



4 Feb 2022

REQUEST TO REVIEW CONDITIONS**SYDNEY EASTERN CITY PLANNING PANEL**

Panel Reference	PPSSEC-52
Council Reference	DA2020/0143 City of Canada Bay Council
Street Address	25 George Street North, Strathfield
Proposed development	Demolition of existing structures and construction of residential apartment buildings of 4-6 levels containing 145 apartments (including affordable housing dedicated to Council) with two levels of basement and 126 [SIC] car parking spaces

Please find below requests to alter certain recommended conditions that are considered imperative to be finalised with the determination of the consent rather than pursued through a section 4.55 Modification Application at a later date.

The requested changes to the conditions have been discussed with Council officers who undertook to provide this request to the Panel accompanied with their comments.

1. SATISFACTION OF CONDITIONS PRIOR TO DEMOLITION (Condition 20)**Request:**

- Insert "relevant" into condition 20 as follows.

*Where demolition is associated with the erection of a new structure, or an altered portion of or an extension to an existing building, the demolition of any part of a building is "commencement of building work" pursuant of section 6.6 of the Act. In such circumstance all **relevant** conditions of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a PCA and Notice of Commencement under the Act.*

Issue:

- It is not possible to fulfill all conditions prior to demolition, only those that are relevant to this stage of development.

2. TIMING OF PAYMENT OF 7.11 CONTRIBUTIONS (Conditions 31)**Request:**

- Amend Condition 31 as follows.

31. DACCBO4 - Section 7.11 Contributions

The following Section 7.11 Development Contributions are required

Contributions must be receipted by Council and submitted to the Accredited Certifier prior to the issue of any ~~Construction Certificate~~ Occupation Certificate.

If no construction certificate in respect of the erection of any building to which the consent relates has been issued on or before 25 September 2022, the monetary contribution must be paid before the issue of the first construction certificate after that date for any such building.

Please present a copy of this condition when paying the contribution at the Customer Service Centre so that it can be recalculated.

Issue:

The timing of the payment of Section 7.11 Development Contributions must accord with the *Environmental Planning and Assessment (Local Infrastructure Contributions – Timing of Payments) Direction 2020* issued to consent authorities, which is still in effect and requires temporary deferment of contributions to no sooner than the first occupation certificate.

Background:

- In response to the 'Covid-19 emergency', the above Ministerial Direction was made in June 2020 under section 7.17 of the EP&A Act, to temporarily defer the payment of local infrastructure contributions and levies until the issuing of an occupation certificate. The Direction is in effect for the period prescribed within section 10.17 of the Act.
- On 25 March 2021, the *COVID-19 Recovery Act 2021* extended the COVID-19 prescribed period to 31 March 2022. The extension applies to Ministerial directions and determinations under the Act relating to State and local infrastructure contributions.
- To accord with the Direction, the proposed amendment replaces 'Construction Certificate' with 'Occupation Certificate' and adds a model condition from the Direction which limits the length of deferment if a construction certificate has not been issued by 25 September 2022.

3. AFFORDABLE HOUSING TRANSFER (Conditions 33)

Request:

- Alter Condition 33 as follows.

DACCB10 – Affordable Housing – Voluntary Planning Agreement (VPA) Pursuant to Section 7.4 of the Environmental Planning & Assessment Act, 1979, the VPA entered into on 5 November 2019 between the applicant and the City of Canada Bay Council, requires that a minimum of 5% of the uplift of the Gross Floor Area, or 2 three- bedroom units, whichever is greater, is dedicated to the City of Canada Bay Council as affordable housing as defined in the Act.

Prior to issue of any Construction Certificate, the applicant and Council shall agree on the number and location of affordable housing units ~~and the applicant must provide evidence to Council that the title to the affordable housing units will to be transferred to the City of Canada Bay Council in accordance with the obligations of the VPA.~~ The applicant shall indicate and identify the affordable housing units on the plans prior to issue of any Construction Certificate.

Issue:

- Requirements to “provide evidence” is unclear and unable to be fulfilled. Processes already exist in the executed VPA for the transfer of affordable housing units that is protected by the obligations for a \$2 million Bank Guarantee prior to a construction certification as per cl7.1.1 and 2, and having the VPA registered on title.

4. BALCONY PRIVACY SCREENS (Condition 34(i))

Request:

- Amend Condition 34 (i) as follows:

i. Privacy Screening to Selected South-Facing Balconies

Balconies with south-facing sides shall incorporate into their design, 45 degree louvred blade balustrades ~~fixed privacy structures with minimum 85% density or be designed such that they prevent overlooking down into the property of 23A George Street.~~

The ~~balustrade treatment privacy structures louvred shall have a minimum height of 1.5m from the finished floor level of the balcony and~~ shall run, at a minimum, the whole length of the southern end of each south-facing balconies of the following units

Issue:

Condition 34 (i) will result in an oppressive amenity for the affected apartments, is unwarranted on planning grounds and proposed standard is disallowed under SEPP 65 Clause 6(2).

Background:

- As noted in p.13 of the Assessment Report, this condition is in response to a submission from the adjoining apartment complex in regard to “overlooking into pool, gardens and units in 23A George Street”.
- The Council report notes that “*The proposal is adequately separated from adjoining units with fully compliant side setbacks required by relevant development controls and guidelines in the SPDCP and ADG*”. In particular, adjoining apartments are separated from the proposal well in excess of ADG minimum building separation and the proposal fully complies with 3F Visual Privacy.
- The conditioned privacy structures are a reflection of Control C8 (a) Part E2.4 of CBDGP as requested in the objection. However, clause 6A(2) of SEPP 65 sets aside DCP provisions that specify requirements for design criteria and guidance under the ADG for 1(a) visual privacy and 1(f) private open space and balconies. Accordingly, the standard of 1.8m privacy screens cannot be applied.
- Notwithstanding, Control C8 refers to overlooking “private open space” and not the pool and gardens that are “communal open spaces”. The requirement for privacy over adjoining communal open space is an unreasonable and unrealistic expectation as anyone occupying these areas is likely being overlooked by unknown residents or visitors within the development itself in any case. Accordingly, no such privacy to the pool and gardens exists at present.

- The imposition of 1.5m 85% density screens will impede natural light and airflow into living areas, impose an oppressive outlook, and introduce materials to the façade that will detract from the architecture inconsistent with accepted planning and design objectives.
- A 45% louvred blade treatment of the south facing balustrades is proposed as a compromise after discussion with Council which will reduce the perception of overlooking while preserving apartment amenity and architectural integrity.

5. SETBACKS (Condition 34(ii))

Request:

- Amend Condition 34 (i) as follows:

li Setbacks

Driveway

*The driveway shall be setback a minimum of 2341mm from the northern side boundary **and transition to the basement setback**. The land between any driveway structure and the northern side boundary shall maintain natural ground levels.*

Basement

The external face of any wall structure, above or below natural ground level, that forms part of the basement and/or loading bay area, shall be setback a minimum of ~~2m~~ 1m from the northern side boundary.

Issue:

The setback distance of 2m is excessive to fulfill the planning objective and will impede truck movement paths in the loading bay.

Background:

- The aim of the condition is to ensure that the basement wall is setback from boundary but a 2m distance will impede truck movement paths in the loading bay and is excessive to fulfill the objective.
- An alternative of 1m is suggested while a transition in the driveway between the different setbacks as shown on the Landscape plans, is required for safety.

6. CAR PARKING (Development description, conditions 34(v)(a)&(b) and 42)

Request:

- Alter the description of the development as follows “~~126~~ 141 car parking spaces”
- Delete Condition 34 (v) (a) and (b) and remove reference to “Vehicle parking”
- Amend Condition 42 as follows.

42. DACCG08 - Off Street Car Parking Space Provision

Car parking spaces shall be provided in accordance with the approved plans with ~~82~~ 126 Residential spaces and ~~9~~ 15 visitor spaces. The spaces are required and designated as follows:

(a) ~~82~~ 126 units shall be allocated 1 car parking space and ~~6~~ 19 units no car parking space.

Issue:

Condition 34 and 42 imposes a parking rate based on a misinterpretation of the DCP provisions. Note also that condition 42 also contains erroneous figures which differ from the Assessment Report that is required to be corrected in any case.

Background:

- CBC DCP Special Precincts sets out parking rates under Controls C33 and C34 with references to Table 1 and 2 respectively. (Extract 'A' attached)
- Table 1 reflects the recommended reduced parking rates set out in the Parramatta Road Corridor Urban Transformation (PRCUT) Strategy. The reduced rates are at a midpoint between that of regional and subregional centres. A Section 9.1 Direction 7.3 aims to facilitate development that is consistent with the Strategy.
- Application of Table 1 rates results in the provision of 124 resident spaces and 15 visitor spaces for 146 apartments.
- Table 2 also sets out maximum car parking spaces per Concord West Study Area sub-precincts which is in response to the findings of a Planning Proposal Traffic Study undertaken by Council which examined an intersection capacity constraint.
- Council has interpreted Table 2 to include visitor parking. This reduces resident parking from 124 under the already reduced PRCUT rate prescribed in C33 to a significantly lower provision of 111 for residents.
- This interpretation is without foundation as follows.
- An extract of the Council Report 7 February 2017) which made the DCP Special Precinct makes mention of implementing the PRCUT parking rates (that is, Table 1) and that *"an average of one (1) car parking space per dwelling (maximum) should be provided"* (that is, Table 2). (Extract 'B' attached)
- The figures for each sub-precinct in Table 2 exactly match the predicted dwelling yields set out in the Concord West Masterplan Study prepared by Council and included in the Addendum to the Planning Proposal required by the Panel after a Rezoning Review (Extract 'C' attached)
- The accompanying Traffic Study prepared by Council included in the Addendum recommended a limit of 1 car space per predicted dwelling be imposed excluding visitor parking in order to mitigate intersection congestion. (Extract 'D' attached)
- Therefore and in accordance with the Council report, Table 2 reflects a sub-precinct resident parking cap to ensure that morning peak hour intersection capacity impacts are acceptable. It is based on the predicted rather than an actual dwelling yield and excludes visitor parking. (Note that the availability of visitor parking has no effect on morning peak hour traffic generation from sub precincts as confirmed by the Council Study).
- Visitor parking is therefore excluded from Table 2 and when interpreted this way, the parking rates and sub-precinct parking caps under Tables 1 and 2 are in general harmony.

- Traffic consultants which undertook both the Council Planning Proposal and the applicant's DA traffic reports are available to the Panel hearing to confirm the above.

7. UNNECESSARY ENERGY AUSTRALIA REFERRAL (Conditions 52)

Request:

- Remove Condition 52 Requiring compliance with Energy Australia requirements.

Issue:

Ausgrid is the relevant energy authority for the site and it's requirement needs are fulfilled by Conditions 5, 63 and 64.

8. REMOVAL OF TREES (Conditions 67 and 78)

Request:

- Alter Condition 67 as follows.

67. DAPCA04 - Removal of Trees

The following trees are approved for removal:

- As identified in approved Arboricultural Impact Assessment prepared by New Leaf Arboricultural Impact Assessment, dated 18 December 2019, including:

i. Tree numbers 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, & 27, 28, 29 & 30

To ensure the protection of trees to be retained on site, all removals are to be ~~undertaken~~ supervised by a suitably qualified arborist practicing industry current arboricultural best practice methods.

- Remove Condition 78 as it is a duplicate of condition 78.

Issue:

Condition 67 excludes trees identified in the approved Arboricultural Impact Assessment without explanation while requiring t removal to be undertaken by, rather than under the supervision of, an arborist is overly and unnecessarily onerous.

Background:

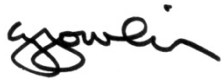
- Condition 67 approves the removal of trees as identified in the Arboricultural Impact Assessment (as shown on Landscape drawing DA-1934-01) and (ambiguously) "*including*" a list of trees that omits trees identified for removal.
- Omitted trees 7, 10, 11, 13 and 16 are located within the front setback and the canopies and root zones are impacted by the basement/building, level changes, terraces, stormwater retention, and the driveway cutting. Omitted trees 26, 28, 29 and 30 are impacted by the building and/or required level changes.
- All omitted trees are either low, low-medium or medium significance only and their removal will be over-compensated by new tree plantings.
- The Assessment Report at page 28 states. "*The proposed tree removal and landscape plans were considered by Council's Tree Services and Landscape*

Team. The proposal is considered acceptable subject to conditions included in the recommendation of this report.” No explanation is provided as to why the Arborist’s nominated trees have been omitted in the recommended condition.

- Otherwise, it is not practical or warranted for the arborist to physically remove the subject trees but should supervise their removal to ensure the protection of trees to be retained on site.

Further information or clarification as to the requested changes to the conditions may be provided at the Panel hearing.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'G Dowling', with a stylized flourish at the end.

Greg Dowling
BAS (Env Pl) M Urb Des (Syd) MPIA

Parking

Objectives

- O23 To provide car parking that responds to the capacity of the neighbourhood.
- O24 To provide a rate of parking that encourages public transport.
- O25 To minimise traffic generation into and out of the precinct.

Controls

C33.	Car and bicycle parking provision is to be in accordance with Section 3.8 Car Parking and Bicycle Parking under the Parramatta Road Urban Transformation Planning and Design Guidelines (see Table 1).
C34.	Car parking provision must not exceed individual maximums provided per Sub-precinct in Table 2.

Table 1 Maximum Car Parking Rates

(Extract of Table 3.2 Paramatta Road Corridor Urban Transformation Strategy, Planning and Design Guidelines, Nov 2016, Page 45)

Category	Residential (max. spaces per dwelling)					Other (max. spaces/m2)		
	Studio	1 bed	2 bed	3 bed	Visitor	Commercial	Retail	Industrial
Homebush Precinct	0.3	0.5	0.9	1.2	0.1	100	70	120

Table 2 Maximum Car Parking Provisions per Sub-precinct

Sub-precinct	No. of Car Parking Spaces
2	86
3	20
5	157
6	141
7	126

- Negotiation of a Voluntary Planning Agreement (VPA) with the applicant to enable funds to be directed towards the intersection upgrade. There is an adopted Master Plan for the precinct that contains detailed planning controls that were informed by both urban design principles and consultation with the Concord West and North Strathfield communities.

As VPAs are commonly associated with departures to planning controls, this approach is not considered to be the most appropriate mechanism in this instance.

In view of the breach of the development consent condition for the Victoria Avenue School, continued action to pursue compliance with this condition is recommended.

Upon receipt of the detailed design and costing, Council will consider the legal opinion received and liaise with the Department of Planning and Education to resolve outstanding funding required for construction of the intersection upgrade.

Based on outcomes of the above, a position will be determined as to whether legal action in relation to the Department of Education's obligation to fulfil its development consent will be pursued.

Canada Bay Development Control Plan

The Sydney Planning Panel also recommended that consideration be given to reducing car parking requirements for the development. Given the location of the site within close proximity to two railway stations, it is considered appropriate to review the proposed car parking rates.

The Concord West Master Plan and associated traffic report recommended that an average of one (1) car parking space per dwelling (maximum) should be provided for development in the precinct. Since this time, the Parramatta Road Urban Transformation Strategy has been released. This document includes the following maximum car parking rates for land in the Homebush precinct:

Studio	0.3 spaces
1 bedroom	0.5 spaces
2 bedroom	0.9 spaces
3 bedroom	1.2 spaces

It is recommended that the Canada Bay Development Control Plan be amended to include the above parking rates for land in the Homebush precinct. This will ensure alignment with the finalised Strategy for Parramatta Road, address the recommendation of the Sydney Planning Panel and encourage a modal shift from private car usage to public transport.

To ensure prospective purchasers of property are aware of the restrictive parking policy that applies to land within close proximity to public transport, it is

recommended that the following notation be included on relevant 149 Planning Certificates:

A restrictive parking policy applies to land affected by this Planning Certificate. The policy aims to encourage low car ownership and high public transport use by residents and visitors. Off-street parking in new developments is limited and no on-street residential parking or Resident Parking Schemes will be provided. Time-limited parking will apply across most streets in the area. Residents should ensure they do not rely on on-street parking for their vehicles and their visitors.

Responsible Planning Authority

Following the decision of the Panel to submit the Planning Proposal for Gateway Determination, Council was invited to be the Relevant Planning Authority (RPA) and was required to advise within 42 days from the 30 November 2016 of whether it will accept the role of RPA for this proposal. The RPA is responsible for processing the Planning Proposal and making a determination following public exhibition.

Council accepted the role given the collaboration required with the Applicant to address the recommendations of the Panel. This decision is also consistent with the Resolution of Council of 6 September 2016.

Conclusion

The Planning Proposal for 25 George Street, North Strathfield has gained support from the Rezoning Review Panel to be submitted for Gateway Determination pending satisfactory arrangements being put in place for the funding of the George, Pomeroy & Beronga Street intersection upgrade.

A detailed design and costing for the upgrade is being prepared and following receipt of final costings, Council will enter discussions with the Department of Education with respect to meeting their obligations under Condition 73 of the Development Consent No. 505/2012 for the Victoria Avenue Public School.

This report recommends that Council submit the Planning Proposal to the Department of Planning and Environment for a Gateway Determination and pursue the Department of Education to deliver the intersection upgrade in accordance with the obligations of the development consent. It is also recommended that the draft Canada Bay Development Control Plan applicable to development in Concord West be updated to include reduced car parking rates.

RECOMMENDATION

1. THAT the Planning Proposal for 25 George Street, North Strathfield, be submitted to the Department of Planning and Environment for Gateway Determination.

Indicative Yield Plan

Key Conclusions:

- The total study area yield of **785** units is consistent with the upper limit of the maximum yield as determined by the traffic study.
- The built form principles when applied to the indicative building envelopes deliver a balanced development approach across the industrial sites.
- Where one site receives a greater percentage of the overall dwelling yield to site area it is directly related to the application of the built form principles and the relative constraints between each of the sites.
- The ‘advantage’ or ‘disadvantage’ gained or lost is minimal and should not adversely impact the development feasibility of the site.

Development Assumptions:

The development yield was determined using the following calculations:

- Building Envelope to GFA: 85%
- GFA to NSA 85%
- Average Gross Unit Size (m²) 80m²

TABLE 1 - Development Summary Balance

Site	Address	Dwelling Yield	FSR : 1	Site Area	% Industrial Area	% Dwelling Yield	% Yield - % Area	Notes
1	7 Concord Ave.	255	1.6	14968m²	33.0%	32.5%	- 0.5%	neutral
2	204 - 210 George St.	86	1.6	5028m²	11.0%	11.0%	0%	neutral
3	3 King St.	20	2.3	809m²	1.8%	2.5%	+ 0.72%	Lower constraints due to reduced setbacks that are based on the existing building footprint & mixed use.
4	1 King Street (Westpac)	n/a	n/a	n/a	n/a	n/a	n/a	Zoned B7 - No residential
5	176 - 184 George St.	157	1.9	7806m²	17.2%	20.0%	+ 2.8%	Site 5 is the least constrained site due to minimal proximity to existing low scale residential and thus achieves a slightly higher dwelling yield.
6	2 - 10 Rothwell St.	141	1.4	9404m²	20.7%	18.0%	- 2.7%	Site 6 is the most constrained site due to proximity to existing low scale residential and thus achieved a slightly lower dwelling yield.
7	25 George St.	126	1.6	7402m²	16.3%	16.0%	- 0.3%	neutral
TOTAL		785 units		45417m²	100%	100%	0%	Excludes Westpac site



FIGURE 18 - Indicative Yield Plan

The 2011 ABS data indicates that apartments (all types) have average car ownership rates of between 1.0 and 1.2 cars per dwelling. Of particular note, Figure 4.1 indicates that with the exception of 'separate house' the car ownership for all dwelling types reduced between 2006 and 2011. In addition, the number of dwellings with zero car ownership increased from 290 to 532 between 2006 and 2011 (83% increase).

Based on the above it is concluded that car ownership rates for apartment residents in the vicinity of the site are on the decline.

4.2.3 RMS Guidance

Reference to the RMS 'Guide to Traffic Generating Developments' (2002) indicates the following resident car parking rates for high density residential uses in Metropolitan Sub-Regional Centres:

- 0.6 spaces per 1 bedroom unit.
- 0.9 spaces per 2 bedroom unit.
- 1.4 spaces per 3 bedroom unit.

4.3 Recommended Future Car Parking Rates

Having regard for the above, it is recommended that multi-dwelling residential developments within the study area are subject to maximum car parking rates, as follows:

- Maximum one resident car parking space per dwelling
- One visitor space per 5 to 10 dwellings (based on block size and parking layout).

In order to ensure the effective implementation of the above car parking rates it is recommended that the following measures are implemented:

- introduction of a resident car parking scheme (details to be confirmed)
- introduction of time restricted on-street car parking in the vicinity of the railway station to discourage commuter car parking as well as at strategic locations within the study area
- provision of appropriate end of trip bicycle facilities (see Section 6).

4.4 Resident Parking Scheme

As detailed above it is recommended that a resident parking scheme be implemented to manage future on-street car parking demands in the vicinity of the development sites. Eligibility for the resident parking scheme would be limited to existing residents of the precinct and would not be available to residents of the rezoned lands. Typically, resident parking schemes are only available to residents of single dwelling properties with access to one or less off-street car parking spaces. If this were to be implemented, existing dwellings with access to two or more off-street spaces would not be eligible for the scheme.

The details of any future resident parking scheme would need to be determined as part of a detailed parking study for the area. The study would identify the following:

- Eligibility criteria for resident parking permits
- Extent of the scheme
- Complementary car parking restrictions.

The resident parking scheme should be implemented prior to resident occupation of the rezoned lands.