

To: Southern Regional Planning Panel

Subject: PPSSTH-252 – DA23/1070 (PAN-318835) – Matters Required to Finalise Determination – 1-5 Rainbow Road, Mittagong

Date: 22/08/2024

Council has considered the Panel's request for additional information from the determination briefing on Tuesday 13 August 2024 in relation to the following to enable a fully informed determination of the subject development application.

- **A letter from Council (or appropriate water authority) to confirm adequate wastewater servicing arrangements can be provided to the site within a reasonable time frame. It is noted that a condition is recommended requiring evidence of adequate wastewater services prior to construction commencing.**

Comment: Please refer to the attached letter from Council's Manager Assets.

- **Close out of concerns raised by Council's Heritage advisor.**

Comment: Following the briefing, further discussion with Council's Heritage Advisor was held to seek further clarification on their comments. The following response has been provided:

'Following our phone discussion, my previous comments in the first DA referral still stand unresolved, save for the protection and management of the aquifer.'

As hydrological and geotechnical assessments and considerations are beyond my area of expertise, I am standing on the shoulders of the hydrological and geotechnical consultants and their assessment reports, which demonstrate that, subject to the implementation of the recommendations therein, the proposed development would not adversely affect the subterranean aquifer of the heritage item.

Distilling the previous heritage comments, the remaining concerns are the visual impacts from the loss of established vegetation that frames the heritage item and offers filtered views to the adjoining urban environment.

The loss of the established treed canopy on the subject site would denude the density of the existing vegetation canopy (both treed and understorey) which would increase the visibility of the three storey buildings. Currently, the heritage item sits within a low density context, with the building stock at the periphery of such a low scale and density that it does not visually dominate the backdrop and curtilage. Consequently, the scale of the proposed built form would visually impact on the semi-rural character of the heritage item, particularly when viewing and appreciating the heritage item from within

the heritage listed site itself and facing outwards. The imposing scale is partially mitigated by the proposed setbacks, but the denuded landscaped buffer along the boundary would essentially mean the built form would become visually prominent and have a deleterious impact on the qualities of the setting of the heritage item, which in my opinion, forms part of the significance of the heritage item.

You mentioned that the Applicant is now proposing to use advanced plantings along the side boundary with selected species that have a faster growth rate. The question which must be asked here is 'what is the significance of the vegetation?'. I do not consider the trees on the subject site to possess heritage significance in and of themselves, rather the significance and importance of the vegetation is imbued in the cumulative canopy that they contribute to the landscaped backdrop to the heritage item, which would afford obscured filtered views to the proposed built form with an instantaneous benefit, supplemented by the proposed additional landscaping.

This then raises the question of the impact of removal of the vegetation. Could the significance be transferred / reinstated if the trees were removed and replanted? The answer is yes it could, but it would be a delayed reinstatement / transfer as it would not be achieved until the replanting reached maturity.

If the RPP is going to support the proposed development, I would strongly encourage that suitable conditions of consent are imposed requiring super advanced specimens of trees and shrubs to be planted on the boundary to substantially reduce the delay in re-establishing a dense canopy on the boundary to the heritage item.'

In response to the updated comments from Council's Heritage Advisor, it is noted that the outstanding concern relates to the impact of proposed vegetation removal along the eastern boundary on the adjoining heritage item. The concerns are appreciated; however, the site and wider area is undergoing transition and a degree of impact on vegetation is expected. It is further noted that most of the vegetation on the eastern boundary of the subject site has been identified as having low to medium retention value.

Although the vegetation contributes to an established treed canopy on the site, the vegetation is in relatively poor health, with the Arboricultural Report identifying most of the trees on the eastern boundary having "poor" or "fair" health with some trees being identified as a "hazard".

The proposed replacement planting will satisfy the preferred development outcomes for the Mittagong Medium Density Precinct by providing a landscape design that will mitigate the visual impact of the buildings long-term. The advanced species and growth-rate of the proposed planting will ensure the significance of the adjoining heritage item will be maintained. Suitable conditions have been included in the draft conditions to address this.

As such, no change is required to the recommended conditions of consent.

- **A revised set of conditions that include the following:**
 - **An amended Condition 93(a) to specify the number of housing units being provided is 40 and not 47.**
 - **New conditions that:**
 - **set out the legal obligation for Affordable Housing and requiring a Restriction as to User to be created under the Conveyancing Act 1919 that burdens the developed lot to be used for the purposes of “affordable housing” as defined in the State Environmental Planning Policy (Housing) 2021 for a period of at least 15 years commencing on the day the OC is issued.**
 - **Require a plan/s that notates/identifies the location of the 40 apartments proposed to be used as affordable housing.**
 - **Require evidence of wastewater capacity prior to the issue of relevant CC.**

Comment: Please refer to the attached revised set of draft conditions.

Note Conditions 31, 32 and 94 have been inserted and Condition 96 (formerly Condition 93) has been amended.

31. Affordable Housing Plan

The applicant shall submit a plan/s that notates / identifies the location of the 40 apartments proposed to be used as affordable housing to Council’s Director of Communities and Place or their delegate for approval prior to the issue of a Construction Certificate.

Reason: *To ensure ongoing compliance.*

32. Sewerage Infrastructure

No Construction Certificate shall be issued unless the appointed Principal Certifier has received written certification from Wingecarribee Shire Council’s Water & Sewer Services that the existing Mittagong Sewage Treatment Plant (STP) and associated infrastructure have:

- (a) sufficient hydraulic capacity to transfer, accommodate and treat the additional wastewater load generated by the development, and/or
- (a) been upgraded and commissioned to treat additional wastewater load generated by the development.

Reason: *To ensure wastewater capacity and that the design and operation of the sewerage infrastructure is undertaken in a way that minimises the risk of sewage overflows.*

94. Restriction as to User – SEPP (Housing) 2021 – Affordable Housing

Following the commencement of an Occupation Certificate being issued, the affordable housing component of the residential development is to be used for affordable housing

for a period of at least 15 years and be managed by a registered community housing provider.

A restriction as to user shall be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the *Conveyancing Act 1919*.

Council shall be nominated as the authority empowered to release vary or modify the Restriction. The restriction as to user shall be provided for Council signature, and shall be registered prior to the issue of the Occupation Certificate.

Reason: *To ensure compliance with State Environmental Planning Policy (Housing) 2021.*

96. Compliance with SEPP (Housing) 2021

The affordable housing component of the approved development (total of 50 apartment units) is required to comply with the following requirements pursuant to SEPP (Housing SEPP) –

(a) The household:

- i. has a gross income within the following ranges of percentages of the median household income for Greater Sydney or the Rest of NSW—
 - a. very low income household—less than 50%,
 - b. low income household—50–less than 80%,
 - c. moderate income household—80–120%, and
- ii. pays no more than 30% of the gross income in rent, or

(b) the household –

- i. is eligible to occupy rental accommodation under the National Rental Affordability Scheme, and
- ii. pays no more rent than the rent that would be charged if the household were to occupy rental accommodation under the Scheme.

(c) For at least 15 years from the date of the issue of the occupation certificate:

- i. the affordable housing component of the residential development (total of 40 apartment units) will be used for affordable housing, and
- ii. the affordable housing component will be managed by a registered community housing provider.



Andre Vernez
Senior Development Assessment Planner
Date: 22 August 2024

Attachments

- Letter prepared by Council's Manager Assets (dated 22/08/2024) in relation to the Mittagong Sewage Treatment Plant.
- Revised Draft Conditions.