

# MEMORANDUM

**TO:** South Sydney Planning Panel (SSPP)  
**FROM:** Larissa Ozog, Senior Development Assessment Planner  
**DATE:** 4 April 2019  
**REFERENCE:** DA2018/0178  
**SUBJECT:** Formal response to the issues raised by City Plan in their letter dated 3 April 2018 in respect to the imposition of several Draft Conditions of consent.

This memo has been prepared in response to the issues that have been raised by correspondence prepared by City Plan Services (on behalf of the Applicant of the above Development Application) dated 3 April 2019.

A residential flat building (RFB) development that is proposed at No.12-24 Stanley Street, Kogarah North is being considered at the SSPP meeting to be held on 9 April 2019. The assessment report has been published and the Applicant has reviewed this report and is questioning several draft conditions and requesting deletion and/or modifications to conditions prior to determination.

Council has considered the issues raised by the Applicant and has addressed each of them (response provided in blue below) in more detail for the Panel to consider.

## Condition No.2

**2. Disabled access – The development must be designed and constructed to comply with: ~~AS 1428.1 – 1993 Design for Access and Mobility Part 1 and AS 1428 – 1993 Design for Access and Mobility Part 2 Enhanced and Additional Requirements – Buildings and Facilities~~ **AS1428.1-2009 Design for Access and Mobility Part 1: General Requirements for access – New building work.****

Council response: The rewording this condition is considered acceptable as it updates the Australian Standard in respect to Disabled access.

### Condition No.3

**3. Landscape Plan - The Landscape Plan shall be updated to provide the following features;**

**ii) The roof top terrace is to include ~~an small sand pit~~ artificial soft surface (2m by 2m) for use by small children.**

Council response: The intention of condition 3(i) aims to provide a greater diversity of recreational uses and surfaces on the roof to cater for a variety of people given the scale of the development.

The Applicant believes that maintaining this space as a sand pit is difficult (I disagree with this point) however providing an artificial soft surface is considered to be a satisfactory alternative and the condition could be amended.

**~~iii) The landscaped area along the ground floor, western side of the building shall be accessible by members of the public and shall include a level pathway that will link up Stanley Lane to Stanley Street. This space is to include some seating and low level lighting.~~**

Council response: In respect to the provision of Condition No.3 (ii), the Applicant requests to delete this part of the condition. Originally the proposal failed to comply with the minimum deep soil area pursuant to the provisions of SEPP 65 (ADG). The proposal also failed to comply with the minimum 6m separation distance for the ground floor to level 4. In response to these non-compliances the Applicant created a generous landscaped area along the western side of the site. This area of landscaping comprises of a deep soil area and therefore can accommodate larger trees and become an attractive green space. This is an ideal location to include a public site through link.

The issue of providing public access along this side of the Site was raised with the Applicant but they were not interested or forthcoming. Connection at grade should be able to be achieved and maintained quite easily as the site is currently vacant and level along this side.

The Applicant has referred to the KDCP and that the Plan does not designate any part of this site to accommodate a public link. The KDCP designates a future link along the eastern side of No.24 Victoria Street if this site is to be redeveloped.

There is a Development Application currently under assessment for the adjoining site (DA No.2017/0597) and the original plans for this development included a Site through link. I have mentioned this issue in the assessment report. However, Council has received amended plans for this property and the site through link has been removed as per the Design Review Panels request which recommends that the design be amended and the building be setback further from the western side where it adjoins two local Heritage Items (terrace houses). In making this design

change the site through link has been removed. The SSPP is the determining authority in respect to this application.

The Applicant is not in favour of providing this link for a number of reasons (stipulated in their submission). Council has not been able to obtain any detailed legal advice (although I did speak to Council's in house lawyers and have sent an email to obtain further formal written advice but have not received a response to date). Council cannot legally impose a condition that private land be dedicated for public purposes without the owners consent or concurrence.

However given that the SSPP is the consent authority there may be the ability for the Panel to impose this condition in accordance with the provisions of Section 7.13 (Section 7.11 or 7.12 conditions subject to contributions plan) of the Environmental Planning and Assessment Act legislation. However I cannot confirm the Panel's legal position in respect to this matter. Section 7.13 (2) states;

- “(2) *However, in the case of a consent authority other than a Council:*
- (a) *the consent authority may impose a condition under section 7.11 or 7.12 even though it is not authorised (or of a kind allowed) by, or is not determined in accordance with, a contributions plan, but*
  - (b) *the consent authority must, before imposing the condition, have regard to any contributions plan that applies to the whole or any part of the area in which development is carried out.”*

In respect to this matter the Panel has three possible options;

### **1. Impose the condition**

If the Panel is of the mind that they are able to legally impose and retain this condition then they will need to also include the following condition as the space will need to become an easement for access;

***Easement for public access*** – *Prior to the issue of any occupation certificate in relation to the development, the Applicant must at its expense, obtain registration on the title of the land an easement upon the terms acceptable to Georges River Council in favour of the public in perpetuity which permits the public to a right of footway (including the use of bicycles) over that part of the land identified in Condition No.3(ii) as “Public Link” to access Stanley Lane and the Easement may only be released or varied with written consent of Georges River Council.*

### **2. Delete the condition**

If the Panel decides to remove the condition then my suggestion is to impose a condition that will ensure this space remains unobstructed by any fencing or structures and becomes an area of open space that is generally accessible but

remains private property. It will also need to ensure this part of the site remains level.

### 3. Negotiate an outcome with the Applicant

The Panel could attempt and negotiate a mutually agreeable outcome that is acceptable to both parties. As the SSPP is the Consent Authority and have the ability to alter and amend conditions.

**v) The terrace that adjoins the lifts on Level 10 shall include a 1m 600mm wide by 1m high planter box on the western side of the lifts to provide some additional screening and greenery.**

Council response: In respect to Condition No.3 (v) the applicant would like the planter box to be reduced in width from 1m to 600mm which is considered to be acceptable as the reduction ensures greater structural integrity. This change is considered to be acceptable and retains the intention of providing some additional screening and greenery.

**~~vi) The balconies and terraces along all sides of the building on Level 4 (apart from the central bridge) shall include a 1m high and 1m wide fixed planter boxes at the edge of the balconies/terraces to improve the visual appearance of these spaces and create a green edge to the building at this level.~~**

Council response: The Applicant is seeking deletion of Condition 3(vi) which requests the provision of planter boxes along the edges (north and southern sides) of terraces on this level to soften this structure, create an attractive transition from lower to upper levels of the building and to create a green edge.

The Applicants own photo montage includes planting along this level as can be seen in Figure 1 below. So initially I believed this was omitted from the plans. I believe removing this condition will be detrimental to the overall design. The terraces along Level 4 are extensive in size from 20sqm to over 100sqm.

**Figure 1: Artists Impression showing planting on Level 4**



#### Condition No.4

**4. Public Domain Plan** – ~~A public domain plan is to be submitted to Council in accordance with the requirements of the Kogarah North Public Domain Strategy/Plan prepared by a Qualified Landscape Architect on behalf of Council.~~

~~The plan is to address the design criteria, including but not limited to:~~

- ~~• Street trees to be retained and new trees,~~
- ~~• Reconfiguration of street verges with geometries that provide better for trees,~~
- ~~• Expanded soil volumes in verges and linear parks for maximum root space,~~
- ~~• The utilization of permeable hard materials for water access to tree roots,~~
- ~~• Variation in seating opportunities~~
- ~~• Stormwater provision.~~
- ~~• Planting of additional street trees, the proposed species and location (new trees shall be established and have a minimum pot size of 100L).~~
- ~~• The extinguishing and removal of all existing driveway crossings.~~
- ~~• The plan is to include a levelled grassed area with street planting.~~
- ~~• The location of two new public pathways along Stanley Street and Stanley Lane including proposed gradients, finishes and materials.~~

~~The cost of the works will be borne by the Applicant and will need to be completed to Council's satisfaction prior to the issuing of the Occupation Certificate.~~

**~~The plan must be approved by Councils Manager for Development and Building prior to the issue of a Construction Certificate.~~**

Council comment: The Applicant is seeking the removal of Condition No.4 as they believe a Public Domain Plan and associated works cannot be imposed given that Section 7.11 (S94) Contributions have been imposed for such works. The intention of this condition is not to provide wider “public works” in the literal sense but rather focus on streetscape works that will be required as a result of this development.

Advice was obtained in response to this matter from Council’s Section 7.11 Contributions Officer who stated that;

*“The Kogarah Section 94 plans that apply to the development are Kogarah Town Centre Plan No.8 and Kogarah Council Libraries Plan No.9.*

*These section 94 plans do not levy for the public domain works recently identified in the Kogarah North Public Domain Plan. They levy for other community facility and infrastructure projects listed in the work schedules of the plans.*

*Council cannot impose conditions under section 7.11 to undertake the public domain works as the works are not identified in the relevant Section 94 Plans.*

*However as I understand Council can only impose conditions and require the developer to undertake works where the works are directly required by the development. It appears from the draft condition that the majority of the works relate to the development.”*

Council is well within its rights to ensure that the provision of footpaths associated landscaping works on the public domain are upgraded and improved as a result of the redevelopment. The intention of the condition aims to relate to the public domain but no wider than the site boundaries. As such the condition could be reworded to read;

**Condition No.4**

*An updated Plan is to be provided which shows the streetscape works that are to be implemented as a result of this development and how these works are to be designed and constructed. The following details are to be shown on the plan;*

- *New footpaths along Stanley Street and Stanley Lane (along the length of this site) and associated gutter crossings and any other associated works if these will be affected by the development (i.e stormwater/drainage and associated pipes).*
- *Removal of all existing driveway cross-overs.*



- *Provision of street planting and grass where cross-overs have been removed and the type of species to be planted, in accordance with Council's requirements.*

*The cost of the works will be borne by the Applicant and will need to be completed to Council's satisfaction prior to the issuing of the Occupation Certificate.*

*The Plan is to be provided to the satisfaction of the Manager of Building and Development prior to the issuing of the Construction Certificate.*

## **Condition No.5**

**5. Design – The following design changes shall be incorporated to improve the design and amenity of the development;**

**~~i) The hydrant booster, sprinkler system and any additional utilities that are required shall be sensitively located and preferably located along the rear off the laneway and screened from view.~~**

Council response: The Applicant is requesting the removal of Condition 5(i) because siting the hydrant booster and sprinkler system and associated utilities along the lane cannot be achieved due to the services having to be in view of the main entry and it may be difficult for accessibility off the rear laneway.

This condition was not written to force the relocation of these services to the rear, it was written to ensure they were sensitively located and screened where possible also to “preferably” locate them to the rear. You could retain the condition to ensure the services are still “sensitively” located and appropriately “screened” (where possible). The deletion of the condition will not detrimentally affect any consent.

**~~ii) The roller door to the basement car parking levels shall be recessed a minimum of 6m from the rear laneway and shall be a timber panelled metal perforated door.~~**

Council response: A timber panelled door seemed to be a softer more sympathetic finish however the Applicant prefers a “metal perforated” door. Amending this condition will not detrimentally affect the consent if issued.

**~~iii) The first set of entry gates from Stanley Street and Stanley Lane shall be removed and the access up to the main lobby shall remain open and accessible for both occupants and visitors.~~**

Council response: The Applicant would like Condition 5(ii) removed. The intention of this condition was to ensure some of the front entry was easily accessible and open to both residents and visitors to the development. The removal of the front gates is a very minor change to the design and will not affect its security and functionality of

the development as the main lobby area will still be secure and only accessible to residents.

This condition should be retained.

~~vi) Additional bicycle parking shall be incorporated along the eastern side of the development at the ground floor in front of the plant room in the form of a modern stainless steel bicycle hoop racks or the like.~~

Council response: The Applicant would like this condition to be removed as this space may need to be taken up by the booster valve and associated services.

The removal of this condition is considered satisfactory.

**24. Vehicular Crossing - Major Development - The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:**

~~(e) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage(s) of the site in accordance with Council's Specifications for kerb and guttering, applying at the time construction approval is sought.~~

**93. Engineering - Vehicular Crossing & Frontage work – Major Development - The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:**

~~(a) Construct a 1.50 metre wide x 80mm thick concrete path for the full length of the frontage of the site in Lawrence Street in accordance with Council's Specifications for footpaths.~~

~~(c) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage(s) of the site in Lawrence Street in accordance with Council's Specifications for kerb and guttering.~~

Council response: The Applicant would like Condition No.24 and 93 to be removed as they believe these works are covered by the relevant Section 7.11 (former S94) Monetary Contributions. This is not correct. These are standard conditions that have been imposed on every development in the LGA in addition to the S7.11 and S94 contributions. These are public works that will be required as a result of the development.

These conditions have been imposed at No.2-10 Stanley Street and every other development in North Kogarah. The development will require new footpaths along Stanley Street and the laneway however the conditions and Condition No.93 can be deleted as it relates to another site and was reproduced from another report. It is not relevant.



Condition No.24 shall remain but could be reworded to be more specific and say the following;

*24. Vehicular Crossing - Major Development - The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:*

*(e) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage(s) of the site **(along Stanley Street and Stanley Lane)** in accordance with Council's Specifications for kerb and guttering, applying at the time construction approval is sought.*

### **Staging**

Council response: The application was not lodged as a "Staged Development Application" and therefore Council imposes conditions that refer to the following sections;

Before commencing works (demolition and excavation)

Prior to the issuing of the Construction Certificate

During Construction

Prior to issuing the Occupation Certificate

Given this isn't a Staged DA then the Applicant will need to formally amend the application to stage it and amend conditions accordingly as the process of altering conditions which relate to differing stages is very time consuming and requires a large amount of work to work out which conditions are relevant to each stage. The proposed change to the wording from "the issuing of the construction Certificate" to "the relevant Construction Certificate" is considered to be ambiguous and assumes there may be several CC's for the Site. The fact that it was not a staged DA means that Council assumes that there will be one Construction Certificate issued for the works.

Changing these conditions is not considered reasonable or within the scope of works that was initially lodged with the application.

### **Demolition**

Council response: Given the Site is vacant and all structures have been demolished in accordance with separate Complying Development Certificates, reference to demolition can be removed where it is no longer relevant.

If you require any further information in relation to the matters outlined above don't hesitate to contact me.

Kind regards

Larissa Ozog  
Senior Development Assessment Planner  
Georges River Council