

2010SYE044/ DA201000288: Addendum

Subsequent to the original report being written, Draft Marrickville Local Environmental Plan 2010 was placed on public exhibition on 4 November 2010 and accordingly is a matter for consideration in the assessment of the subject development application under Section 79C of the Environmental Planning and Assessment Act 1979.

Draft Marrickville Local Environmental Plan 2010

The following assessment considers the proposed development having regard to the zoning provisions and controls contained in draft MLEP 2010 that are of relevance in the assessment of subject development application:

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| Zoning: | R2- Low Density Residential |
| Is development permitted under zoning? | No |
| Does the property enjoy existing use rights? | No |
| Is development permissible under heritage incentive clause? | Bethesda House - No Stead House - Yes |
| Floor Space Ratio (max): | |
| Permitted: | 0.85:1 |
| Proposed: | 0.78:1 |
| Height of Building (max): | |
| Permitted: | 9.5 metres |
| Proposed: | ranges from 7.2 metres to 14 metres |
| Land Reservation Acquisition: | No |
| Heritage: | |
| Draft Heritage Item: | Yes- Stead House is proposed to remain an item |
| Draft Heritage Conservation Area: | Yes, Llewellyn Estate HCA (Enmore) |
| In vicinity of draft item or area: | Yes, Enmore Park is proposed to remain an item |
| Flood Planning: | Not affected |
| Acid Sulfate Soils: | Affected Class 5 |
| Key Sites: | No |
| Foreshore Building Line: | No |
| Natural Resource – Biodiversity: | |
| Habitat Corridor | No |
| Bandicoot Protection Area | No |

As indicated above, the proposed development does not satisfy the zoning provisions and relevant controls as contained in draft MLEP 2010.

As per the existing controls prescribed under MLEP 2001, the R2- Low Density Residential zone under draft MLEP 2010 prohibits the provision of residential flat buildings under the zoning provisions applying to the subject land. To be permissible the proposed development needs to satisfy the heritage incentive clause in the instrument.

Under draft MLEP 2010, Stead House is identified as Heritage Item No. I125 under Schedule 5. Bethesda House is not listed as a heritage item under draft MLEP 2010. As such, the proposed redevelopment of Bethesda House for the purposes of a residential flat building would be prohibited under the zoning provisions contained in draft MLEP 2010.

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In accordance with Clause 5.10 (10) of MLEP 2010, if the consent authority is satisfied that the retention of the heritage item depends on the granting of the consent, then the granting of consent for the use for any purpose is permissible even though the use would otherwise be prohibited by draft MLEP 2010 for Stead House.

Clause 5.10 (10) of the draft Marrickville Local Environmental Plan 2010 contains conservation incentives relating to Items of Environmental Heritage. That clause reads as follows:

“5.10 (10) Conservation incentives

The consent authority may grant consent to development for any purpose of a building that is a heritage item, or of the land on which such a building is erected, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- (a) the conservation of the heritage item is facilitated by the granting of consent, and*
- (b) the proposed development is in accordance with a heritage conservation management plan that has been approved by the consent authority, and*
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage conservation management plan is carried out, and*
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, and*
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.”*

Having regard to the requirements identified above, it is considered the proposed heritage incentive provisions under draft MLEP 2010 are less onerous than those prescribed under Clause 54 of MLEP 2001. The requirement to demonstrate that the condition of the heritage item is such that the use of the item for any purpose which is permissible in the zone would be impractical or undesirable and that the heritage item requires a substantial amount of capital expenditure (other than maintenance work) in order to conserve its heritage significance has been removed.

Notwithstanding the above and excluding Bethesda House, it is considered the proposed development would not satisfy all the criteria identified under draft MLEP 2010 having particular regard to Clauses 5.10 (10) (b), (d) and (e), and these themes are discussed in detail under Heading 6(v) of the Assessment Report.

While the draft MLEP 2010 incentive clause may be less onerous, it retains the core principles from the current LEP and the proposal fails to satisfy these matters within either LEP.