



25 August 2015

Department of Planning and Environment
Major Project Assessments

Attention – Natasha Harris

Dear Natasha,

Re: 330 Church St, Parramatta – MP10_0171 MOD 8

I write on behalf of Jag Point Group Pty Limited who are the owners of the El-Phoenician Restaurant at 328 Church Street, Parramatta (**Site**).

It is noted that the Site is immediately adjacent to the southern boundary of 330 Church Street, Parramatta (**Meriton Land**), the land subject of 'MP 10_0171, MOD 8' (**Application**).

A successful and long established restaurant operates at the Site, which has a minimum of 500 people per week entering and exiting the premises from the rear. The Site benefits from direct frontage to Church Street, however the rear of the restaurant is accessible to patrons from David Fraser Reserve, where there is existing public parking. A minimum of 25 staff per day access the restaurant from the rear. The rear access point also provides an important point for delivery and services to the restaurant, comprising up to 10 deliveries per day.

In addition, we note that the Site is identified as a future pedestrian laneway by Parramatta City Council (**Council**) and therefore irrespective of whether the restaurant remains, an alternative development emerges or the area is acquired by Council for pedestrian purposes, the management of traffic and pedestrian movements in this area is critical.

We write to express our objection to the Application. In short, we do not understand how the Department of Planning and Environment (**Department**), acting reasonably, can approve an Application that will lead to the amplification of a serious and dangerous traffic and pedestrian conflict.

We submit that the Part 3A Project Approval (as modified) has failed to adequately deliver a safe traffic and pedestrian arrangements for my client's Site. After repeated submissions, the approval has not delivered a safe pedestrian or traffic arrangement during construction and provides no long term safe pedestrian or traffic arrangement

to facilitate access to the rear of my client's Site over the Meriton Land or Council owned land.

We remind the Department that the Site, irrespective of its ongoing use as an restaurant, an acquired pedestrian laneway (as identified by Council in the *Parramatta City Centre Development Control Plan 2007*), or a redeveloped Boutique Hotel with through site link, our continued concerns expressed in relation to the pedestrian and traffic safety for the Site are equally valid and relevant.

This objection raises the following issues –

- the Application continues to fail to provide for a safe pedestrian and traffic arrangement for land at the rear of my client's Site;
- the current construction works are unlawful as Condition B41 has not been satisfied, and the Construction Certificate for above ground works is therefore invalid;
- there appears to be the potential for broad ranging safety liability should there be a safety incident on Meriton's Land (or Council owned land) at the rear of the Site resulting from construction activities or during the future use of the Meriton Land;
- the Application is (again) not properly made as the Planning Report does not accurately describe the works proposed, which includes significant alterations to the driveway entrance arrangements immediately at the rear of the Site; and
- the Application leads to the amplification of traffic movements and the reduction of safety in the subject area.

Planning Assessment Commission Decision to Provide Safety – Modification 3

Modification 3 to the proposal was considered by the Planning Assessment Commission (**PAC**) in late 2013. The El-Phoenician Restaurant presented to the PAC at the Public Meeting held 12 December 2013, raising concern with the lack of activation in the amended scheme along the southern boundary of the Site, and critically, the potential for serious conflict between pedestrians and vehicles in the rear laneway. The PAC Determination Report specifically notes –

'The Commission noted the existing access arrangements and the potential for conflict between pedestrians and vehicles accessing the development site. In response to this issue the proponent has indicated a willingness to extend the southern wall of the building adjacent to the loading dock further to the east to provide a buffer for pedestrians exiting the rear of the restaurant as shown in Figure 1 below.' (our underlining)

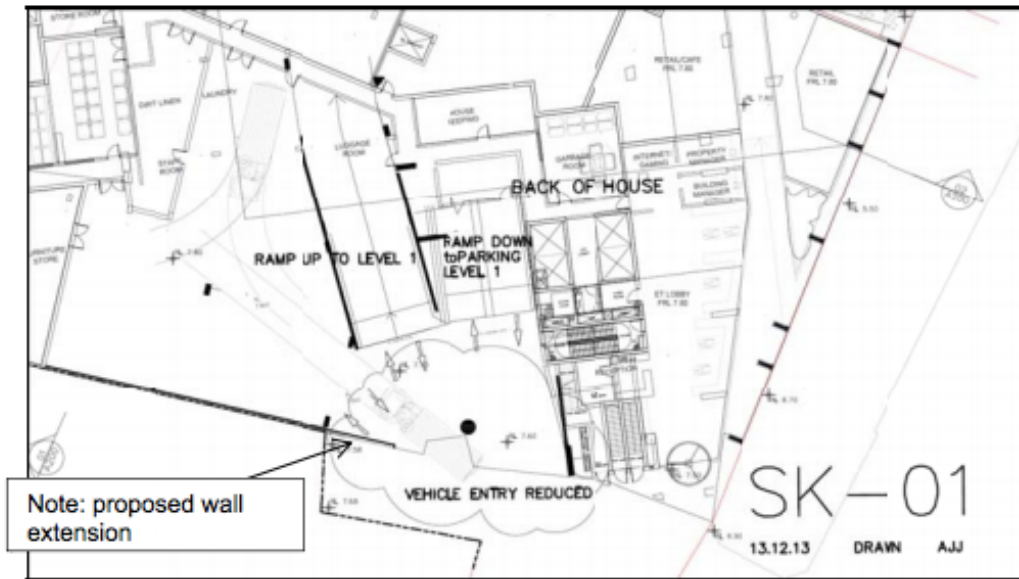


Figure 1: Proposed modification to loading dock

'The Commission considers that it is appropriate to include an additional condition of consent requiring that an amended plan of the loading dock, vehicle car park entry and shared zone be prepared and submitted for the approval of Parramatta City Council prior to issue of a construction certificate for above ground works. The plan is to ensure appropriate and safe loading and pedestrian access is provided to the rear of the El Phoenician Restaurant.' (our underlining)

Consistent with the above discussion, a new condition was added to the consent as follows –

'B41 LOADING DOCK, VEHICLE CAR PARK ENTRY AND SHARED ZONE

Prior to the issue of a construction certificate for above ground works, an amended plan of the loading dock, vehicle car park entry and shared zone is to be submitted for the approval of Parramatta City Council. The plan is to ensure appropriate and safe loading and vehicular and pedestrian access is provided to the building and the rear of the El Phoenician Restaurant.' (our underlining)

This condition was acceptable to my client as it served to ensure –

- safety to patrons of the restaurant;
- clear separation of vehicular and pedestrian movements; and
- the provision of safe loading areas at the rear of the restaurant.

That said, satisfaction of this condition requires more than mere submission of an 'amended plan' to the Council. It requires that the 'plan' ensure safety. In

circumstances where the Council is dissatisfied with the 'plan' (which we understand it is), it follows that the plan is not ensuring safety and that the applicant is therefore in breach of the condition. The seriousness of any breach of condition B41 is amplified by its subject matter. Failure by the applicant to provide a plan which ensures appropriate safety measures are approved by the Council, places persons at safety risk.

Modification 4 - Improper Assessment

Modification 4 was lodged with the Department in April 2014. The description of the modification provided by the applicant and as advertised by the Department was:

'Internal and external changes to the podium and towers including reduced retail floor space, increased number of serviced apartments, reduced number of parking spaces, building name signage, new external swimming pool on podium and other minor changes.'

It is clear that the description of Modification 4 significantly failed to capture the changes in relation to the rear access of the Site.

As can be seen in the approved Modification 4 plan below, the amendments that immediately impact upon the safety of the laneway included –

- the relocation of the 'down ramp' in the basement to the west ensuring that numerous car movements now occur in closer proximity to the rear of the restaurant; and
- a reduction in the truck loading area and introduction of potential traffic conflict between loading vehicles and resident / visitor vehicles.

Notably, the opportunity to address condition B41 and properly consider the safety of pedestrian and vehicular movements in the laneway at the southern boundary of the Meriton Land was not pursued by the applicant, nor insisted upon in the assessment by the Department.

The further reduction in safety occasioned by the assessment of Modification 4 is of significant concern as it appears to fail to take into account a relevant consideration. In all of the circumstances, it is difficult to see how the Department, acting reasonably, could overlook public safety in assessing Modification 4. It is our view that the intentions of the PAC in preparing condition B41 during its assessment of Modification 3 were overlooked or ignored in the subsequent assessment of Modification 4. The direct consequence is that public safety has been compromised.



Condition B41

In our view, the applicant is currently undertaking building works in breach of its approval, as they have failed to comply with condition B41 of the consent. We have advised both the Department and the Council of this. However, to date, no action has been taken to require any construction activity to cease or for appropriate safety and traffic management measures to be implemented.

In this regard we note –

- construction activity is occurring well above ground level;
- the plan submitted by the applicant in accordance with condition B41 does not “ensure appropriate and safe loading and vehicular and pedestrian access to the building and the rear of the El Phoenician Restaurant”; and
- the approval of the Council has not been provided.

Safety Implications of the Application

As you are aware, our client has the benefit of right of carriageway over the Meriton Land, which relevantly allows, among other things, *'full and free right for every person ... to go, pass and repass at all times and for all purposes'*. This right of carriage provides crucial access to the Site and allows staff and the public to access the rear of the restaurant at all times.

The Planning Report relevantly states that the Application will have no adverse impacts as the proposed modifications *'will not generate any additional traffic'*. This statement defies logic, as the Application will have a significant impact on the ability of any person to safely use the existing right of carriageway to access the Site.

In our submission, there are serious concerns that the successive modifications to this Project Approval have overwhelmingly and cumulatively caused, what is now, an unsafe and dangerous entry and exit point to the Site, both during construction and during the future use of the Meriton Land. These are modifications approved by the Department.

There is little doubt that condition B41 and the extension of the wall adjacent to the Site (which were imposed by the PAC in modification 3) were specifically intended to address the serious safety concerns associated with the proposal and to protect the safety of all persons, employees, contractors, residents and members of the public accessing the Site and the Meriton Land.

However, the applicant's ongoing failure to comply with condition B41 and the deletion of the extended wall proposed by the Application have resulted in the cumulative erosion of any real safety measures at the Site.

Our client concerns are amply demonstrated by the 'Proposed Shared Zone & Access Arrangements' plan (accompanying the Application), which contains a confusing plethora of traffic signs which purport to manage traffic and protect any persons using the right of carriageway, but in practice will be difficult for any pedestrian or motorist to decipher in any meaningful way. In our submission, the current treatment of safety by the Application is wholly inadequate in every respect and the Application must be rejected on that basis alone.

The failure to adequately consider safety issues in the materials accompanying the Application may expose the Department, the Council and others to risks associated with safety including liability arising under the *Work Health and Safety Act 2011* (NSW).

Further, if the Department fails to take into account safety concerns during its assessment of the Application, the validity of the consent may be open to successful challenge in the Land and Environment Court (**LEC**).

If this issue is not resolved, our client reserves their rights to review the Department's assessment of the Application (and Modification 4) in the LEC and may rely on this submission with respect to costs.

The Port Cochere Proposal

We raise two primary objections to the Port Cochere proposal.

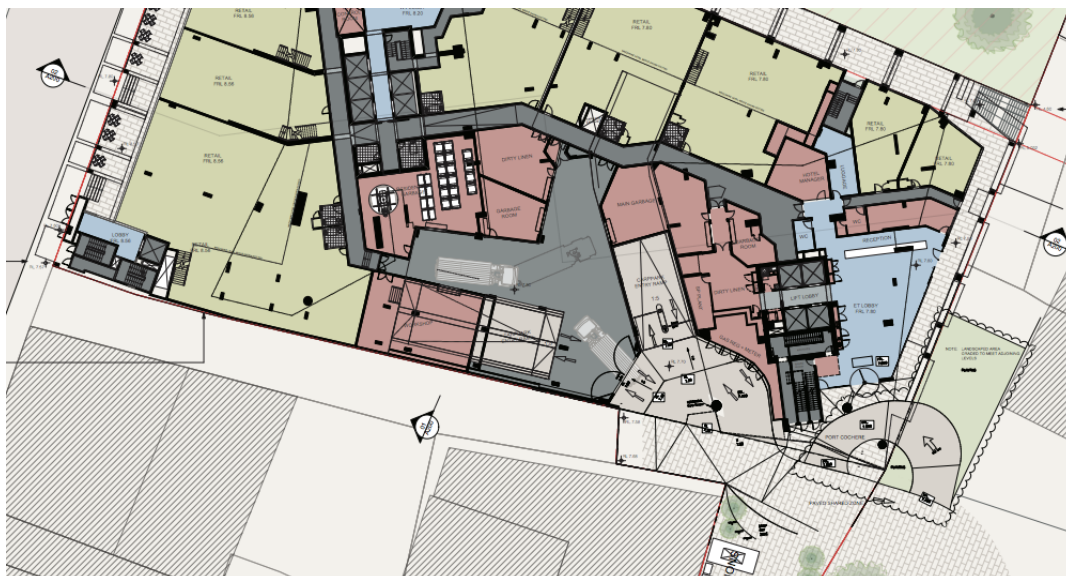
Firstly, the description of the proposal, as provided in the Planning Report, is misleading and does not accurately reflect the plans submitted.

Please refer to the two images below, and note how the approved plan (Modification 6) differs from the proposed plan (Modification 8) in relation to the deletion of the wall that separates the Site from the Meriton Land and provides a small measure of protection through a barrier / wall for patrons exiting and entering the restaurant.

The written report accompanying the proposal fails to acknowledge this fundamental amendment, which was intentionally sought by the PAC as part of Modification 3. The continued eroding of safety measures; along with the ongoing amplification of unsafe conditions are hallmarks of the modification applications. We appeal to the Department to carefully observe the pattern and finally act to stop any further modification that we exacerbate safety matters even further.



Modification 6 Plan



Modification 8 Plan

Secondly, the porte cochere modification is not supported by any traffic or safety analysis that calculates the increase in traffic movements; analyses the implications for traffic safety; reviews the way in which pedestrian safety is provided; considers the management of loading, unloading, garbage, deliveries, resident access, visitor parking; and gives an estimate of the porte cochere use and the relationship with other traffic movements in this very small area of land. The traffic analysis is limited to simply the swept turning paths for vehicles.

Clearly a proper traffic, pedestrian and safety analysis should consider more than the “workability” of a driveway, but should thoroughly review the cumulative impacts of the proposal, taken together with other traffic and pedestrian generating uses in immediate proximity to the site.

Conclusion

We trust that the objections raised in this letter will be fully considered and that the Application will not be approved. Further, we again appeal to the Department to exercise its regulatory functions to ensure this Project Approval is being carried out in accordance with its conditions. To the extent it is not, in our view, all above ground works should cease until such time as condition B41 has been properly satisfied to ensure safety.

We are more than happy to meet with you to discuss how our relevant concerns could be satisfied, particularly with respect to safety matters.

Please do not hesitate to contact me to discuss any of the matters in this letter at adam@thinkplanners.com.au.

Regards,

Adam Byrnes- Director
Think Planners Pty Ltd