

# **Attachment 1 to** Item 2.1.1.

# **Assessment Report and Conditions**

Date of meeting: 21 March 2024 Location: By audio-visual link Time: 10:00 A.M.



# ATTACHMENT 1: DRAFT CONDITIONS OF CONSENT

# Recommendation

That development application DA0350/2023 at Lot 1, DP 556829, No. 361 George Street, Windsor for the construction of a cenotaph at McQuade Park be approved, subject to the following conditions:

# **General Conditions**

# 1. Approved Plans and Supporting Documentation

The development must be carried out in accordance with the approved plans and supporting documentation listed below which have been endorsed by Council's approved stamp, except where amended in red on the plans and/or amended by other conditions of consent:

# a) Plans Reference:

Job No.	Drawing Description	Prepared by	Revision	Sheet	Date
Nastasi 01	Site Plan	Nastasi &	Α	2	16.12.16
		Associates			
Nastasi 01	Site Plan	Nastasi &	Α	3	16.12.16
		Associates			
Nastasi 01	Floor Plan	Nastasi &	Α	4	16.12.16
		Associates			
Nastasi 01	Section A-A	Nastasi &	Α	5	16.12.16
	Section D-D	Associates			
Nastasi 01	Section B-B	Nastasi &	Α	5	16.12.16
	Section C-C	Associates			
9894	Structural Engineering	Nastasi &	В	Sheet 1/2	2.6.17
	Plan - S01.00 Issue B	Associates			
9894	Structural Engineering	Nastasi &	В	Sheet 2/2	2.6.17
	Plan - S02.00 Issue B	Associates			

### b) Document Reference:

Document Title	Reference	Prepared By	Date
Statement of	-	-	March 2012
Environmental Effects			
Waste Management Plan	-	-	March 2012
Development Application	-	Windsor and District RSL sub-	-
Report		Branch	
Historical & Aboriginal	-	Dominic Steele Consulting	28 November
Archaeological		Archaeology	2017
Assessment & Statement			
of Heritage Impact			

No works, other than those approved (including raising or lowering of ground levels on the site, or construction of retaining walls on any property boundary) are permitted by this consent.

Note: Details of the development shown in the approved plans and documents referenced are altered in the manner indicated by:

- (i) any amendments made by Council on the approved plans or documents;
- (ii) any notes, markings, or stamps on approved plans or documents; and

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(iii) any conditions contained in this consent.

# 2. Works Must Not Commence Until a Construction Certificate is Issued

Construction or preparatory work (including earthworks or tree and/or vegetation removal) must not commence until:

- a) a Construction Certificate is obtained from either Council or an Accredited Certifier;
- b) a Principal Certifier is appointed; and
- c) a Notice of Commencement is lodged with Council.

Note: If the Construction Certificate is issued by an Accredited Certifier that is not Council it will be necessary to lodge the Construction Certificate and other approved documents with Council within two days of such approval (a registration fee is payable upon lodgement).

# 3. Appointment of a Principal Certifier

No work shall commence until:

- a) A Principal Certifier is appointed for the building/engineering works and the following details relating to the carrying out of the works have been provided:
  - (i) name and licence number of the builder/contractor undertaking the construction works;
  - (ii) name and permit number of the owner-builder (if relevant);
- b) The Principal Certifier has:
  - (i) provided a copy of the notice of its determination to the consent authority, and to Council (within two days after the date of the determination);
  - (ii) notified the person having benefit of the consent of any critical stage inspections and other inspections that it requires to be carried out in relation to the approved work;
  - (iii) notified Council of its appointment (not less than two days before commencement of building work);
- c) The person having benefit of the consent (if not carrying out work as an owner-builder) has:
  - (i) appointed a principal contractor who must hold a 'contractor licence' if any residential building work is involved;
  - (ii) notified the Principal Certifier of the appointment of the principal contractor;
  - (iii) notified the principal contractor of any critical stage inspections or any other inspections that are required to be carried out in relation to the approved work; and
- d) At least two days' notice are to be provided to Council of the date on which it is proposed to commence work associated with this development consent.

#### 4. Integrated Development – General Terms of Approval

The general terms of approval from the following Authorities, as referred to in Section 4.47(2) of the Environmental Planning and Assessment Act 1979, and referenced below, are attached and form part of the consent conditions for this approval:

a. Heritage NSW - The General Terms of Approval, Reference DOC18/31257 and dated 14/02/2018 are attached in Attachment B and form part of this consent.



#### 5. Occupation Certificate Required Prior to The Use Of The Building

The building must not be occupied or used prior to the issuing of an Occupation Certificate by the Principal Certifier. Where a partial Occupation Certificate has been issued, only that part of the building to which the Certificate applies may be occupied or used.

A copy of any Occupation Certificate must be submitted to Council within two days of its issue.

### 6. Prescribed Conditions - Compliance with National Construction Code

All building works must be carried out in accordance with the requirements of the National Construction Code (Building Code of Australia).

### 7. Archaeology - Discovered During Excavation

As required by the *Heritage Act 1977*, in the event that items, relics, historical cultural fabric and/or deposits are encountered/discovered where they are not expected, works must cease immediately and Council and the NSW Government's Heritage Council must be notified of the discovery.

In the event that archaeological resources are encountered, further archaeological work may be required before works can re-commence, including the statutory requirement under the Heritage Act 1977 to obtain the necessary approvals/permits from the Heritage Council.

Note: The Heritage Act 1977 imposes substantial penalty infringements and / or imprisonment for the unauthorised destruction of archaeological resources, regardless of whether or not such archaeological resources are known to exist on the site.

#### 8. Excavation - Aboriginal Relics

If any Aboriginal object (including evidence of habitation or remains) is discovered during the course of the work:

- a) all excavation or disturbance of the area must stop immediately in that area; and
- b) Heritage NSW must be advised of the discovery.

All necessary approvals from the Heritage NSW must be obtained and a copy provided to Council prior to works recommencing.

Note: If an Aboriginal object is discovered, an Aboriginal Heritage Impact Permit may be required under the National Parks and Wildlife Act 1974.

#### **Prior to the Issue of Construction Certificate**

The following conditions in this section of the consent must be complied with or addressed prior to the issue of any Construction Certificate. In many cases, the conditions require certain details to be included with or incorporated in the detailed plans and specifications which accompany the Construction Certificate.

The Accredited Certifier may require a Compliance Certificate to address particular matters below:

# 9. Flood Prone Land – Flood Compatible Construction

All structures must have flood compatible structural components up to and including the 100 year Average Recurrence Interval (ARI) flood level. The materials used in the construction must be consistent with any structural engineering certificate regarding the ability of the structure to withstand the forces of floodwater.

A written specification of the proposed materials to be used must be provided to the Accredited Certifier



prior to the issue of a Construction Certificate.

Note: Advice on suitability of materials for use on flood liable land can be found in the publication 'Reducing Vulnerability of Buildings to Flood Damage' (Chapter 4.3 - Construction Materials).

# 10. Flood Prone Land - Engineers Certification

The 100 year Average Recurrence Interval (ARI) flood level for this site is RL 17.3 metres AHD (Australian Height Datum).

An engineer's certificate must be provided deeming compliance with the following requirements during a 100 year ARI flood event:

- a. Debris: Damage to the proposed structure/s sustained in a flood will not generate debris capable of causing damage to downstream buildings or property
- b. Structural Soundness: Any part of the structure will be able to withstand the force of floodwaters (including lateral forces, buoyancy forces, unbalanced hydrostatic forces) and the impact of debris; and
- c. Foundations: The footing system must be structurally stable during flooding and must consider the soil properties when wet, possible erosion and scouring or liquefaction, subsidence or collapse due to saturation.

The Engineers Certificate must be submitted to the Accredited Certifier prior to issue of the Construction Certificate

# 11. Design Amendments Required

In order to satisfy relevant considerations as per Councils Parks Officer referral response, the design of the proposal must be amended as follows:

- a) The proposed cenotaph is to be positioned at 10m away from the lake. This is to be clearly detailed on the architectural plans.
- b) The proposed cenotaph is to be accessible for persons with a disability who may wish to participate in the memorial or commemorative services at the location.
- c) If the construction of the cenotaph interferes with the location of the existing pathway, the applicant must ensure the pathway is reconnected and reconstructed to enable a continuous path of travel for pathway users.
- d) The materials and finishes proposed for the cenotaph must be slip-resistant to ensure the safety of persons utilising the platform.
- e) The cenotaph must be constructed in such a manner as to allow the grass around it to be whipper snipped and maintained without damaging the monument itself. Details of the treatment proposed around the monument must be included on the plans lodged with the application for the Construction Certificate.
- f) A detailed external finishes and materials board for the monument and its immediate surrounds must be lodged with the application for the Construction Certificate.
- g) Native plants and vegetation must be planted around the cenotaph to soften the appearance of the structure as viewed within the park.

Details of the above design measures (a)to (g) are to be included on the architectural plans lodged with the application for the Construction Certificate.

### 12. External Materials – Approved Schedule of Finishes

The external colours and finishes of the structure must be generally in accordance with the approved schedule of finishes and materials.

Details must be submitted to the Accredited Certifier prior to the issue of the Construction Certificate.

#### 13. Erosion and Sediment Control Plan

Prior to the issue of the Construction Certificate, the applicant must submit to and obtain the Accredited Certifier approval of an Erosion and Sediment Control Plan (ESCP). The ESCP must show the location of site boundaries, adjoining roads, approximate grades, vegetation, site access, impervious areas, existing and proposed site drainage and a north point.

The ESCP must take into account the requirements of Landcom's publication 'Managing Urban Stormwater - Soils and Construction' (2004). The plan must show the following:

- a. Timing of works;
- b. nature and extent of earthworks, including the amount of any cut and fill;
- c. where applicable the diversion of runoff from upslope lands around the disturbed areas;
- d. location of all soil and other material stockpiles including topsoil storage;
- e. location and type of proposed erosion and sediment control measures:
- f. site rehabilitation proposals; and
- g. frequency and nature of maintenance program.

# **Prior to Any Works Commencing on Site**

# 14. Principal Certifier - Details

The applicant must advise Council of the name, address and contact number of the Principal Certifier, in accordance with Section 6.6(2) of the *Environmental Planning and Assessment Act 1979*.

#### 15. Toilet Facilities

Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet must:

- a) be a standard flushing toilet connected to a public sewer;
- b) be attached to an approved on-site effluent disposal system;
- c) be a temporary chemical closet that is regularly maintained; and
- d) appropriate facilities for the disposal of sanitary items are to be provided within the toilet.

# 16. Survey Certificate - Building to be Verified by a Registered Surveyor

In order to ensure compliance with approved plans, a Survey Certificate, prepared by a Registered Surveyor, including locating any easements affecting the subject land, is to be undertaken:

a) a set-out survey prior to the placement of any footings showing the proposed building and its relationship to the boundaries;

Progress surveys must be submitted to the Principal Certifier at the time of carrying out relevant progress inspections. Under no circumstances is work allowed to proceed should such survey information be unavailable or reveal discrepancies between the approved plans and the works as constructed.

#### 17. Notice of Commencement

No work shall commence until a notice of commencement has been provided to Council. This notice is to be provided not less than two days from the date on which it is proposed to commence work associated with this Development Consent. The notice must also contain:

- a) details of the appointment of a Principal Certifier (PCA) providing name, address and telephone number; and
- b) details of the name, address and licence details of the Builder.

# 18. Principal Certifier Site Sign

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- a) showing the name, address and telephone number of the Principal Certifier for the work;
- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
- c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

# 19. Construction Certificate - Required Prior to Commencement of Works

A Construction Certificate as specified in this consent is required prior to the commencement of work on the site.

# 20. Erosion and Sediment Control for Minor Development

Erosion and sediment control devices are to be installed and maintained until the site is fully stabilised in accordance with Hawkesbury Council's publication *Guidelines for Erosion and Sediment control on a building site (2017).* 

# **During Construction**

#### 21. Construction Hours

Clearing of land, running of machinery, excavation, and/or earthworks, building works and the delivery of building materials must be carried out between the following hours:

- a. between 7am and 6pm, Mondays to Fridays inclusive;
- b. between 8am and 4pm, Saturdays;
- c. no work on Sundays and public holidays; and
- d. works may be undertaken outside these hours where:
  - i. the delivery of vehicles, plant or materials is required outside these hours by the Police or other authorities;
  - ii. it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm; and
  - iii. a variation is approved in advance in writing by Council.

# 22. Site Management During Construction



The following requirements relating to site management apply during and immediately following construction:

- a) All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- b) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.
- c) Copies of receipts stating the following must be given to the Principal Certifier:
  - (i) the place to which waste materials were transported;
  - (ii) the name of the contractor transporting the materials; and
  - (iii) the quantity of materials transported off-site and recycled or disposed of.
- d) Any run-off and erosion control measures required must be maintained within their operating capacity until the completion of the works to prevent debris escaping from the site into drainage systems, waterways, adjoining properties and roads.
- e) During construction:
  - (i) all vehicles entering or leaving the site must have their loads covered;
  - (ii) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads; and
  - (iii) any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to the public.
- f) At the completion of the works, the work site must be left clear of waste and debris.

Note: In the event it is not possible to keep the footpath or road reserve clear during construction works written approval from Council must be obtained prior to any closing of the road reserve or footpath area. The closure must take place in accordance with Council's written approval. The area must be signposted and such signposting be maintained in a way that ensures public safety at all times.

#### 23. Tree Removal

No approval is expressed or implied for the removal of trees. No trees are to be removed without separate Council approval.

#### 24. Loading and Unloading During Construction

The following requirements relating to loading and unloading apply during construction:

- a) All loading and unloading associated with construction activity must be accommodated on site.
- b) If, during excavation, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.
- d) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate approval must be obtained from Council.



# 25. Critical Stage Inspections

Prior to the commencement of building work and at nominated stages during the construction of the building, a minimum of 48 hours' notice is required to be provided to allow the Principal Certifier to ensure that the critical stage inspections are undertaken.

Note: Critical stage inspections are required to be carried out in accordance with Clause 162A of the *Environmental Planning & Assessment Regulation 2000*.

# 26. Earthworks - General Requirements

All earthworks on site must comply with the following:

- a) topsoil must be stripped only from approved areas and must be stockpiled for re-use during site rehabilitation and landscaping;
- once the topsoil has been removed the natural batter must be suitably stepped, scarified or roughened to prevent slipping and the fill is to be keyed in to hold the toe of the fill batter in place;
- c) filling must comprise either uncontaminated Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM). Contamination certificates for all source material must be provided to the Principal Certifier prior to placing any fill on site;
- d) a ticketing system is to accompany any material being brought to the site. A register is to be kept on site to cross reference against the source records. An independent site auditor is to be engaged to undertake appropriate certification regarding the monitoring and validation of the fill material imported to the site as being sound, suitable for the proposed use and free of contamination:
- e) where batters exceed a ratio of three horizontal to one vertical, retaining walls, stoneflagging or terracing must be constructed;
- f) all fill within the site shall be placed in layers not exceeding 300mm thickness and compacted to achieve a minimum dry density ratio of 98% when tested in accordance with Australian Standard AS 1289 - 'Methods of testing soils for engineering purposes unless otherwise specified'; and
- g) all disturbed areas are to be stabilised/revegetated, using a minimum 300mm surface layer of topsoil, as soon as practicable after the completion of filling works.

Note: ENM is defined by the Excavated Natural Material Exemption - NSW Environment Protection Authority.

# 27. Approved Colours and Finishes

The development must be completed generally in accordance with the approved colours and finishes.

# **Prior to Issue of Occupation Certificate**

28. An Occupation Certificate must be obtained from the Principal Certifier prior to commencement of use.

# 29. Dilapidation Report - Completion of Works

On completion of the development the subject of this consent and prior to the issue of the Occupation Certificate, a final dilapidation report is to be prepared by an appropriately qualified person and is to be provided to the Principal Certifier and Council identifying:



- a. Whether any damage to surrounding properties and/or public infrastructure has occurred as a result of the development;
- b. the nature and extent of any damage caused to the adjoining property and/or public infrastructure as a result of the development;
- c. the nature and extent of works required to rectify any damage caused to the adjoining property and/or public infrastructure as a result of the proposed development;
- d. the nature and extent of works carried out to rectify any damage caused to the adjoining property and/or public infrastructure as a result of the development; and
- e. the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property and/or public infrastructure as a result of the development.

This report must reference the original dilapidation survey and reports that were required to be provided to the Principal Certifier in accordance with this consent.

The developer must bear the cost of carrying out works to restore all damage to adjoining buildings as a result of the carrying out of the development, and no occupation of the development must occur until damage caused as a result of the carrying out of the development is rectified. OC126 ~Change of Use – Tourist and

# 30. Infrastructure Repair at Completion of Works

Prior to the issue of any Occupation Certificate:

- a) all works in the road reserve must be fully completed; and
- b) any public infrastructure damaged as a result of the development must be repaired to the satisfaction of Council.

# **Operational Conditions**

# 31. Operational Details

The proposed development can only be used yearly for the following commemorative services:

- a. Anzac Day
- b. Boer War
- c. Korea Veterans
- d. Victory in the Pacific and Vietnam Veterans
- e. Battle for Australia
- f. Remembrance Day

# 32. Neighbourhood Amenity

The management must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood. In this regard, the management must be responsible for the control of noise and litter generated by patrons of the premises and must ensure that patrons leave the vicinity of the premises in an orderly manner. Signs must be placed in clearly visible positions within the premises requesting patrons upon leaving the premises

## 33. Graffiti Removal

The owner/lessee of the building must remove any graffiti which appears on the buildings, fences, signs and other surfaces of the property within 48 hours of its application in accordance with the environmental maintenance objectives of 'Crime Prevention Through Environmental Design'.

#### 34. No Illumination Permitted

The cenotaph structure must not be illuminated.



#### 35. Protection of the Environment

Any activity carried out in accordance with this approval shall not give rise to pollution such as odour, offensive noise or pollution of land and water as defined by the Protection of the Environment Operations Act 1997.

# **Advisory Notes (if applicable)**

# (i) Acid Sulfate Soils - Monitoring of Excavation During Works

All excavations are to be monitored to ensure that acid sulphate soils are not encountered during works. Signs that may indicate the presence of acid sulphate soils include:

- a) change in colour of the soil into grey and green tones;
- b) effervescence;
- c) the release of sulphur smelling gases such as sulphur dioxide or hydrogen sulphide; and
- d) lowering of the soil Ph by at least one unit.

Should any of the above indicators be present excavation work on the site is to stop and Council is to be notified to determine what action is required to be taken before work may commence.

# (ii) Site Contamination Discovered During Demolition or Construction

Should any new information come to light during demolition or construction works which has the potential to alter previous conclusions about contamination, Council must be immediately notified and works must cease. Works must not recommence on site until an agreed management strategy is developed in consultation with Council.

#### (iii) Dial Before You Dig

Prior to commencement of work, you are required to contact the free national community service 'Dial Before You Dig' on 1100 regarding the location of underground services in order to prevent injury, personal liability and even death. Enquiries should provide the property details and the nearest cross street/road.

# (iv) Requirements of 88B Instrument

The applicant must make themselves aware of any User Restriction, Easements and Covenants to this property and must comply with the requirements of any Section 88B Instrument relevant to the property in order to prevent the possibility of legal proceedings against them.

# (v) Works on Public Land - Public Liability Insurance

Any person or contractor undertaking works on public land must take out a Public Risk Insurance policy with a minimum cover of \$10 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent.

The policy is to note, and provide protection/full indemnification for Council, as an interested party. A copy of the policy must be submitted to Council prior to commencement of any works. The policy must be valid for the entire period that the works are being undertaken.

# (vi) Utilities and Services

Utilities, services and other infrastructure potentially affected by construction and operation must be identified prior to construction to determine requirements for access to, diversion, protection, and/or support.

Consultation with the relevant owner and/or provider of services that are likely to be affected by the







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Our Ref. DOC18/31257 Your Ref: DAD056/16

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#### SITE PROTECTION

Significant elements are to be adequately protected during the works from potential damage. Protection systems must ensure historic fabric is not damaged or removed.

#### **UNEXPECTED HISTORICAL ARCHAEOLOGICAL RELICS**

The Applicant must ensure that if unexpected archaeological deposits or relics not identified and considered in the supporting documents for this approval are discovered, work must cease in the affected area(s) and the Heritage Council of NSW must be notified. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

#### ABORIGINAL OBJECTS

Should any Aboriginal 'objects' be uncovered by the work, excavation or disturbance of the area is to stop immediately and the Office of Environment & Heritage is to be informed in accordance with Section 89A of the National Parks and Wildlife Act, 1974 (as amended). Works affecting Aboriginal 'objects' on the site must not continue until the Office of Environment and Heritage has been informed. Aboriginal 'objects' must be managed in accordance with the National Parks and Wildlife Act, 1974.

#### 7. COMPLIANCE

If requested, the Applicant and nominated Heritage Consultant may be required to participate in audits of Heritage Council approvals to confirm compliance with conditions of consent. Reason: To ensure completion of the works in accordance with the approved plans and to improve the approvals process through a better understanding of the implementation of conditions of approval.

#### **SECTION 60 APPLICATION**

An application under section 60 of the Heritage Act 1977 must be submitted to and approved by the Delegate of the Heritage Council of NSW prior to work commencing.

Your attention is drawn towards the powers of entry and inspection under s.148 of the Heritage Act 1977 for authorised persons. If entry and inspection are required, reasonable notice will be provided as per the Act. The owner could voluntarily agree to allow non-authorised persons, such as Heritage Division (Office of Environment and Heritage) staff who are acting in a supporting role to the authorised persons, to enter their property for the purpose of inspection. Owners may also voluntarily grant permission to take photograph, take samples or request records.

Reason: Section 148 of the Heritage Act 1977, allows people authorised by the Minister to enter and inspect, for the purposes of the Act, with respect to buildings, works, relics, moveable objects, places or items that is or contains an item of environmental heritage. Reasonable notice must be given for the inspection.

If you have any questions regarding the above matter please contact Lucy Hampton, Senior Heritage Operations Officer, at the Heritage Division, Office of Environment and Heritage, on 9873 8535 or lucy.hampton@environment.nsw.gov.au.

Yours sincerely

4/02/2018

# KATRINA STANKOWSKI

A/Senior Team Leader Regional Heritage Assessments, North Heritage Division Office of Environment and Heritage