

D21/65387
DA234/2018(1)



8 October 2021

Planning Panel Secretariat
Western Regional Planning Panel

Dear Sir/Madam

COUNCIL SUBMISSION

**DEVELOPMENT APPLICATION DA 234/2018(1) – 129-133 SALE STREET (CALDWELL HOUSE)
REFERENCE: PPSWES-40**

Reference is made to the above described development application currently before the Western Regional Planning Panel, and the Independent Planning and Assessment Report provided by the Department of Planning, Infrastructure and Environment (DPIE) dated February 2021 in relation to this matter.

It is understood that DPIE has requested the Planning Panel to:

- 1 Reconsider the Application having regard to Clause 12 of State Environmental Planning Policy 55 – Remediation of Land (SEPP 55) and the Independent Assessment Report.
- 2 Consider the revised draft conditions which the Independent Assessment Report indicates as having been agreed to by Health Infrastructure NSW.

Please be advised that Council staff have carried out a review of the Independent Planning and Assessment Report provided by DPIE, and that this matter has been further considered by Council at the Planning & Development Committee meeting held on 5 October 2021. Council respectively disagrees with the analysis of the works as being Category 1 Remediation works and the characterisation of the development as Category 1 remediation works.

The Independent Assessment Report asserts that the works proposed in the application fall within clause 9(e)(iv) of SEPP 55 to the effect that they are works to be carried out in an area to which there is classification of environment protection under Orange Local Environmental Plan (OLEP). The report identifies that that Clause 7.6 of OLEP provides that before determining a development application for development on land which is identified "groundwater vulnerability" on the Groundwater Vulnerability Map, the consent authority must consider:

- 1 Whether the development is likely to cause any groundwater contamination or have any adverse effect on groundwater dependent ecosystems; and
- 2 The cumulative impact of the development on groundwater.

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The Independent Assessment Report further asserts that the identification of groundwater vulnerability is the classification of the area as environment protection under OLEP. It is as a consequence of that determination that the independent Assessment Report concludes that the consent authority must not refuse development consent because the development is Category 1 remediation works and it could not be satisfied that there would be a more significant risk of harm posed by the remediation of the land than there would be from the use of the land in the absence of the work for any purpose for which the land may lawfully be used. It is Council's view that the identification of groundwater vulnerability in OLEP is not a classification of an area as environment protection, and hence the provisions of Clause 12 of the SEPP do not apply to the subject development.

Council is also of the view that the correct characterisation of the development is "demolition of buildings" and not "Category 1 Remediation" as alluded to in the independent report. It is also important to note that Council did not recommend the refusal of the application; rather the recommendation to the Western Regional Planning Panel was approval to remove some buildings and the required retention of the more significant heritage buildings on the site.

With the contamination matters aside, the basis of the assessment of the development proposal remains the merit of the proposal to demolish a heritage item within the City of Orange, and the Panel supported the original Council recommendation.

In summary:

- 1 It is Council's opinion that the remediation work is not to be undertaken in an area or zone which is classified as environment protection;
- 2 The remediation work is not by definition under SEPP 55 Category 1 remediation work;
- 3 By correct characterisation of the development, the work is demolition, not Category 1 remediation work;
- 4 Clause 12 of the SEPP does not apply to the development
- 5 The assessment is not constrained from refusal on the basis that it is asserted in the Independent Assessment Report that Clause 12 of the SEPP governs the development;
- 6 Having undertaken that aspect of the requested reconsideration, it is open for the Panel to consider the remainder of the assessment report.

Council wishes to reaffirm its position that the buildings previously identified in Council's assessments as having significant cultural and architectural heritage value, are of such significance to the City that they should not be demolished.

Should you wish to discuss the matter or clarify any aspect of the above, please contact me on (02) 6393 8292 or mhodes@orange.nsw.gov.au.

Yours faithfully



Mark Hodges

DIRECTOR DEVELOPMENT SERVICES