



SUPPLEMENTARY REPORT

Application No.	DA/2023/0022
Address	350 Illawarra Road MARRICKVILLE
Proposal	Retention of the building façade and construction of a five storey shop top housing development comprising one commercial tenancy and five residential units
Date of Lodgement	17 January 2023
Applicant	Benson McCormack Pty Ltd
Owner	Mr Van L Tran
Number of Submissions	Initial: One
Value of works	\$3,511,662
Reason for determination at Planning Panel	SEPP 65
Main Issues	Contamination; Site Isolation
Recommendation (amended)	Approved with Conditions
Attachment A	Recommended conditions of consent

SUMMARY

Subsequent to the assessment report being finalised and published for the Local Planning Panel Agenda, the applicant submitted a Detailed Site Investigation (DSI) on 7 February 2024 seeking to address the reasons for refusal identified in Attachment A of the assessment report for Item 5 of the agenda.

1. Background

At the request of Council, the applicant supplied a Preliminary Site Investigation which concluded that the site was likely contaminated and recommended a DSI be prepared. A DSI was not prepared or submitted during the assessment process and therefore insufficient information was provided to Council to demonstrate that the land could be made suitable for residential purposes contrary to Section 4.6(1) & (2) of *State Environmental Planning Policy (Resilience and Hazards) 2021* and Part 2.24 of Marrickville Development Control Plan 2011.

As such, the assessment report prepared for the Inner West Local Planning Panel meeting on 13 February 2024, recommends refusal of the application. The reasons for refusal are outlined below;

1. The proposed development is inconsistent with, and has not demonstrated compliance with the *State Environmental Planning Policy (Resilience and Hazards) 2021*, *Inner West Local Environmental Plan 2022* and Marrickville Development Control Plan 2011 pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, including:
 - a. Section 4.6(1) & (2) of Resilience and Hazards SEPP 2021– Contamination and remediation to be considered in determining development application, as the proposal fails demonstrate that the site can be suitably used for residential purposes;

- b. Section 1.2(2)(h) and (i) - Aims of Plan of *Inner West Local Environmental Plan 2022* in that the proposal does not prevent adverse environmental impacts on the local character of the Inner West, including cumulative impacts; and
 - c. Part 2.24 – Contaminated Land of Marrickville Development Control Plan 2011, in that the proposal fails demonstrate that the site can be suitably used for residential purposes in accordance with O1, O2, and O3 and C1.
2. The proposal has not demonstrated that the site is suitable for the development pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
3. The proposal has not demonstrated it is in the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.

2. Assessment

The applicant has now submitted a Detailed Site Investigation Report prepared by Geo-Environmental Engineering dated 7 February 2024 which concluded:

Based on observations made during the field investigations, the sampling and analysis program conducted at the site, the proposed land-use and with respect to relevant statutory guidelines, GEE concludes that the site is suitable for the proposed development and land-uses as described in the Development Application. In this regard, there is no requirement for a Remedial Action Plan or further investigations.

The report has been peer reviewed by Councils Environmental Health officer who supports the above findings subject to the imposition of conditions on any consent granted regarding the disposal of soil and imported fill materials;

39A. Imported Fill Materials

All imported fill on the site shall be validated as Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM), in accordance with NSW Environment Protection Authority guidelines, 'Consultants Reporting on Contaminated Sites' (August 2011) to ensure the imported fill is suitable for the proposed land use.

All fill imported onto the site shall be validated by either one or both of the following methods:

- a. *Imported fill be accompanied by documentation from the supplier which certifies that the material is not contaminated based upon analyses of the material for the known past history of the site where the material is obtained; and/or*
- b. *Sampling and analysis of the fill material be conducted in accordance with NSW Environment Protection Authority's Sampling Design Guidelines (September 1995).*

43A. Contamination – Disposal of Soil

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a validation report confirming that all off site disposal of soil has been classified, removed and disposed of in accordance with the NSW DECC Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014), Protection of the Environment Operations (Waste) Regulation 2014 and the Protection of the Environmental Operations Act 1997.

On the basis of the above, the consent authority can be satisfied that the land will be suitable for the proposed development and the submission of the new documentation adequately addresses the reasons for refusal identified previously which relate solely to the concerns of contamination on the subject site.

3. Conclusion and Recommendation

It is recommended that the Panel **APPROVE** DA/2023/0022 for retention of the building façade and construction of a five storey shop top housing development comprising one commercial tenancy and five residential units at 350 Illawarra Road MARRICKVILLE, subject to the recommended conditions identified in Attachment B of the Assessment Report and the insertion of the additional 2 revised conditions below.

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