for Building 3 and to refer to the amended Flood Risk Management Report dated May 2023. The proposed amendments have been reviewed by the City's Public Domain Unit and are acceptable.</p>

Condition	Assessment
Condition 45 (Tree Protection Zone)	<p>The City's Tree Management unit has advised that the Tree Protection zone stated in the condition for Tree 4 (Peppercorn Tree) was initially calculated as 9.5m based upon the size of the trunk of the tree, however based upon further review of the tree they recommend the tree protection zone be reduced to 4 metres as this distance will be sufficient to ensure the protection of the tree during construction.</p> <p>Tree 4 is at a lower level than the subject site and it's roots are unlikely to be impacted by the proposal, and therefore the City's Tree Management unit have recommended that part (d) of Condition 45 be amended to specifically refer to Trees 1-3 (street trees).</p> <p>The amended conditions will ensure the adequate protection of the tree during construction, whilst ensuring that there is no conflict between the wording of the condition and the proposed development.</p>
Condition 60 (Tree Protection During Construction)	<p>The City's Tree Management unit has advised that Condition 60 should be deleted, as the condition is duplicating requirements for the protection of trees that are already covered through Condition 45 (Tree Protection Zone) and Condition 62 (Street Tree Protection).</p> <p>The City's Tree Management unit have advised that the 'Tree Protection During Construction' condition is typically used when there are multiple trees being impacted by a proposed development, and that the 'Tree Protection Zone' condition is used when the trees being impacted are specifically identified and tree protection zones specified, however they advise that these conditions should not both be used on the same development consent, and the 'Tree Protection During Construction' condition was originally recommended in error.</p>

Prepared by: Matthew Girvan, Area Coordinator

Attachments

Attachment A. Email Correspondence from the Applicant

Approved

Handwritten signature in black ink, consisting of the letters 'AJT' in a stylized, cursive-like font.

ANDREW THOMAS

Executive Manager Planning and
Development