

Memo

Development Assessment

To: Development Determination Panel (DDP)

Cc: Adam Richardson
Manager, Development Assessment

From: Stephanie Gelder
Planner

Date: 21 November 2024

Subject: Item 3.1 - DA2024/1165 - 31 Alexandra Crescent BAYVIEW

Record Number: 2024/847914

Dear Panel,

Please see below a list of additional documentation provided by the Applicant:

1. Additional Information Uploaded to NSW Planning Portal on 20 November 2024

On 20 November 2024, the Applicant (Cohesive Planning) uploaded to the NSW Planning Portal the following unrequested information:

- Letter prepared by Cohesive Planning dated 20 November 2024;
- Amended Landscape Plans prepared by Edwina Stuart Landscape Design dated 13 November 2024;
- Amended Survey Plan prepared by Surv3D Pty Ltd dated 17 October 2024; and
- Amended Arborist Report prepared by Advanced Arborist Reporting dated 13 November 2024.

The Applicant has outlined in the Letter prepared by Cohesive Planning that the amended documentation is in response to the Natural Environment Referral Response – Biodiversity and Landscape Referral Response on Council's website.

As per the Request for Further Information sent to the Applicant on 30 September 2024 the following is noted:

*Council will offer **one** opportunity to provide feedback on your proposed information/amendments before they are permitted to be uploaded on the Portal. Please ensure that the proposed information/amendments submitted on the Portal is a genuine attempt to resolve the issues as Council will not seek any further information/amendments and once received, Council will proceed to assess and determine the application on the information without further consultation.*

Council reserves its rights under the Environmental Planning and Assessment Regulations clause 37 to not accept any information/amendment if it is not considered

to be a genuine attempt to resolve the issues. In which case Council will inform you that the changes have not been accepted and the application will proceed to be determined.

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This process has been established to ensure an efficient and responsible level of service which meets the requirements of the Department of Planning and Environment's 23A Guidelines on withdrawal of Development Applications 2023, Ministerial Orders Statement of Expectations 2021 and the Development Assessment Best Practice Guide 2017.

The information uploaded to the NSW Planning Portal on 20 November 2024 was not requested by Council and as such Council is not accepting the additional information/amendments, pursuant to the provisions of Clause 37 of the *Environmental Planning and Assessment Regulation 2021*. Whilst the information attempts to respond to the issues raised in the Bushland and Biodiversity and Landscape referrals that are published online, no invitation for a response to those issues has been made.

It should be noted the applicant has had the opportunity to resolve the issues identified in the Request for Further Information (RFI) and additional information was uploaded on the NSW Planning Portal on 23 October 2024 and 1 November 2024. It should also be noted that the applicant did not seek feedback from Council prior to uploading the amended documentation to the NSW Planning Portal on either of the dates outlined above.

2. Additional Information emailed on 22 November 2024

On 22 November 2024, the Applicant (Cohesive Planning) provided email correspondence that included the documentation outlined above (Amended Landscape Plans, Amended Survey Plan, and Amended Arborist Report), in addition to the following:

- Letter prepared by Cohesive Planning dated 22 November 2024.

The Letter prepared by Cohesive Planning provides a response to the following issues:

- ***Building height/building envelope***

Comment:

The applicant states that the proposed development can be amended to comply with the height of buildings or could reduce the height and provide a Clause 4.6 if required. It is considered that the height of buildings and building envelope issues that were initially raised were not addressed in the amended documentation submitted during the assessment period, and no further opportunity should be provided to further amend documentation.

- ***BDAR***

Comment:

The applicant has provided a response to the BDAR, however as outlined above an opportunity has been provided, and no further consideration should

be made under this application.

- ***Landscaped Areas***

Comment:

The applicant has not made any changes to the non-compliant landscaped area proposed, and as detailed in the Assessment Report the proposed landscaped area is not supportable.

- ***Tree Removal***

Comment:

The inconsistency with the Survey and Arborist report was raised by Council's Bushland and Biodiversity Officer and Council's Landscape Officer in the RFI sent to the applicant on 30 September 2024. The applicant did not submit an amended Arborist Report as requested with the amended documentation during the assessment of the application.

- ***Excavation/earthworks***

Comment:

The applicant incorrectly refers to Clause 9.2 of the PLEP 2014, however this should be Clause 7.2 Earthworks of PLEP 2014. Notwithstanding, the proposed excavation is not supportable per the reasons set out in the Assessment Report.

- ***Zone objectives***

Comment:

It is considered that the proposal is not consistent with the C4 Environmental Living zone objectives as outlined in the Assessment Report. The applicant's response that further opportunity to reduce the height, reduce the manoeuvring area, and possible trimming of the floorplate and basement area should have been explored when the issues were raised in the RFI sent on 20 September 2024.

- ***BASIX***

Comment:

The amended architectural plans were not accompanied by an amended BASIX Certificate as detailed in the Assessment Report.

Recommendation

Whilst unsolicited amended documentation has been provided in response to the Natural Environment Referral Response – Biodiversity and Landscape Referral Response, there are a number of issues as detailed within the Assessment Report that are not simply overcome by the amended documentation.

Furthermore, the response from the applicant on 22 November 2024 also does clearly demonstrate how all the issues raised are quickly resolved, and as such it is recommended that (a) the unsolicited information not be accepted by Council pursuant to Clause 37 of the *Environmental Planning and Assessment Regulation 2021* and (b)

there are no changes required to the Assessment Report and that the application be refused as recommended.