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MEMORANDUM

DATE: 29 July 2020
TO: Northern Beaches Local Planning Panel (NBLPP)
CC: Peter Robinson, Executive Manager
FROM: Geoff Goodyer, town planning consultant, Symons Goodyer Pty Ltd (assessment officer)
SUBJECT: 49 Forest Way, Frenchs Forest
REFERENCE: DA 2020/0393

Dear Panel Members,

Firstly, my apologies for the late arrival of this memo. I had hoped to tie up all queries in a single memo but I am still awaiting advice from Council's Landscape Officer. In the meantime, this memo addresses other queries.

1. Future road widening

During the briefing of Panel members, there were queries regarding road widening on Adams Street and the implications for the proposed development.

Enquiries have been made with Council's Traffic Engineer in this regard. The road widening is associated with future works by the RMS to upgrade the Forest Way / Adams Street intersection. No plans of these works are available. However, the works would include the widening of the carriageway of Adams Street by 1.6m.

The setback of the carriageway of Adams Street from the property boundary of 49 Forest Way ranges from approximately 5.0m to 6.5m, so there will still be approximately 3.4m – 4.9m between the carriageway and the property following the proposed road widening. I have marked up a survey to show the area in question:



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As can be seen from the diagram above, the road widening will not require the dedication of any land or the reduction of any landscaping on the subject site.

However, the road widening will have an impact in terms of the proposed driveway crossing from the subject site to Adams Street, as the proposed road works may change the level of the Adams Street carriageway. To address this situation Council's Traffic Engineer has recommended the following additional condition:

Driveway Levels.

The applicant is to prepare Civil Drawings demonstrating a tolerance of 300mm up and down from the current road alignment levels leading to the boundary. The tolerance should not impact the access to the site via the driveway.

The plans are to be submitted to and approved by Council prior to the release of the Construction Certificate.

Reason: To ensure any future adjustments to the road reserve will not impede on access to the site.

When I queried if this condition was practical, Council's Traffic Engineer advised:

"Based on a future 4.0m verge (approximately) this is practical.

The applicant will need to provide 3 plans. One showing no change in the grades. One with a +300mm level and the third with a -300mm level.

This will enable the applicant to run a vertical clearance swept path over the 3 scenarios to ensure vehicles will be able to enter the site under any circumstance."

I am satisfied that this condition is practical and appropriate and will include it in an updated set of conditions for the Panel's consideration.

2. Consolidation of conditions relating to footpaths

During the briefing of Panel members, queries were raised as to whether the conditions relating to the construction of footpaths (5, 12, 38 and 65) could be rationalised or consolidated.

I have reviewed those conditions and recommend that they not be consolidated because they seek to achieve different things at different points in the development process:

- Condition 5 requires a bond for the Adams Street footpath and is in the "Fees / Charges / Contributions" section of the conditions.
- Condition 12 requires engineering plans for the footpath and is in the "Conditions to be satisfied prior to the issue of the Construction Certificate" section of the conditions.
- Condition 38 requires footpath construction to be carried out in a certain manner and ensures Council inspects the footpath during construction. It is in the "Conditions to be complied with during demolition and building works" section.



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- Condition 65 seeks to ensure that the footpath has been constructed to Council's satisfaction. It is in the "Conditions which must be complied with prior to the issue of the Occupation Certificate" section.

Consolidating the conditions would not fit in with the structure of the document. It's a bit unwieldy but, in my opinion, the conditions as a whole group issues into the various sequential steps and "hold points" (ie: CC, during construction, OC, ongoing) and make sense.

3. Submission of engineering plans (footpaths and bus stops) – Condition 12

During the briefing of Panel members, concern was raised that draft Condition 12 included requirements for footpaths and upgrading of the adjacent bus stops that was inconsistent with other conditions.

I have made enquiries with Council's Traffic Engineer in this regard. I have been advised that the existing footpaths immediately in front of the site on Forest Way and on the opposite side of Forest Way that provide access from the site to the nearest bus stops are not currently of a suitable standard and present trip hazards and provide insufficient clear width to satisfy the requirements of the Disability Discrimination Act 1992 and SEPP (Housing for Seniors or People with a Disability) 2004.

Draft Condition 12 seeks to address this situation by requiring upgrade to those footpaths and bus stops. However, in making these enquiries the opportunity has been taken to clarify the requirements of the condition. The following is proposed:

Submission of Engineering Plans

The submission is to include four (4) copies of Civil Engineering plans for the design of:

- *Upgraded footpaths providing access to the nearest bus stops (immediately in front of the site and directly opposite the site in Forest Way) which are compliant with grades specified under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and crossfalls specified in Council's Engineering Specifications;*
- *Upgraded footpaths providing access to the nearest bus stops (immediately in front of the site and directly opposite the site in Forest Way) to provide a minimum 1.5m clear width where practicable (clear width refers to available width between obstructions); and*
- *Upgrade of the designated Bus Stops immediately in front of the site and directly opposite the site in Forest Way to be compliant with the requirements of the Disability Discrimination Act 1992.*

These are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Section 138 and/or 139 applications are to be submitted to Council for Local Traffic Committee approval.



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Reason: To improve safety and accessibility for seniors and the mobility impaired, ensuring the facilities are in accordance with specifications required by the appropriate authorities.

4. A footpath to Warringah Road? (Condition 38)

Draft condition 38 includes a requirement to construct a footpath to connect to Warringah Road. This is an error and it should read Forest Way. I will update draft Condition 38 and provide the Panel with a consolidated set of updated conditions for consideration.

5. Bin storage area and inconsistency in plans

During the briefing of Panel members, a query was raised regarding the location of a bin storage facility at the Forest Way frontage of the site. This is shown on the Landscape Plans (drawings L501.1(C) and L502.1(C)).

This is inconsistent with the architectural plans that now form the application under consideration by the Panel. This situation has arisen because the architectural plans were amended and submitted on 18 May 2020 in response to concerns raised by Council's technical officers. One of those changes related to the location of bin storage and arrangements for presentation of the bins on the street on collection days. The landscape plans were not updated. As a result, the bin storage area on Forest Way was deleted from the architectural plans but remains on the landscape plans.

Draft condition 1 requires that the development be carried out "in compliance with" the architectural plans and "generally in accordance with" the landscape plans. The implication is that the condition nominates that the architectural plans take precedence to the extent of any inconsistency.

Consequently, no change to the condition is recommended and the Panel may be satisfied that adopting the recommend conditions will achieve the desired outcome in this regard. If the Panel desires greater certainty it is possible to defer the application for the submission of amended landscape plans or for the imposition of a Deferred Commencement Condition in this regard; however, in my opinion this is unnecessary.

6. Impact of a footpath in Adams Street on existing trees

Council's Traffic Engineer has recommended that a condition of consent be imposed requiring the construction of a footpath in Adams Street in front of the subject site.

There is sufficient area between the existing trees and the property boundary for the construction of such a footpath. However, concern has been raised regarding the impact of such a footpath on the health of the existing trees.

I am currently awaiting advice from Council's Landscape Officer in this regard.



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7. Are the requirements for footpaths and bus stop improvements reasonable?

The draft conditions seek to require the applicant to provide a footpath in Adams Street for the length of the site, as well as upgrade footpaths and bus stops in front of the site and on the opposite side of the site where they are currently non-compliant with the relevant requirements.

The applicant has made a submission that these conditions are unreasonable and don't satisfy the relevant *Newbury* considerations (*Newbury District Council v Secretary of State for the Environment* [1981] AC 578). Those considerations are that the condition must relate to the development, it must be for a planning purpose and it must be reasonable.

In this regard, the draft conditions are considered to be reasonable. There is a clear nexus between the intensification of the development on the site and the particular needs of the future residents to the proposed footpaths and the bus stop upgrades, noting that the development is designed to be occupied by seniors or people with a disability. The provision of appropriate pedestrian access for the needs of those future residents is for a planning purpose. The conditions are not considered to be unreasonable in the *Wednesbury* sense (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1947] 2 All ER 680; 1 KB 223).

Council's Traffic Engineer also recommended a condition requiring the widening of Adams Street by 1.6m for a length of 45m in front of the site. For the reasons detailed in the assessment report such a condition does not, in my opinion, satisfy the *Newbury* tests and is not included in the recommendation provided to the Panel.

8. A double booking

I find myself somewhat double-booked this afternoon, being the assessing officer for a matter being considered by the Sydney North Planning Panel at the same time as your Panel meeting. One advantage of having "virtual" meetings is that I can be in two places at once and I will be logged in to your meeting and available to answer queries. However, I may need to jump from one meeting to the other on occasions and, for that, I apologise in advance.

A handwritten signature in black ink that reads "Geoff Goodyer".

Geoff Goodyer
Symons Goodyer Pty Ltd