

3 July 2015

Our Ref: 14094

Panel Secretariat
Joint Regional Planning Panel
GPO Box 39
Sydney NSW 2001

Dear Sir/Madam,

RE: PANEL REFERENCE: 2014SYE145 DA: 6 - 8 CRANBROOK ROAD, BELLEVUE HILL

City Plan Strategy and Development acts for Cranbrook Properties Pty Limited, the owner of No. 6-8 Cranbrook Road Bellevue Hill, who has requested that this submission be provided to the Joint Regional Planning Panel (JRPP) ahead of its meeting on 8 July, 2015.

Our client welcomes the recommendation of Woollahra Municipal Council (Council) in its assessment report provided to the JRPP to approve the development application for the subject site. The purpose of this submission is therefore to respond to some of the proposed conditions of consent.

1. Background to proposed conditions of consent.

After the completed assessment report was lodged with the JRPP (5 June 2015) that same report was considered by Council's Development Control Committee (DCC) at its meeting of 15 June 2015 *"to enable Council to make a submission to the Panel prior to the determination of the application"*.

Rather than make any resolution on such a submission, the Committee instead resolved to:

- To amend condition C.1(d); and
- Add additional condition C.1(j).

The report with those amendments was then considered by the full Council at its meeting on 22 June 2015. The minutes for that meeting note that a new condition (I.12) was also added by resolution of the DCC, however it appears Condition I.12 was added by resolution of the Council.

Regardless the report endorsed by Council on 22 June 2015 includes amended conditions C.1(d) and additional conditions C.1(j) and I.12, relative to the report lodged with the JRPP.

It is our understanding that a Council is not able to alter the recommendation and/or conditions of an assessment report prepared by its technical staff. Instead, we understand that if a Council wishes to pursue outcomes that vary from those within its technical officers' report then it must lodge its own submission to the JRPP. At the time of preparing this submission, we are not aware that that is the case.

Notwithstanding, this submission addresses the recommendation as contained within the report endorsed by Council at its meeting on 22 June 2015.

A copy of this submission has also been forwarded to Council for their information.

2. Response to proposed conditions

PART A - CONDITION 1

This condition reads, in part, as follows:

"1. *Deferred Commencement - (s80(3) of the Act, cl.95 of the Regulation)*

To ensure the structures on Council land accord with Council's "Policy for Managing Encroachments on Council Road Reserves", development consent is granted subject that this consent is not to operate until the person with the benefit of this consent satisfies the Council in relation to the following:

1. *Complete and lodge Council form "Application to formalise an existing encroachment on Council Land". An Application fee is payable and;*
2. *The encroaching structures must be formalised by:*
 - i. *The Subdivision of the road reserve to excise the area encroached upon, closure of the road parcel and Sale of the land to the owner of 6-8 Cranbrook Road OR;*
 - ii. *Enter into an easement agreement with Woollahra Council under Section 181(a) Conveyancing Act 1919 permitting the permanent structures within the road reserve to remain for the life of the building or the redevelopment of the structure or the site, whichever occurs first, OR;*

Period within which evidence must be produced

The applicant must produce evidence to Council sufficient enough to enable it to be satisfied as to those matters above within 365 days (1 year) of the date of determination."

Our response

We request this matter be an operational condition for the reasons set out below.

Lots A and B in DP 386790 when combined provide for a site area of about 1,932m². However, our client is negotiating with Council to purchase a portion of the Cranbrook Road road reserve (of about 423m²) which is defined by a sandstone retaining wall and landscaped embankment. The area the subject of those negotiations is shown on Drawing A010, an extract of which is provided below:

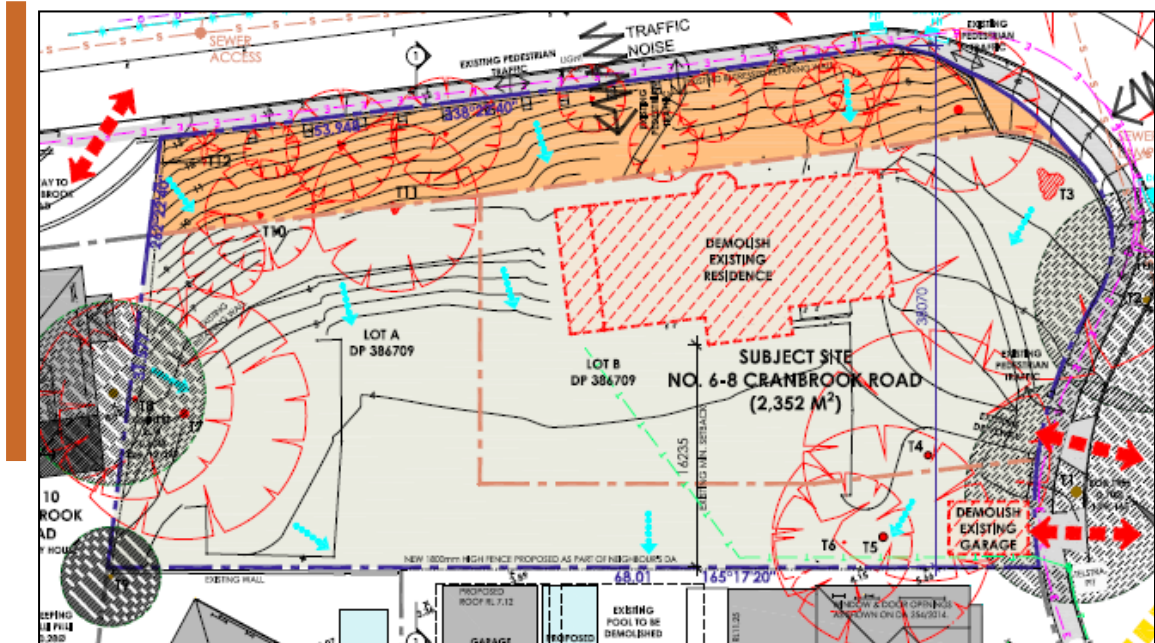


Figure 1: Site plan also showing area of road reserve subject to negotiation to purchase (shaded orange)

The application does propose works within that part of the road reserve, namely to modify the embankment and construct a series of retaining walls and undertake associated landscape works and boundary fencing. However those works, and the road reserve land, are not essential elements of the proposal, and could be excised from the project if the purchase were not to proceed.

Given that, we contend that the process for the purchase of this portion of the road reserve is not something that must be finally resolved before consent could operate. In support of this position we note:

- The appropriate owners consent from Council for the lodgement of the development application is in place;
- Due process for the purchase of that land is being followed. The matter has been the subject of multiple reports to Council's Corporate and Works Committee, and has been supported at every stage. We understand further Committee reports will be required as the matter progresses; and
- The processes involved, and the timeframes associated with them, are not able to be determined by our client but are at the discretion of Council. In this regard we note the condition as it stands nominates a timeframe for compliance of 1 year.

Consequently our client could not secure a Construction Certificate until the purchase, which is essentially procedural, is finally resolved. Further, a "deferred commencement condition" prevents our client from early works that do not rely upon a Construction Certificate, such as demolition.

We therefore request the JRPP **delete** the proposed "deferred commencement" condition and instead allow this matter to be the subject of a condition to be satisfied prior to the issue of a Construction Certificate. Our suggested wording for such a condition is provided below:

"Prior to the issue of any Construction Certificate the Principal Certifying Authority (PCA) shall be provided with documentation which demonstrates that the following matters have been

finally completed relative to Council's "Policy for Managing Encroachments on Council Road Reserves":

1. Complete and lodge Council form "Application to formalise an existing encroachment on Council Land". An Application fee is payable **and**;
2. The encroaching structures must be formalised by:
 - (a). The Subdivision of the road reserve to excise the area encroached upon, closure of the road parcel and Sale of the land to the owner of 6-8 Cranbrook Road **OR**;
 - (b). Enter into an easement agreement with Woollahra Council under Section 181(a) Conveyancing Act 1919 permitting the permanent structures within the road reserve to remain for the life of the building or the redevelopment of the structure or the site, whichever occurs first.

Notes:

1. The Applicant is to contact Council's Senior Property Officer to further discuss the encroachment formalising process.
2. Sale of Road reserve is subject to Council's Sale of Land policy and resolution to sell the land.
3. If formalising the encroachment by easement, the Applicant must enter into a registrable easement agreement with Council (using Council's Template) for the encroaching structures.
4. The area occupied for an easement will be independently valued and payment is to be made to Council in compensation for the alienation of public land for private use.
5. Granting of the easement is subject to Council resolution, payment of compensation and all Council's costs in the matter; including but not limited to valuation, survey, and legal fees."

PART B - CONDITION C.1

This condition sets out multiple design amendments that are to be documented on plans to be approved with a Construction Certificate. Our client accepts conditions (a), (e) and (g) - (i), however wishes to address conditions (b)-(d), (f) and (j), as set out below.

Condition C.1 (b) reads as follows:

"The second level southern and eastern roof terraces/landscaped courtyard areas (Areas 6 on the landscape plan 1 of 2 Issue G and 2 of 2 Issue E dated 15/04/2015 by Outhouse Design) are to be non-trafficable except for maintenance in order to minimise amenity impacts to neighbouring properties to the east and south. Privacy screening to these areas is deleted given that the areas are to be non-trafficable."

Our response

We request this condition be deleted, and that an alternative condition limiting the use of the terraces be imposed instead.

This issue was not raised with our client during the assessment process. Our client wishes to retain these terraces for the following reasons:

- Their function is to provide a small, conveniently located and pleasant outdoor space for passive use by elderly residents; and
- Particularly, these terraces enable residents to enjoy sunshine, being important for Vitamin D production which is beneficial for the health of residents.

These terraces are already designed in a manner which protects the amenity of adjacent sites as follows:

- The usable area of the terraces is already limited by consequence of substantial landscaping that will protect privacy of adjacent sites by creating a soft, visual screen, and which is of a depth and location to prevent a person from accessing the perimeter of the terraces; and
- Notwithstanding that landscaping, all edges of these terraces are provided with fixed screens which are 1.5m high above floor level (refer to drawings A113 and A4012).

We therefore request that the JPRR **delete** this condition. However, to provide a further safeguard, our client is agreeable to an **additional condition** that would permit the use of these terraces only between the hours of 8.00am and 5.00pm each day. The suggested wording for such a condition is provided below:

"The common terraces on level 2, adjacent to rooms 53 and 54, shall only be used by residents and visitors between the hours of 8.00am and 5.00pm daily."

We note that such a management approach is consistent with Council's position regarding the use of the basement driveway - see separate comments below.

Condition C.1 (c) reads as follows:

"Privacy screens to a height of 1.5m above finished floor level are required to be added to all elevations of the second floor level private terraces of bedrooms 53 and 54 in order to maintain privacy of adjoining neighbours to the east and south."

Our response

The architectural plans already nominate the installation of privacy screens to these terraces (refer to drawings A113, A401 and A402).

We therefore request that the JPRR **delete** this condition.

Condition C.1(d) reads as follows:

"Internal reconfiguration is required to relocate the lounge/dining rooms at ground, first and second floor levels from the western side of the building to the north-western corner of the development at each level (approximately in place of units 2 and 3 at ground floor level, units

23 and 24 at first floor level and units 45 and 46 at second floor level in accordance with Section 35(b) of SEPP (Housing for Seniors or People with a disability) 2004."

Our response

We request that this condition be **amended**.

Clause 35 sits in Division 2, Part 3 of SEPP (Housing for Seniors or People with a Disability) 2004 (the SEPP). That Part provides design principles which apply equally to all forms of housing facilitated by the SEPP. Clause 35 is reproduced below:

"35 Solar access and design for climate

The proposed development should:

- (a) *ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and*
- (b) *involve site planning, **dwelling design** and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction."* (our emphasis)

We contend that clause 35(b) does not apply to this proposal as the rooms do not meet the definition of a "dwelling" under this Policy being *"a room or suite of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile."*

We also note that the preDA plans lodged with Council located the common lounge/dining rooms at the eastern edge of each floor of the dwelling. However Council's formal preDA advice, dated 27 August 2014, specifically identified that those rooms should be located away from southern and eastern elevations to avoid impacts for neighbouring sites.

Nevertheless, our client has reviewed this matter and is agreeable to revising the first and second floor plans to position the common lounge/dining room at the north eastern corner of the building. Amended plans incorporating these changes will be available to present at the meeting, noting that the Panel Secretariat has advised we are not able to submit revised plans with this submission.

We consider that the common rooms on the ground floor are appropriately located given that this floor is dementia-specific, and consider the sitting room will receive adequate solar access such that the lounge/dining room does not need to be relocated.

To implement this amendment we request the JRPP amend the condition to read as follows:

"Internal reconfiguration is required to relocate the lounge/dining rooms at first and second floor levels from the western side of the building to the north-eastern corner of the development in accordance with Section 35(b) of SEPP (Housing for Seniors or People with a Disability) 2004."

Condition C.1 (f) reads as follows:

"The main switch and comms room are to be relocated within the storage areas of the basement to minimise impacts on neighbouring residences."

Our response

We request that this condition be deleted.

The switch room and comms room are both located at the basement level, and are wholly within the footprint of the building above. The location for those rooms resulted from a design amendment specifically to respond to Council's concerns that insufficient space was provided to the loading bay.

We note the intent of the condition is to minimise impacts for neighbouring sites however we do not consider any impacts from those rooms will arise, and therefore no further design amendments are warranted.

Condition C.1 (j) reads as follows:

"The south-eastern corner of the building (in the location of rooms 35 and 36) on the first floor level is to be setback a minimum 10.5m from the eastern boundary and align with the eastern elevation wall of rooms 37-41. The roof terrace on the second floor level is to be setback a corresponding amount (minimum of 10.5m from the eastern boundary). The roof above the ground floor may contain landscaping but must be non-trafficable and only accessible for maintenance purposes."

Response

We request that this condition be deleted.

We understand the intention of this condition to remove building volume relative to the eastern boundary to address amenity considerations. The floor space in question is highlighted on an extract from Drawing A112 and A402 below.



Figure 3: Floor space the subject of condition C.1(j) - floorplan

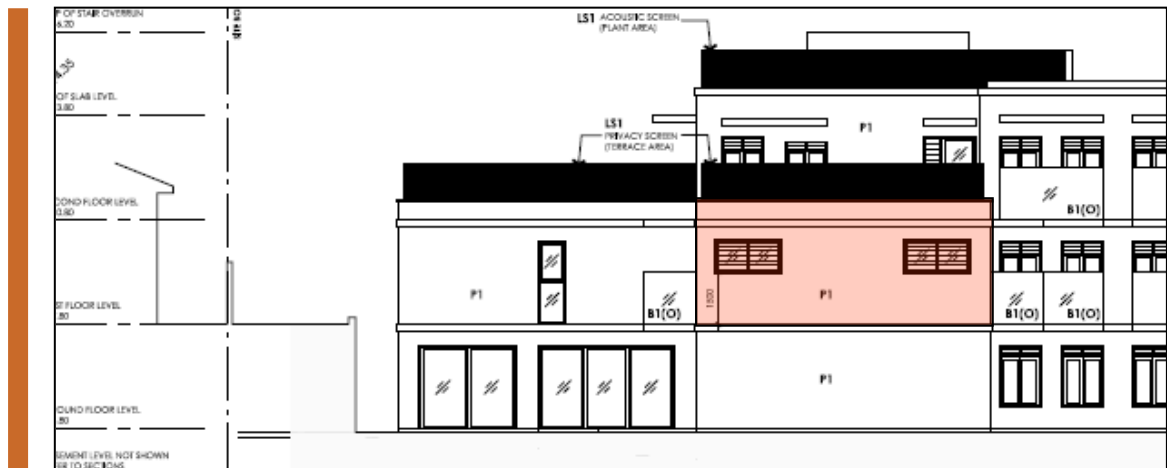


Figure 4: Floor space the subject of condition C.1(j) - east elevation

We do not agree that such a design modification is necessary, and request the JRPP **delete** the proposed condition. In support of this request we provide the following contentions:

- The matter was never raised with our client throughout the assessment of the application.
- This matter was not a part of condition C.1 of the assessment report lodged with the JRPP. It was only added following consideration of the application by Council's Development Control Committee on 15 June 2015, and subsequently by full Council at its meeting on 22 June 2015.
- Rooms 35 and 36 generally align with the existing garage at the rear of No. 4 Cranbrook Road.
- Rooms 35 and 36 are setback 5.7m from the eastern site boundary, being the common boundary with No. 4. The eastern wall of those two rooms is only 8.4m long. The ceiling of rooms 35 and 36 is only 6.8m above existing ground level at that boundary.

Rooms 35 and 36, in combination with rooms 13 and 14 below, therefore provide a built form outcome significantly less than if Lot A in DP 386709 were to be developed only for the purposes of a single dwelling house, as the relevant LEP/DCP controls are:

- Maximum height of 9.5m
- Side boundary setback of 3.75m
- Wall height of 7.2m
- Privacy for the adjacent sites is maintained through the following elements:
 - 1.8m high boundary fence;
 - Dense plantings at the boundary to form a continuous screen immediately adjacent to, and for the full length of, the eastern site boundary;
 - High quality landscape treatment for the area between rooms 35 and 36 and the eastern site boundary, including trees;

- The use of 'highlight' windows in the eastern elevation of rooms 35 and 36, with a minimum sill height of 1.5m above floor level, which prevent views over adjacent sites;
- Primary windows and balconies of those two rooms facing either north or south, rather than east towards neighbouring sites; and
- Balconies are provided with a 1.5m high balustrade of obscure glazing to limit views down over adjacent sites.

Condition I.12 reads as follows:

"The driveways must not be used for service vehicles other than between the hours of 8am and 6pm Monday to Friday and 9am and 1pm on Saturdays and Sundays."

Response

This issue was never raised with our client during the assessment process, and no such restriction was included in the recommendation of the assessment report as lodged with the JRPP.

Nevertheless, our client is agreeable to this additional condition, but requests that it is **amended**. The preferred times and suggested wording for the condition is provided below:

"The use of the basement driveway by service and delivery vehicles shall only occur between 7.00am and 5.00pm on weekdays and weekends. This condition does not apply to staff vehicles, visitor or emergency vehicles."

Thank you for the opportunity to make this submission. Should you wish to discuss any aspect of this letter, please contact me on (02) 8270 3500.

Yours Sincerely,



Brad Roeleven
Associate