

SUPPLEMENTARY REPORT – SYDNEY CENTRAL PLANNING PANEL

SCPP No – 2018SCL041

DA Number – DA-13/135/08

Address – 659, 661- 663 & 669 Gardeners Road, Mascot

Date: 20/7/2018

Background

At its meeting on 26 June 2018, the Sydney Central Planning Panel considered Item 2018SCL041, being a Section 4.56 modification to modify Development consent No. 13/135 at 659, 661-663 & 669 Gardeners Road, Mascot.

Record of Deferral

The Panel deferred the abovementioned matter. The decision was unanimous. The record of deferral issued by the Panel states the following:

In principle, the Panel was satisfied with proceeding to approval. However, was of the view that some of the conditions needed to be reworded in terms of timing, works to be delivered, and bonds. The Council is to review all conditions to ensure clarity.

Specifically, the matter has been deferred to allow for a re-draft of conditions of consent, as follows:

- **Modify Condition 6A-H**
Reworded to provide for a bond in the event of the works not being carried out by the Applicant, to change timing and clarity
- **Modify Condition 86**
In the opening paragraph, delete all words providing for an irrevocable offer, so that the clause will provide for the works to be carried out prior to the issue of the Occupation Certificate.
- **Modify Condition 93**
Reword the title to reference: 'Prior to the issue of any Occupation Certificate for Stage 2 works' and to ensure that the works referenced in the condition separately relate to the rear new road and Gardeners Road
- **Additional Condition 93 (g)**
To provide for the requirement of a bond in the event that the works in A-F inclusive are not completed by the Applicant, including but not limited to, the impact of the WestConnex project.

Council staff should also review all conditions of consent to establish correct timing and to ensure there are no inconsistencies.

As supplementary report should be prepared for the Panel addressing these changes.

Once the supplementary report has been received, the matter will be determined electronically unless otherwise specified by the Chair.

Assessment and Conditions to be modified

The development consent has been reviewed in light of the concerns raised by the Panel. For clarity, all changes made to the conditions are shown in bold and italicised.

Condition 6

6. It is a condition of consent that the applicant shall, at no cost or expense to Council, comply with the following:
 - a) Dedicate the portion of land to Council for the purpose of a new public road. The area of the land to be dedicated shall be the full length of the southern property boundary for a width of 9 metres as shown on the stamped approved plans. The Plan of Dedication shall be lodged with Council prior to the issue of the *relevant Construction Certificate* and registered with the Department of Lands prior to the issue of *any Occupation Certificate for the approved Stage 2 works*. A copy of the registered document shall be submitted to Council for record purposes; **(DA13/135/08)**
 - b) The construction of New Street and public domain such as footpaths, street lighting, landscaping, etc. shall be constructed by the Applicant at no cost to Council or the body corporate. The developer may enter into a Voluntary Planning Agreement (VPA) with Council to provide a monetary contribution in lieu of the construction works for the new road. A signed undertaking shall be submitted by the applicant prior to the issue of *any Occupation Certificate for Stage 2 works*; **(DA13/135/08)**.
 - c) A Public Domain Plan shall be submitted to and approved by Council for public domain improvements along the frontage of the development to Gardeners Road. The Public Domain Plan shall include but not be limited to footpath treatments, service adjustments/access lids and street trees (as provided by the Landscape Consultant), adjoining the site together with the provision of appropriate street light standards, drainage (if any), kerb and gutter, footway, bicycle paths, landscaping, traffic signs). The landscape component shall be in accordance with Council's City Identity Program and any other Council specification or requirement. All public domain/footpath improvements shall be installed in accordance with Council specifications by the Applicant and at the Applicant's expense. ~~All improvements shall be completed prior to the issue of an Occupation Certificate;~~ **(DA13/135/08)**.
 - d) Replace all the existing above ground electricity and telecommunication cables to underground cables within the site and road reserve area fronting Gardeners Road in accordance with the guidelines and requirements of the relevant utility authorities. The applicant shall bear all the cost of the construction and installation of the cables and any necessary adjustment works. These works and payments shall be completed prior to the issue of *any Occupation Certificate*; **(DA13/135/08)**.
 - e) Provide appropriate and suitable street lighting to a high decorative standard to the Gardeners Road street frontage of the site, so as to provide safety and illumination for residents of the development and pedestrians in the area. All street lighting shall comply with relevant electricity authority guidelines and requirements;

- f) The public footpaths in Gardeners Road shall be constructed in accordance with Council specifications and the Draft Public Domain Manual. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications. Hold points and Council inspections are required after formwork setback and to prior pouring the concrete blinding slab, at the commencement of paving works and at final completion as a minimum. Pavers shall be ordered allowing for adequate lead time for manufacture (10-12 weeks); and
- g) New street trees at the pot size specified shall be installed in the accordance with the approved Public Domain Plan. The trees shall be sourced from a reputable supplier that grows stock to the NATSPEC specifications. A Dial-Before-You-Dig enquiry is required prior to all planting - Council is not liable for any damage to subsurface infrastructure during public domain works. Two hold point inspections are required: prior planting trees to ensure plant stock is suitable and post-planting.
- h) The completion of works at (a) to (g) above are pre-conditions to the issue of **any** Occupation Certificate **for Stage 2 works. (DA13/135/08).**

The applicant must submit payment of a Bond to Council of \$250,000.00 before the issue of any Occupation Certificate for the Stage 1 works. At the completion of works referenced at (a) and (b) above, the Bond shall be refunded. If the required works are not completed, Council shall utilise all or part of this bond to complete the works. (DA13/135/08).

Comment

This condition has been further modified as to require the applicant to submit payment of a Bond to Council to the value of \$250,000 before the issue of any Occupation Certificate for the Stage 1 works. This provides an appropriate safeguard in the event that the works associated with Stage 2, including the new public road at the rear of the development, are not carried out.

In addition to the above, references to *prior to the issue of the Occupation Certificate* have been substituted with *prior to the issue of any Occupation Certificate*. This is intended to ensure the conditions capture the issuing of an interim occupation certificate.

Condition 86

86. Prior to the issue of any Occupation Certificate for Stage 1 works the person who is entitled to act on this consent must:- (DA13/135/08)

- a) Extinguish the Right of Way adjacent to the western boundary.

Prior to the issue of any Occupation Certificate for Stage 2 works the person who is entitled to act on this consent must:- (DA13/135/08)

- b) Dedicate land to be occupied for the New Street to Council, without cost to Council, together with proportional costs for its design and construction.
- c) Infill the temporary vehicular access from Gardeners Road with a commercial land use together with all the necessary building work to allow the space to be adapted for that purpose or other such arrangement as agreed to by Council or determined by legal jurisdiction.

Comment

All words providing for an irrevocable offer have been deleted. An additional heading within the condition has been inserted because part (a) of the condition concerning the extinguishment of the Right of Way is required to be satisfied before the issue of any occupation certificate for Stage 1 works.

The new heading associated with Part (b) of the condition enables the new street at the rear of the development to be dedicated to Council before the issue of any occupation certificate for Stage 2 works. The wording of condition 86 is consistent with modified condition 6 and 93 below.

Condition 93

93. Prior to the issue of **any Occupation Certificate for Stage 2 works**, the following is to be complied with:

Works relating to the new public road at the rear of the site(DA13/135/08)

- a. A Plan of Dedication shall be registered with the Department of Lands for the dedication of the new public road, at no cost to Council. The area of the land to be dedicated shall be the full length of the southern property boundary for a width of 9 metres as shown on the stamped approved plans. A copy of the registered document shall be submitted to Council for record purposes.

Works relating to the Gardeners Road frontage(DA13/135/08)

- b. Replace all the existing above ground electricity and telecommunication cables to underground cables within the site and road reserve area fronting Gardeners Road in accordance with the guidelines and requirements of the relevant utility authorities. The applicant shall bear all the cost of the construction and installation of the cables and any necessary adjustment works. These works and payments shall be completed prior to the issue of ***any*** Occupation Certificate.
(DA13/135/08)
- c. Provide appropriate and suitable street lighting to a high decorative standard to the Gardeners Road street frontage of the site, so as to provide safety and illumination for residents of the development and pedestrians in the area. All street lighting shall comply with relevant electricity authority guidelines and requirements.
- d. The public domain shall be upgraded with new paving and street tree planting, to be installed by the Applicant at the Applicant's expense in accordance with the approved Public Domain Plan. All improvements shall be in accordance with Council's Landscaping Engineering specifications and requirements. ~~and shall be constructed and completed prior to the issue of an Occupation Certificate.~~
(DA13/135/08)
- e. New street trees at the pot size specified shall be installed in the accordance with the approved Public Domain Plan. The trees shall be sourced from a reputable supplier that grows stock to the NATSPEC specifications. A Dial-Before-You-Dig enquiry is required prior to all planting - Council is not liable for any damage to subsurface infrastructure during public domain works. Two hold point

inspections are required: prior planting trees to ensure plant stock is suitable and post-planting.

- f. The public footpaths in Gardeners Road shall be constructed in accordance with Council specifications and the Draft Public Domain Manual. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications. Hold points and Council inspections are required after formwork setback and to prior pouring the concrete blinding slab, at the commencement of paving works and at final completion as a minimum. Pavers shall be ordered allowing for adequate lead time for manufacture (10-12 weeks).

Bond

- g. ***The applicant must submit payment of a Bond to Council of \$69,036.85 before the issue of any Occupation Certificate for the Stage 1 works. At the completion of works referenced at (b) to (f) above, the Bond shall be refunded. If the required works are not completed due to the impact of the WestConnex project or otherwise, Council shall utilise all or part of this bond to complete the works. (DA13/135/08).***

Comment

Condition 93 has been split to differentiate the works relating to the new public road at the rear of the site and the works relating to the Gardeners Road frontage.

This condition has been further modified as to require the applicant to submit payment of a Bond to Council to the value of \$69,036.85 before the issue of any Occupation Certificate for the Stage 1 works. This provides an appropriate safeguard in the event that the works relating to the Gardeners Road frontage are unable to be carried out by the applicant. It is noted that the nearby WestConnex project being undertaken impacts upon the ability of these works to be undertaken at this stage. The bond specifically relates to items (b) to (f), that being works along the Gardeners Road frontage. A separate bond for item (a) at the rear of the site is captured by the bond imposed in condition 6.

Where applicable, references to *prior to the issue of the Occupation Certificate* have been substituted with *prior to the issue of any Occupation Certificate*. This is intended to ensure the conditions capture the issuing of an interim occupation certificate.

Conditions 102 and 112

Some wording within conditions 102 and 112 have been modified/deleted to ensure that the consent is consistent in respect of the changes that have been sought in the subject application.

Impact of Westconnex

The Westconnex project has impacted the ability to undertaken construction works along the Gardeners Street frontage. As a result, the works associated with vehicular access at the rear of the site have been accelerated. In this regard, vehicular access to the rear of the subject site will be capable of being achieved via Muller Lane and/or Kent Road.

Section 4.56 considerations

The recommended conditions as modified do not alter any of the previous findings in respect of the assessment against section 4.56 of the Environmental Planning and Assessment Act 1979. The development as originally approved will be substantially the same development when modified as proposed. The modified application is not required to be re-notified in accordance with Rockdale DCP 2011.

RECOMMENDATION

It is RECOMMENDED that the Sydney Central Planning Panel resolve pursuant to Section 4.56 of the Environmental Planning and Assessment Act 1979, to modify Development Consent No. 13/135 at 659, 661-663 & 669 Gardeners Road, Mascot to:

- Amend conditions 6, 86, 93, 102 and 112 as indicated in the update schedule of conditions.

REASONS FOR DETERMINATION

- 1) The development as originally approved will be substantially the same development when modified as proposed;
- 2) Suitable bonds have been imposed to protect the public interest; and
- 3) The proposed modifications will satisfy the intent of the conditions of consent, do not result in any changes to the approved built form and would be in the public interest.