

Delegated Authority Reports Meeting 2 December 2013
15-25 MARSHALL AVENUE, ST. LEONARDS

Subject: 15-25 Marshall Avenue, St. Leonards
Record No: DA13/32-01 - 61904/13
Division: Environmental Services Division
Author(s): Rebecka Groth

Property: 15-25 Marshall Avenue, St. Leonards
DA No: DA13/32
Date Lodged: 11 November 2013
Cost of Work: Nil
Owner: Loftex Pty Ltd
Applicant: Loftex Pty Ltd

DESCRIPTION OF PROPOSAL TO APPEAR ON DETERMINATION	Modification to DA13/32 to remove Condition No. 63 requiring a remediation action plan be prepared from the development consent
ZONE	B4 Mixed Use under the Lane Cove Local Environmental Plan 2009
IS THE PROPOSAL PERMISSIBLE WITHIN THE ZONE?	Yes
IS THE PROPERTY A HERITAGE ITEM?	No
IS THE PROPERTY WITHIN A CONSERVATION AREA?	No
IS THE PROPERTY ADJACENT TO BUSHLAND?	Yes
BCA CLASSIFICATION	Class 2
STOP THE CLOCK USED	Yes
NOTIFICATION	Notification was not deemed necessary given the proposal relates to the deletion of a condition only.

EXECUTIVE SUMMARY

The applicant seeks to remove Condition No. 63 from the development consent which required a Remediation Action Plan (RAP) be prepared in accordance with the provisions of SEPP No. 55 - Contaminated Land. Council's Manager Environmental Services reviewed the proposed modification and the Stage 2 Report under taken by EIS and advises the conclusions reached by the consultant are acceptable. The officer concurs with the consultants statement that a RAP is not required.

It is therefore recommended that Condition No. 63 be deleted from the development consent.

The modification was not required to be notified, subsequently no submissions were received.

SITE

The site is located on the northern side of Marshall Ave, south of the Pacific Highway. The description of the site is Lots 1 and 2 in DP 209715, Lot 25 Section 1 in DP 7259, Lot 26 in DP 666506, Lot 27 Section 1 in DP 7259, Lot 1 in DP 1083410 and Lot 28 Section 1 in DP 7259. The site is irregular in shape with an area of 2502.50m². The site has a frontage to Marshall Ave, Berry Street and Marshall Lane.

The site falls approximately 3.5m from the north-western section of the site down towards the north-eastern section of the site.

The site comprises seven lots. The dwellings on the site and towards the east have been approved to be demolished as part of a separate development application (DA2012/226, No. 1-25 Marshall Avenue, St. Leonards).

Matures trees line both sides of Marshall Avenue and are situated outside of the site boundaries. One tree is proposed to be removed to enable vehicular access into the proposed basement.

To the site's north is land zoned B3 Commercial Core which addresses the Pacific Highway. The commercial buildings which are immediately north of the site are approximately two to three storeys and have vehicular access from Marshall Lane.

To the site's east is land zoned B4 Mixed Use. Dwelling houses are situated east of the site and front Marshall Avenue, vehicular access is provided from Marshall Lane.

To the site's south on Marshall Avenue and along part of Berry Street are one to two storey dwelling houses. These properties are zoned R2 Low Density Residential.

To the site's north-west on Berry Street are commercial buildings ranging from two to seven storeys in height. These buildings address the corner of Berry Street and the Pacific Highway. Further south along Berry Street is an elevated open air car park and a single storey building. These properties are zoned B3 Commercial Core. The remainder of Berry Street is occupied by single storey dwelling houses and is zoned R2 Low Density Residential.

PROPOSAL

The Stage 1 Environmental Assessment report in the original development application identified potential for the site to be contaminated as a result of its previous use and advised recommended that a detailed investigation be undertaken to ascertain the extent of the contamination. Subsequently Council's Manager Environmental Services officer advised subject to the following condition being included in the consent, they had no objection to this proposal:

- *A Remediation Action Plan (RAP) is to be prepared in accordance with the provisions of SEPP55- Contaminated Land and the NSW EPA's Guidelines for Consultants Reporting on Contaminated Sites and submitted to Council for assessment. The submission of the RAP to Council is to be accompanied by a Site Audit Statement from a NSW EPA Accredited Site Auditor confirming that the RAP has been prepared in accordance with SEPP 55. No works are to commence until Council has provided written confirmation to the applicant that the RAP has been endorsed by Council and that works can commence (Condition No. 63).*

The applicant undertook a Stage 2 Environmental Site Assessment on the site with detailed soil and groundwater sampling. This assessment concludes that the site is not contaminated and will not be required to be remediated. As no remediation is required to be carried out on-site, a RAP is not required. The applicant requests that Condition No. 63 is removed from the development consent.

PREVIOUS APPROVALS/HISTORY

The Development Application was determined by the Sydney East Joint Regional Planning Panel (JRPP) as per Schedule 4A of Environmental Planning and Assessment Act 1979 as the development had a capital investment value of greater than \$20 million. The JRPP granted approval for the proposal on 9 May 2013.

The approved mixed use development comprised 66 residential units, commercial/retail, basement parking comprising 91 car spaces and torrens title subdivision creating proposed Lot 1 being 2162m² comprising the mixed use development and Lot 2 = 340.5m² which would form part of a future pedestrian walkway (total site area 2502.50m²).

MATTERS for CONSIDERATION - Section 96(2) Environmental Planning and Assessment Act 1979

A consent authority may modify the development consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

The modification seeks to delete a condition of consent which is no longer required to be addressed. The proposed modification is substantially the same development.

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

There is no requirement to consult with any Minister, public authority or approval body as a result of the proposed modification.

***(c) it has notified the application in accordance with:
(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and***

The modification was not required to be notified in accordance with Council's notification policy given the proposal involves the deletion of a condition.

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

An assessment of the proposal is required in relation to Section 79C(1) of the Act. This assessment follows.

SECTION 79C(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (the Act)

S.79C(1)(a)(i) The provisions of any environmental planning instrument

Lane Cove Local Environmental Plan 2009 (the LEP)

Mixed use developments are permitted in the current B4 - (Mixed Use) zone. As indicated in the following table, the proposed modification complies with the applicable planning controls.

	Code	Approved	Proposed S96	Complies/ Comment
Clause 2.2- Zoning	B4 – Mixed Use zone	Proposed mixed use development comprising of 66 units & retail/ commercial space at ground level	No change to approved development	Yes
Clause 4.3 - Height of Buildings	9.5m along Marshall Ave 36m remainder of the site	Max 5.1m Max 24.6m	No change to approved development	Yes
Clause 4.4 - Floor Space Ratio	5.1:1	2.8:1 (GFA 6254m ² / Lot 1 2162m ²)	No change to approved development	Yes

OTHER PLANNING INSTRUMENTS

SEPP 55: Remediation of Land

As per Council's assessment report for the approved proposal, Stage 1 Environmental Assessment report identified potential for the site to be contaminated as a result of its previous use and recommended a detailed investigation be undertaken to ascertain the extent of the contamination.

Council's Manager Environmental Services officer advised subject to the following condition being included in the consent, they had no objection to this proposal:

- *A Remediation Action Plan (RAP) is to be prepared in accordance with the provisions of SEPP55- Contaminated Land and the NSW EPA's Guidelines for Consultants Reporting on Contaminated Sites and submitted to Council for assessment. The submission of the RAP to Council is to be accompanied by a Site Audit Statement from a NSW EPA Accredited Site Auditor confirming that the RAP has been prepared in accordance with SEPP 55. No works are to commence until Council has provided written confirmation to the applicant that the RAP has been endorsed by Council and that works can commence (Condition No. 63).*

Council's Manager Environmental Services reviewed the proposed modification and the Stage 2 Report under taken by EIS. The officer advises the conclusions reached by the consultant are acceptable and the officer concurs that a RAP is not required.

The Manager recommended that EIS be engaged for the project and be consulted on reviewing the groundwater assessment should the need arise prior to construction works commencing.

S.79C(1)(a)(ii) The provisions of any draft environmental planning instrument

Not applicable.

S.79C(1)(a)(iii) The provisions of any development control plan

The Lane Cove Residential Development Control Plan 2009 (the DCP)

The proposed modification will not impact the requirements of the Development Control Plan 2009.

CONCLUSION

The matters pursuant to Section 96 have been considered and are deemed to be satisfied.

The modification is substantially the same development and is recommended for approval.

RECOMMENDATION

That pursuant to the provisions of Section 96 of the Environmental Planning and Assessment Act, 1979, as amended, the development consent DA13/32 granted 9 May 2013 for the construction of a mixed use development comprising of 66 residential units and retail/commercial space at the ground level and subdivision on Lots 1 and 2 in DP 209715, Lot 25 Section 1 in DP 7259, Lot 26 in DP 666506, Lot 27 Section 1 in DP 7259, Lot 1 in DP 1083410 and Lot 28 Section 1 in DP 7259 and known as address 15-25 Marshall Avenue, St Leonards is amended in the following manner:

Delete Condition No. 63.

All other conditions remain.

Michael Mason
Executive Manager
Environmental Services Division

ATTACHMENTS:

There are no supporting documents for this report.