

COUNCIL ASSESSMENT REPORT

Panel Reference	2018SCL043
DA Number	DA-2014/203/B
LGA	Bayside Council
Proposed Development	4.55(1A) Modification to delete condition 45 as public works are required
Street Address	4-6 Princes Highway Wolli Creek
Applicant/Owner	Mr George Habambo C/O Grand City International Development Pty Ltd
Date of DA lodgement	7 December 2017
Number of Submissions	N/A
Recommendation	Approval
Regional Development Criteria (Schedule 7 of SEPP)	4.15(1A) where original determination made by Regional Panel to a DA >\$20M
List of all relevant s4.15 matters	<p>List all of the relevant environmental planning instruments S4.15(1)(a)(i);</p> <ul style="list-style-type: none"> SEPP – 55 – Remediation of Land Rockdale Local Environmental Plan 2011 <p>List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s4.15(1)(a)(ii);</p> <ul style="list-style-type: none"> N/A <p>List any relevant development control plan: s4.15(1)(a)(iii);</p> <ul style="list-style-type: none"> Rockdale Development Control Plan 2011 <p>List any relevant planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4:</p> <ul style="list-style-type: none"> N/A <p>List any relevant regulations: s4.15(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288:</p> <ul style="list-style-type: none"> Environmental Planning and Assessment Regulations 2000
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> Planning report Draft Determination Site Audit Statement

Report prepared by	Fiona Prodromou – Senior Assessment Planner
Report date	7 June 2018

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **N/A**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **N/A**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

RECOMMENDATION

It is RECOMMENDED that the Panel resolve pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, to modify Development Consent No. 2014/203 at 4-6 Princes Highway Wolli Creek by deleting condition 45, as indicated within the updated Schedule of Conditions and for the following reasons:

- a) The proposal as modified is substantially the same development to that originally approved.
- b) Deletion of Condition 45 will facilitate the necessary public domain works to occur as required upon the subject site.

EXECUTIVE SUMMARY

On 14th August 2014, the then JRPP approved the demolition of existing structures and construction of a fourteen (14) storey mixed use development comprising 5 commercial units, 185 residential units and basement car parking at the above site.



Approved Development - Photomontage

DA-2014/203/A seeking to undertake internal and external design modifications, changes to external building materials & design features, raising of the basement levels, reducing of upper floor to floor levels & incorporating a substantial increase in FSR & density on site was submitted to Council on 7 April 2015. This was Refused by the then JRPP on 11 June 2015 on the recommendation of Councils Assessing officer.

The development is currently under construction on site and is nearing completion.

The current proposal seeks to delete condition 45, which does not permit works within an L shaped portion of the site, which is required to be dedicated to Council.

A Detailed Site Investigation and Remediation Action Plan were approved as part of the original application, however these documents did not thoroughly test the soils within the portion of the site to be dedicated to Council as nil works were proposed at the time in this location.

Condition 45 was imposed originally imposed as the land to be dedicated to Council was presumed to potentially be contaminated.

Consideration had not been given at the time of the original assessment, to potential public domain works which would likely be required in the portion of the land to be dedicated to Council, as at the time of the original assessment the scope of public works had not yet been determined or finalised by Council.

The proposal as modified seeks to delete condition 45 in order to enable the Council authorised public domain works to proceed. A Site Audit Statement submitted with the proposal as modified, confirms the suitability of the site as per SEPP 55.

The proposal is a 4.55(1A) to a development originally approved by the Panel that has a Capital Investment Value greater than \$20 million (i.e. 32 million) and as such the application is referred to the Regional Panel for determination as per Schedule 7 of the SEPP – State and Regional Development 2011.

The recommendation is for approval.

Background

PROPOSAL

The current proposal seeks to delete condition 45 as follows:

45. *No works are permitted within the road widening dedication as noted on approved plans. This includes the provision of any trees or garden beds. All works shall be within the new property boundaries of the site.*

Deletion of this condition is sought, in order to enable the Council authorised public domain works to proceed on the subject site including the land to be dedicated to Council as required by original conditions of consent.

EXISTING AND SURROUNDING DEVELOPMENT

The subject site is located at the junction of Princes Highway and Gertrude Street and is a Gateway Site. The site comprises a frontage of 40.76m to Princes Highway (State Road), 98.83m to Gertrude Street, and an overall site area of 3933.7sq/m. The originally approved development is currently under construction and is nearing completion.



Subject site

To the north and east, the site adjoins Cahill Park (Crown Land), to the south the site adjoins Gertrude Street. Cahill Park comprises a range of trees, a cricket pitch, children's playground and range of amenities further to the south east.

Opposite the site to the south west lies 10 Princes Highway & 1-5 Gertrude Street a part 9 & 11 storey mixed use development comprising five (5) commercial tenancies, 140 residential units and car parking at basement and ground levels for 193 vehicles.

Number 7 - 9 & 15-17 Gertrude Street lie opposite the site to the south west. These are the subject of recent approvals for 9 storey residential flat buildings, which are currently under construction. Number 11 Gertrude Street is currently occupied by building materials and number 13 is the subject of a current development application for a 9 storey boarding house.

To the north west of the site, along Princes Highway, lies a significant expanse of car yards with single to two storey structures. Further to the north west of the site is the single storey Wolli Creek Woolworths and Dan Murphy's site with associated car parking. Further to the NW of the site lies Discovery Point and Wolli Creek Railway Station. This is approximately 480m walking distance taking the most direct route.

The subject site is flood affected, potentially contaminated and is classified class 3 acid sulphate soils. The site is affected by a local road widening along the Princes Highway and Gertrude Street, and is subject to the 51AHD obstacle limitation surface, given the proximity of the site to Sydney Airport.

PLANNING CONSIDERATION

The proposed development has been assessed under the provisions of the Environmental and Planning Assessment Act, 1979. The matters below are those requiring the consideration of the Joint Regional Planning Panel.

Section 4.55(1) – Modifications Involving Minimal Environmental Impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

Comment: Documentation accompanying the proposal as modified confirms the subject site and area subject of the necessary public domain works is remediated as per the provisions of SEPP 55. The proposal is of minimal environmental impact.

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

Comment: The proposal as modified does not alter the previously approved building or basement form, levels, overall height, density or footprint.

The proposal as modified ensures that the development remains substantially the same as that to which approval was originally granted.

(c) it has notified the application in accordance with

- i. the regulations, if the regulations so require, or*
- 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*

Comment: The proposal as modified did not require public notification, as per the provisions of Rockdale DCP 2011.

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

Comment: N/A

Section 4.15 - Matters for Consideration

The relevant matters for consideration pursuant to Section 4.15 are addressed as follows:

(a) The provisions of any EPI, draft EPI, DCP, Planning Agreement, draft Planning Agreement and any other matters prescribed by the Regulations.

Draft EPI

The proposal as modified is not subject to any draft EPI.

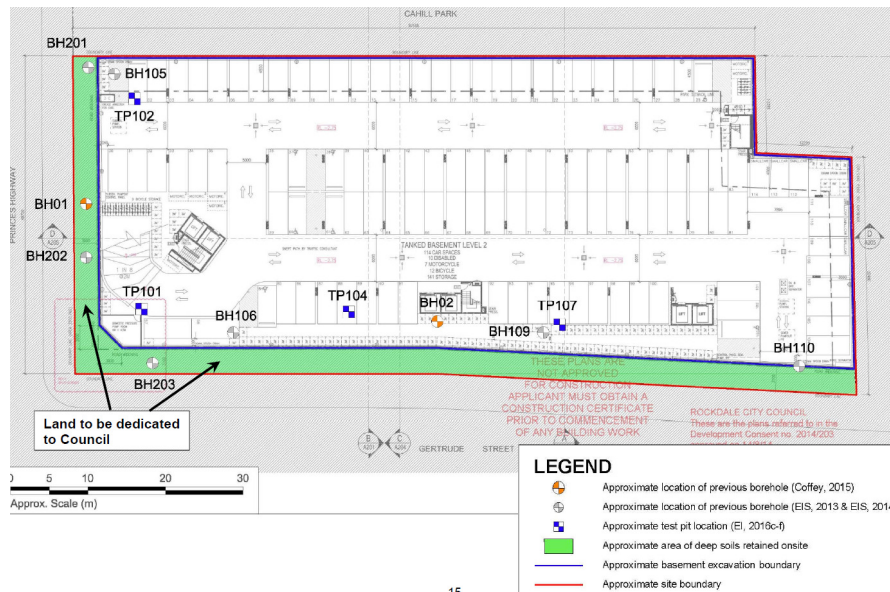
Planning Agreement

The proposal as modified is not subject to any current or draft planning agreement.

State Environmental Planning Policy No.55 - Contaminated Land (SEPP 55)

The original application was accompanied by a Stage 2 Detailed Site Investigation (DSI) and a Remediation Action Plan (RAP). An assessment of the original application concluded that the site was suitable for the proposed use, yet these documents had not thoroughly tested

soils within the portion of the site as illustrated in green below, to be dedicated to Council, as the development as proposed within the new site boundaries.



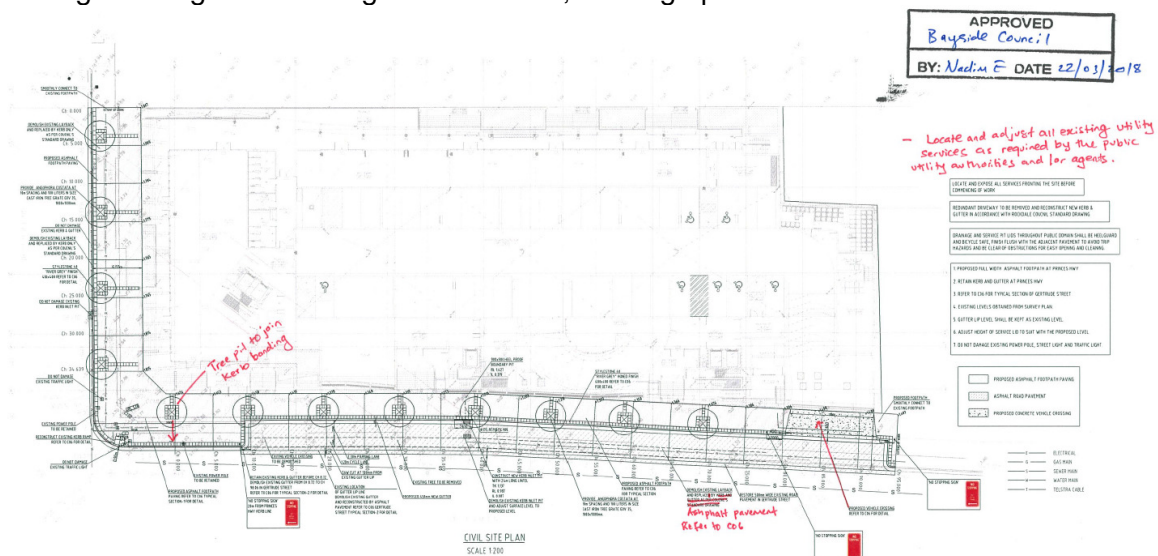
Excerpt from SAS

The original consent was conditioned to ensure the recommendations of the aforementioned documents were implemented on site and that a Site Audit Statement be undertaken for the entire site including the land to be dedicated to Council at a future time.

Given the above, condition 45 was originally imposed as the land to be dedicated to Council was presumed to potentially be contaminated.

Consideration had not been given at the time of the original assessment, to potential public domain works which would likely be required in the portion of the land to be dedicated to Council, as at the time of the original assessment the scope of public works had not yet been determined or finalised by Council.

In March 2018, Council approved public domain works within the land yet to be dedicated to Council, including a new concrete footpaths, vehicular entrance, reconstruction of kerb and guttering, construction of paving between the new boundary and kerb line, turf, undergrounding of low voltage street mains, drainage pits etc.



Approved Public Domain Works

Condition 45 prevented the applicant from commencing and undertaking the aforementioned works. As a result, the current application was submitted, seeking the deletion of condition 45.

In order to ensure the land to be dedicated to Council, where works were required was fit for purpose a Site Audit Statement (SAS) dated 09/05/2018 was submitted with the proposal as modified. The SAS concluded that this portion of the site is suitable for the specified uses without any risk of harm from contamination. The SAS was reviewed by Council's Environmental Scientist who was satisfied with the conclusions.

On the basis of the above, Council is satisfied that the land to be dedicated, where public works are required is no longer contaminated and the Regional Panel can be satisfied that it has fulfilled its statutory obligations under SEPP 55, in relation to this application.

The proposal as modified meets the requirements of SEPP 55.

Rockdale Local Environmental Plan 2011 (RLEP 2011)

The relevant clauses that apply to the proposal as modified are listed below:

Clause	Control	Requirement	Proposed	Complies	Objectives
2.2	Zone	B4 Mixed	Ground floor commercial premises; shop top housing no change to previously approved uses on site	Yes	Yes
5.1A	Development on land intended to be acquired for public purposes	3m - Princes Highway frontage 3.1m - Gertrude Street frontage	Dedications as previously approved – no change.	Yes	Yes
6.1	Acid sulfate soils	Class 3 – for works below than AHD 1m below ground level.	Conditioned as per original DA. No changes proposed.	Yes	Yes

Rockdale Development Control Plan 2011

The proposal as modified seeks to ensure the proposal is consistent with the Wolli Creek Public Domain Plan and Manual (PDP) via ensuring that public domain works as permitted by Council can occur as necessary and be completed upon the subject site and portion of land to be dedicated to Council.

Environmental Planning and Assessment Regulations 2000

All relevant provisions of the Regulations have been considered in the assessment of the proposal as modified.

(b) Likely impacts

The proposed modification relates only to the deletion of condition 45, in order to facilitate public domain works on this portion of the site. The proposal as modified will improve and upgrade the existing public domain as previously detailed in this report.

(c) Suitability of the site

The suitability of the site was addressed in the original approval of DA-2014/203. The site remains suitable for the proposal as modified and associated public domain works.

(d) Submissions

The proposal as modified did not require public notification, as per the provisions of Rockdale Development Control Plan 2011.

(e) The public interest.

The proposed modification is in the public interest, as it will facilitate public domain works which will upgrade existing infrastructure to accommodate the residential development on the subject site and those established and emerging nearby. The proposal as modified will have no adverse impact upon the public interest.

CONCLUSION

The proposed development has been considered under sections 4.15 and 4.55 of the Environmental Planning and Assessment Act, 1979. The proposal as modified is consistent with the objectives of state and local controls and as such, the proposal as modified DA-2014/203/B is recommended for approval.