

**JOINT REGIONAL PLANNING PANEL  
(Sydney East Region)**

<b>JRPP No</b>	<b>2011SYE035</b>
<b>DA Number</b>	<b>DA/182/2011</b>
<b>Local Government Area</b>	<b>Randwick City Council</b>
<b>Proposed Development</b>	<b>DA/1113/2010 – Demolition of existing structures on the site and construction of a new part 3 part 7 storey level mixed use development comprising of 3 separate multi-unit buildings to create 103 apartments with basement carparking for 92 vehicles, landscaping and associated works at 2-6 Goodwood Street, Kensington.</b>
<b>Street Address</b>	<b>2-6 Goodwood Street, KENSINGTON NSW 2033</b>
<b>Applicant/Owner</b>	<b>Fox Johnston Architects/ Kensington RSL Sub Branch</b>
<b>Number of Submissions</b>	<b>111</b>
<b>Recommendation</b>	<b>Refusal</b>
<b>Report by</b>	<b>Wendy Wang, Environmental Planning Officer</b>

**1. Executive Summary**

Council is in receipt of a development application proposing the demolition of the existing structures on the site and construction of a new part 3 part 7 storey level mixed use development comprising of 3 separate multi-unit buildings (referred to as Block A, Block B and Block C) to create 103 apartments with basement carparking for 92 vehicles, landscaping and associated works.

The application is referred to the Joint Regional Planning Panel for determination pursuant to clause 13B (1)(a) of State Environmental Planning Policy (Major Development) 2005 as the development has a capital investment value in excess of \$10 million.

Additional information and comparative shadow diagrams have been provided by the applicant in response to the overshadowing impacts of the development proposal on the adjacent residential flat buildings and Kokoda Park and concerns raised by Council Officers and the Design Review Panel

The proposal is permissible under the Randwick Local Environmental Plan (Consolidation). The proposal does not comply with the maximum number of storeys and maximum height for development standards as prescribed by Clauses 42C(4)(a) and (b) of the Randwick LEP 1998. The proposal has a maximum building height of

24.7m, which exceeds the maximum building height control of 17.1m by 7.m. The proposal also breaches the maximum 5 storey height having a 7 storey component in all three blocks (A, B & C), with each of the 3 blocks having a maximum height of 24.7m. State Environmental Planning Policy No.1 (SEPP No.1) objections have been submitted in relation to the breach of these controls.

The proposal was the subject of a prelodgement meeting (PL/53/2010) held between the applicants and Council Officers on 29 September 2010 and 15 November 2010. At the time, the recommendation provided to the applicant by both the Design Review Panel and Council explicitly advised that the maximum number of storeys and building height controls would have deciding weight in the final assessment and a reduction should be reflected in any formal development application. The current proposal is successful in addressing some of the matters raised by the Panel in relation to building footprints and general amenity for future occupants, but fails to provide any reasonable grounds for Council to support the extra storeys. As such, the application is recommended for refusal.

An assessment of the SEPP 1 objections indicates that strict compliance with the controls would be reasonable and necessary as detailed in Section 5 of this report. In particular, the excess building height has been applied along the entire length of the eastern side of the site with the corner floors being overstated and heavy in presentation. The proposed façade composition and external treatment further exacerbates the appearance of bulk and scale by accentuating the north eastern and south eastern corner blocks.

The DCP – Kensington Town Centre describes a block-perimeter envelope with a maximum height of 5 storeys along Goodwood Street (with upper 2 levels setback by 4m); 4 storeys along the Kokoda Park frontage; and 5 storeys along Ascot Street (with upper 2 levels setback by 4m). The proposal will have a maximum of 7 storeys such that it will exceed the designated envelopes on the street frontages by 2 storeys and on the Kokoda Park frontage by 3 storeys.

The proposed buildings adopt footprints which generally occupy the designated permissible footprint in the DCP thus providing for reasonable opportunities for open space at ground level both privately for individual dwellings and in common as a landscaped central courtyards and corridors. Notwithstanding this, the excessive GFA and resultant height and number of storeys proposed erodes the benefits of distributing floor space over three (3) separate blocks and will result in significant adverse impacts to the adjoining development and Kokoda Park.

The overall height, setback at upper levels and the courtyard are important elements of the envelope, future built form and character of Block 02 of the DCP. Significantly, the gross floor area of the proposed scheme is in the order of 116.5% of the gross floor area of the envelope, while the DCP describes a maximum yield of 85%. The breaches in gross floor area and height are considered to translate into a bulky and excessively scaled complex of buildings that do not relate appropriately with the context of the surrounding urban development and landscape setting.

Additionally, the proposal does not comply with the DCP – Kensington Town Centre in terms of setbacks for transitional development as outlined in the table below;

<i>Transitional Development</i>	<b>Building</b>	<b>Setback Distance</b>	<b>Proposed</b>
	<i>First 4 storeys</i>	0 metres	0m-2m
	<i>5<sup>th</sup> &amp; 6<sup>th</sup> Storeys</i>	4 m (min)	1.2-4m
	<i>First 3 Storeys</i>	0m	0m-1.2m
	<i>4<sup>th</sup> &amp; 5<sup>th</sup> Storeys</i>	4m	1.2m
	<i>All Storeys where adjoining strata titled buildings</i>	6m (min)	2.8m

*Table 1 – Setback controls for transitional development (behind the Anzac Parade buildings and addressing secondary streets).*

The variations in setback, storey height, maximum building height and gross floor area have been assessed in relevant sections of this report and are considered to be unacceptable in the circumstances.

A total of 110 submissions were received in response to the notification and advertising of the DA raising concerns including, but not limited to, overdevelopment of the site, increased pressures on parking, overshadowing of Kokoda Park, lack of landscaping, and general non-compliance with the relevant requirements of the DCP – Kensington Town Centre and Randwick LEP 1998 (Consolidation). Refer to Section 6 of this report for detailed discussion of the matters raised in the submissions.

The site forms Block 02, part of the wider Kensington Town Centre site which is the subject of a Development Control Plan 2002 (DCP) adopted on 26 November 2002 and effective from 22 January 2003. The proposal does not meet the relevant controls of the DCP and is inconsistent with the overall objectives for the Kensington Town Centre.

The scale of the development is not considered to be suitable for the site or in the context of the surrounding Kensington Town Centre. The proposal will also result in unreasonable adverse impacts to the amenity currently enjoyed by the surrounding residential development and Kokoda Park users. The subject application is therefore recommended for refusal.

The proposal is an “integrated development” as the proposed development requires a site dewatering permit from The Office of Environment and Heritage (OEH) (formerly known as the Department of Environment, Climate Change and Water (DECCW)) under Part 5 of the Water Act 1919. Accordingly, the proposal was referred to the Office of Environment and Heritage for approval, and notified and advertised in accordance with the EP&A Act 1979 (as amended). As the General Terms of Approval for the proposed development have not been received from the OEH, pursuant to Clause 70(1)(a) – ‘Notification of general terms of approval’ as outlined by the Environmental Planning and Assessment Regulation 2000, the application is recommended for refusal and copies of all submissions received, as well as a copy the determination will be forwarded to the OEH, as the approval body.

## 2. Site description and locality



Figure 1 - Aerial view of subject site

The site is located on the southern side of Goodwood Street and northern side of Ascot Street, between Anzac Parade (to the west) and Doncaster Road (to the east).

The site comprises of the following lots:



- Lot 1, DP 920484 (site area 1593sqm), known as No. 2 Goodwood Street, alternately also know as 3 Ascot Street, which contains the Kensington War Memorial Club and adjoining car parking area fronting Ascot Street at 5-7 Ascot Street.
- Lot 1, DP 653029 (site area 284.5sqm), known as 4 Goodwood Street, which contains one half of a single storey semi detached dwelling.
- Lot 1, DP 901206 (site area 329.8sqm), known as 6 Goodwood Street, which contains the adjoining half the single storey semi detached dwelling

The site has a northern frontage of 35.14 metres to Goodwood Street, depth/park frontage of 80.465m, southern frontage of 19.81m to Ascot Street and a combined site area of 2211sqm. 2 – 6 Goodwood Street is generally level in topography and is absent of any significant vegetation.

Directly to the east of the subject site is Kokoda Memorial Park. To the west (Ascot Street frontage) lies No. 5 – 7 Ascot Street, presently occupied by an existing four (4) storey strata titled residential flat building containing five (5) units. Also to the west of the subject site (Goodwood Street frontage) is No. 8-10 Goodwood Street, presently occupied by an existing four (4) storey strata titled residential flat building containing 6 units.

To the north of the subject site, across Goodwood Street is No. 29 Elsmere Road, presently occupied by an existing four (4) storey residential flat building. To the south of the site, across Ascot Street is comprised of a variety of housing types including multi unit housing and low scale residential dwellings.

The surrounding area forms part of the wider Kensington Town Centre as and is characterised by a mixture of single storey semi-detached dwellings, older style residential flat buildings and newly developed multi unit housing.

<b>Photo1 : Photographs of the site and surrounds</b>	
1. (Shown left to right) Kensington War Memorial Club, semi detached dwellings to be demolished and existing RFB to the west.	2. View of the Kensington War Memorial Club in relation to Kokoda Park.
	



<p>3. No. 5 – 7 Ascot Street, presently occupied by an existing four (4) storey strata titled residential flat building containing five (5) units to the west of the site. The Club carpark is shown in foreground.</p>	<p>4. Existing residential development to further to the east across Kokoda Park.</p>
	
<p>5. No. 8-10 Goodwood Street, presently occupied by an existing four (4) storey strata titled residential flat building containing 6 units to the west of the site. Semi detached dwelling to be demolished is shown on the left.</p>	<p>6. Existing residential flat buildings to the south of the subject site across Ascot Street.</p>
	

### 3. History

The site forms Block 2, part of the wider Kensington Town Centre site which is the subject of a Development Control Plan 2002 (DCP) adopted on 26 November 2002 and effective from 22 January 2003.

The proposal was the subject of a prelodgement meeting (PL/53/2010) held between the applicants and Council Officers on 29 September 2010 and 15 November 2010.

The main issues/concerns raised at the Predevelopment stage are outlined as follows: -

- Compliance with the building envelope.

- GFA in excess of the DCP maximum yield of 85%, ultimately impacting on the desired future character of Kensington; the amenity of private and public spaces; and the public domain.

The variations sought at Predevelopment stage go significantly beyond the DCP provisions in that it introduces significant height, bulk and scale that do not appear to accord with the DCP's design objectives for Block 02. As such, it was recommended that any formal future development application for the proposal should reduce the building height and number of storeys.

#### 4. The proposed development

The development proposes to demolish the existing structures on the site including 2 x semi-detached dwellings at Nos. 4 and 6 Goodwood Street and the Kensington War Memorial Club and adjoining car parking area fronting Ascot Street at No. 2 Goodwood Street.

The proposal seeks to construct a part 3, part 7-level mixed use development comprising of 3 separate buildings in the form of 3 distinct blocks and will be internally connected by the basement levels as indicated in Figure 2 below.

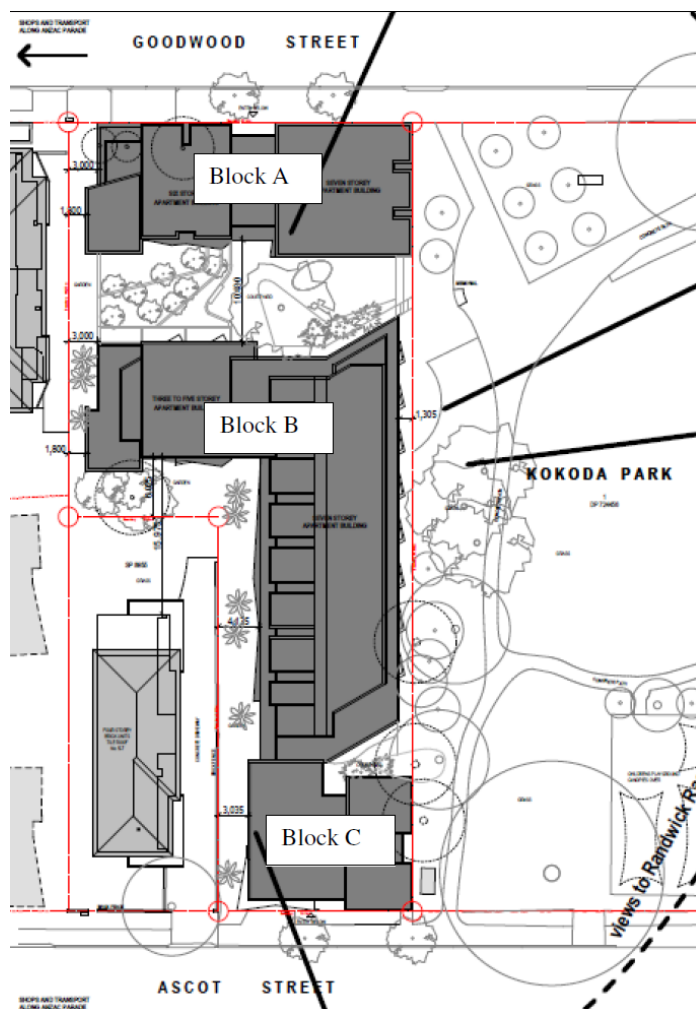


Figure 2 - Site plan of the proposed development.

## Proposal Overview

No. of dwelling units	103
Apartment mix	60 studios 17 x 1 bedroom units 26 x 2 bedroom units
Apartment Mix	<u>Requirement:</u> Studios and 1 bed apartments to comprise no more than 40% of the total number of apartments. <u>Provided:</u> 73%
Parking	<u>Requirement:</u> 107 car spaces <u>Provided:</u> 92 car spaces over 2 basement levels which also contains storage areas, plant rooms and bicycle storage areas. * Traffic Impact Assessment submitted.
GFA	<u>Requirement:</u> 85% of the of the building envelope <u>Proposed:</u> 116.5% of the of the building envelope
Max Building Height and Number of Storeys	<u>Requirement:</u> 4-5 storeys/ 17.1m <u>Proposed:</u> 3-7 storeys/ 24.7m  * Does not comply – SEPP 1 Objection submitted
Minimum Allotment Size	<u>Requirement:</u> 900sqm <u>Proposed:</u> 2211sqm

Vehicular access is provided via a double width two way driveway from Goodwood Street, at the north western corner of the site. The proposal will also involve associated landscape works and perimeter planting along the eastern frontage abutting Kokoda Park and to the west where the site adjoins two residential flat developments as well as utility service installation.

Pedestrian access will be made available from both Ascot and Goodwood Street frontages and east facing units located at the ground floor will have direct access to the Kokoda Park.





*Figure*

3 – A photomontage of the proposed building viewed from Goodwood Street across Kokoda Park in the foreground.

## 5. State Environmental Planning Policy (SEPP) No. 1 - Development Standards

The land is subject to a building envelope under the Kensington Town Centre DCP. The DCP standards for maximum building height, number of storeys, minimum frontage and lot size have the effect of development standards under the Randwick LEP 1998 (Consolidation). Table – 2 below is an assessment of the proposal against these standards:

<b>Table 2 – Assessment under Clause 42C RLEP development standards</b>			
Standard	DCP	Proposal	Compliance
Minimum Frontage	20m	35.14m to Goodwood Street	Yes
Minimum Site Area	900m <sup>2</sup>	2211m <sup>2</sup>	Yes
Max Storeys	4/5 storeys	3/7 storeys	No (SEPP 1 Objection submitted)
Maximum Height	17.1m	24.7m	No (SEPP 1 Objection submitted)

*Table 2 – Assessment of the proposal under RLEP development standards*

The proposal seeks to vary development standards contained within RLEP 1998 (Consolidation). Accordingly, SEPP 1 Objections have been submitted with the development application. In assessing the applicant's SEPP 1 Objections, the following matters are addressed:

The proposal seeks to vary a development standard contained with Randwick Local Environmental Plan 1998 (Consolidation) being Clause 42C – Kensington Town Centre Site specific development controls.

- **Clause 42C(4)(a) - Maximum number of storeys**

A maximum number of storeys standard of 5 storeys along Goodwood and Ascot Streets and 4 storeys along the Kokoda Park frontage is applicable to the subject site pursuant to Clause 42C (4) of the Randwick Local Environmental Plan 1998. The proposal will have a maximum of 7 storeys such that it will exceed the designated envelopes on the street frontages by 2 storeys and on the Kokoda Park frontage by 3 storeys.

- **Clause 42C(4)(b) - Maximum height of development**

A maximum building height of 17.1m applies to development within Block 02 as identified by the DCP – Kensington Town Centre. The proposal has a maximum building height of 24.7m, which exceeds the maximum building height control of 7m.

The applicant has submitted an objection under State Environmental Planning Policy No.1 - Development Standards, and has argued that strict compliance with Clause 42C of Randwick LEP is unreasonable and unnecessary. Principles for assessing SEPP 1 Objections have been established in the NSW Land and Environment Court case, *Wehbe v Pittwater Council* [2007] NSWLEC 827. The case has established that the upholding of a SEPP 1 objection is a precondition which must be satisfied before a proposed development can be approved by the consent authority. The principles established in *Wehbe v Pittwater Council* are addressed in the assessment of the applicant's current SEPP 1 Objection:

#### **Matter 1**

*The Court must be satisfied that "the objection is well founded" (clause 7 of SEPP 1). The objection is to be in writing, be an objection "that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case", and specify "the grounds of that objection" (clause 6 of SEPP 1).*

The stated purpose for the development standard as outlined in the Kensington Town Centre LEP/DCP:

*"Most dwellings in Kensington streets close to the Town Centre are residential flats in buildings of 3 storeys or more. Proposed building heights for the Town Centre acknowledge that Anzac Parade can visually support slightly taller buildings along the main street, with a visual transition to lower heights 'behind' the main street. Generally, this means that the maximum height of any building along Anzac Parade will be 4 storeys setting back to 6 storeys, and the maximum height of any other building will be 3 storeys setting back to 5 storeys.*

*The Urban Design Advisory Service, in its 'Guidelines for Better Urban Housing in NSW', notes that well proportioned streets are generally 1:1 street width to building height. For the Kensington Town Centre, 1:1 proportions would result in Anzac Parade building heights of 40 metres or more.*

*This plan reflects Council's response to community input that building heights of 40+ metres would be out of context with the character of the Kensington Town Centre.*

The objectives of the height control are:

- *To ensure appropriate scale relationship between new development and: street width; local context; adjacent dwellings; and Contributory Buildings.*
- *To achieve well proportioned buildings.*
- *To maintain public view corridors from the east side of Randwick Racecourse over the town centre to the Monastery of the Missionary of the Sacred Heart.*
- *To ensure appropriate management of overshadowing, access to sunlight and privacy*
- *To achieve a visual transition between the heights of buildings on Anzac Parade and the heights of buildings behind the main streets.*

The applicant has submitted the following arguments in support of the SEPP 1 Objection:

- *The proposed height of 24.7m/7-storeys relates well to the respective street widths along Goodwood and Ascot Streets. The width of the streets to the north and south are commensurate with the building height, being 23-25-metres.*
- *The proposed height is also consistent with the local context which includes higher buildings one property to the west which is addressed to Anzac Parade.*
- *The height is also suited to the expanse of the park to the east which achieves a ratio of 1:3 (which is also a recognised ratio as advised by Roberts Day Urban Design Report). Analysis of Spatial Enclosure of Kokoda Park using proposed development at 2-6 Goodwood Street (Source: Roberts Day Urban Design Justification Report March 2011 pp16).*
- *The design and articulation of the building is well proportioned and suited to the site context having 2 wide street frontages and a park. The facades of the building have interest and will enhance the aspect from the park and the broader town centre in general.*
- *The height does not interfere with critical views such as the view from the east of Randwick over Randwick Racecourse to the monastery on the hillside to the west.*
- *The height maintains solar access to neighbouring buildings to the south across Ascot Street whilst also preserving a reasonable degree of sunlight to the older style residential flat buildings to the immediate west at 8-10 Goodwood Street and 4-6 Ascot Street.*
- *The height also maintains sunlight to the majority of Kokoda Park to the east for the majority of the day and impacts are limited to 3pm on June 21.*

- *The orientation of all units to the north, east and south where there are expansive distances of separation in excess of 20-metres and avoidance of openings to the western neighbours ensures that the height is not responsible for any adverse privacy impacts.*
- *The height incorporates generous ceiling heights at or in excess of 2.7-metres. The heights of the park-facing studios contain ceiling heights of 3-metres in the living areas which provides for a high degree of internal amenity in terms of access to sunlight, daylight, ventilation and outlook.*
- *The proposed design is of high quality, as it presents an articulated and interesting form to its respective street frontages and the adjoining park.*
- *The development encourages a range of uses, including a retail component that would suit a café given its park side location, as well as a range of apartment types.*
- *The area will experience significant increases in residential apartments in recent years, including the approved 82 dwelling development at 66a Doncaster Avenue, 59 dwelling development at 112-114 Anzac Parade, 40 units at 105-109 Anzac Parade as well as other developments throughout the Kensington suburb. The proposal complements the town centre's function, providing a range of unit choice.*
- *The application proposes a range of dwellings in 3 distinct forms, which are considered to provide an appropriate mix of housing choice within the Local Business Zone.*
- *The development proposes a departure from The Kensington Town Centre DCP 2002 Building Envelope controls in terms of building siting and height. These variations are however provide for a better performing building through more slender built forms and overall slimmer development related solar access and cross-ventilation benefits.*
- *The orientation of units to the park and street frontages ensures that there are no adverse privacy impacts to the residential flat buildings to the west. The setbacks from the western boundary with of the flat buildings also allows for retention of solar access to these properties.*
- *There is no view loss associated with the proposal.*
- *The site amalgamates lots with frontages to Goodwood Street and Ascot Street to achieve a large site area of 2211sqm. This creates a site that engages both street frontages and creates a space that has the potential to have a significant and positive effect on the streetscape and park through an exemplary design. It is considered that the amalgamation of the lots encourages redevelopment of the town centre through the ability to facilitate increased densities and support changes in housing types.*

- *The subject site is located within close proximity from Royal Randwick Racecourse and Fox Studios. The Racecourse attracts thousands of visitors to the locality on race days while Fox Studios also attracts regular visitors. The development proposes retail/commercial outlets on the ground floor, which have the capacity to support visitors to eateries and retail units within the town centre and immediate area.*
- *The application has taken into account the housing requirement of the locality and has increased housing choice for residents whom are likely to live and work locally (students & medical staff). The predominance of studio/1-bedroom apartments is suited to the demand from students and nurses whilst the site's proximity to the CBD also confirms the suitability of the apartment mix.*
- *The additional housing proposed will sustain the convenient and frequent public transport services, which is capable of supporting the increase in the local residential population. The likelihood of future light rail provides greater justification to the proposal as it will increase the role of the Town Centre and its suitability to accommodate a greater housing density.*
- *There are no buildings of recognised architectural merit or environmental heritage within the vicinity of the subject site pursuant of Clause 49 of the Randwick LEP 1998. The proposal will not impact any surrounding items in terms of structural integrity nor loss of setting. The proposed green zone between Blocks A and B provides a link to the Kokoda memorial.*
- *The application is of high quality design, which allows for sun, light, cross flow ventilation and BASIX compliance which will reduce dependence of artificial heating, cooling and lighting. The provision of additional density in this location close to services and transport is also a sustainable outcome. The proposed floor plates are significantly thinner than those anticipated in the DCP, thereby promoting improved access to sunlight, daylight and ventilation.*
- *The proposal additional height with thinner floor plates in contrast to lower and broader buildings as envisaged by the DCP therefore has positive amenity and environmental consequences. Such principle is also recognised in the Residential Flat Design Code.*
- *The existing development comprises of 2 semi-detached dwellings at and the Kensington War Memorial Club, which are not considered to be consistent with the desired future character objectives of the Kensington Town Centre. The proposal comprises a high quality design which fully utilises the site to its potential and provides an appropriate infill and desirable addition to the Kensington Town Centre. Quality landscaping is introduced to the site as are elements that will integrate the building with the adjacent park. The additional housing will also contribute to the viability of the town centre.*
- *In conclusion, the submitted SEPP 1 objection has addresses the consistency of the proposed development with the underlying and stated purpose of the standard, the local planning objectives for the locality and objectives of the*



*Act. The objection has appropriately justified that the strict compliance with the development standard is unreasonable and unnecessary in the circumstance of the case. As such, it is considered that the objections are well founded.*

**Comments:**

The applicant's objections are not well founded and the proposal has a severe impact on the environmental amenity and aesthetic character of the area in that:

- The purpose for the standards are to operate together to limit the size, scale and site coverage of a development. It is not legitimate for the applicant to claim that compliance with some but not all of the standards are adequate. The proposal is significantly in excess the standards for the maximum number of storeys and building height, and does not comply with the DCP side setbacks. These matters are fundamental to the size, scale and site coverage of the development as mentioned in the purpose statement.
- The proposed height and scale of the development fails to achieve an effective visual transition between the heights of buildings on Anzac Parade and the heights of buildings behind the main streets.
- The breach in number of storeys and building height is evident on all three blocks, with building mass being concentrated along the entire eastern elevation adjacent to Kokoda Park. Specifically, the proposal has a maximum building height of 24.7m, which exceeds the maximum building height control of 17.1m by 7.6m. The proposal also breaches the maximum 5 storey height having a 7 storey component in all three blocks (A, B & C), with each of the 3 blocks having a maximum height of 24.7m.
- The proposed height is inconsistent with the local context and built form in terms of height and building mass, which is a direct consequence of the excessive gross floor area sought under the current proposal. The gross floor area of the proposed scheme is in the order of 116.5% (which equates to an approximate FSR of 3:1) of the gross floor area of the envelope, while the DCP describes a maximum yield of 85% (FSR of approximately 2.4:1). The breaches in gross floor area and height translate directly to a perceptibly bulky and excessively scaled complex of buildings that do not relate appropriately with the context of the surrounding development and natural environment.
- The building fails to adopt a logical distribution of mass and proportioning; with the bulkiest elements being enhanced rather than made recessive. The attempt to reinforce the corners of the upper floors results in a development which provides no visual relief to address the development's dominance over the adjoining open space, further accentuating the proposal's non-compliance with the relevant planning controls as contained in the RLEP 1998 and DCP – Kensington Town Centre.
- The upper floors of the development, particularly the north eastern (of Block A) and south eastern (of Block C) corners are overstated and maximise the visual impact of the proposed development at the most prominent corners.

- The proposal adopts narrow building footprints to provide for a greater level of amenity (in terms of landscape provision and ventilation) in order to mitigate negative impacts generated by the development. The applicant has argued that the additional height beyond the height control of 5 storeys and 17.1m (as contained in the RLEP 1998) is a result of the design of the development which seeks to provide increased levels of landscaping through provision of narrower building footprints. The applicant has further argued that the increased amount of landscaping results in higher levels of amenity for surrounding residents. This is not considered to be a valid justification given that the measures only serve to mitigate adverse impacts which result directly from the proposal's degree of non-compliance with Council's planning controls. It is considered that a reduction in GFA, height and scale is considered to be the most rational and effective approach to alleviating the adverse impacts to the amenity enjoyed by surrounding sites and Kokoda Park users.
- The excessive GFA and resultant height and number of storeys proposed erodes the benefits of distributing floor space over three (3) separate blocks and will result in significant adverse impacts to the adjoining development and Kokoda Park.
- The extensive and unacceptable overshadowing impacts on Kokoda Park are a direct consequence of the proposal's excessive height and number storeys. These impacts are particularly apparent in the winter afternoons, when the development overshadows the park entirely, restricting any use and enjoyment by the public. The resultant overshadowing is clearly demonstrated in accompanying shadow diagrams and when compared to overshadowing impacts generated by a more compliant development, it is evident that a development which meets the relevant controls lends a tangibly higher degree of amenity to the surrounding development and Kokoda Park users (see Figures – 4 and 5 below). As shown in the diagrams below, additional overshadowing caused by the non-compliant storeys of the proposal affect a significant portion of the existing children's play area located in the south eastern corner of Kokoda Park. It is considered that preserving reasonable levels of solar access for these areas are particularly important and conducive to a high level of amenity for residents living within the Kensington Town Centre.



Figure 4 – proposed overshadowing (shaded grey) at 3:00pm on 21 June from the subject site (not shown).

Note: Figure not to scale.

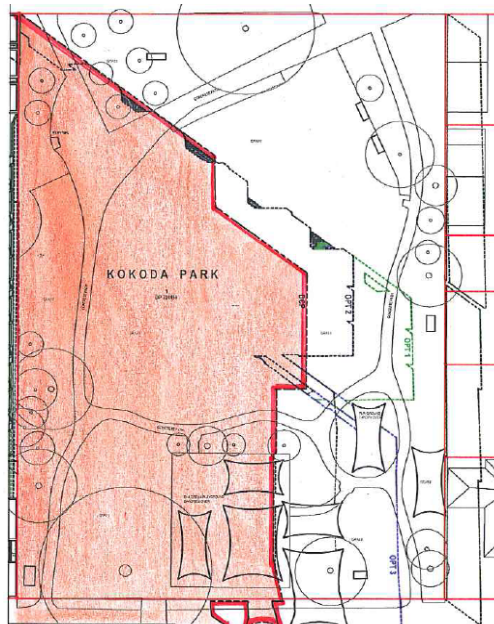


Figure 5 – overshadowing (shaded red) from a DCP compliant development on the subject site (not shown).

Note: Figure not to scale.

- The new buildings will have an adverse impact on the amenity of adjoining and neighbouring properties in terms of solar access, privacy and views (see Section 10 below).
- The proposal is deficient in parking provision (required – 107 spaces, provided – 92 spaces) due to the excessive floor area and number of units sought. The applicant offers the argument that provision of more studio/1 bedroom units (73% of the proposed apartment mix) will generate less parking demand, the surrounding area is well serviced by public transport, and that a third basement level to provide additional parking is not considered viable or necessary. This is not considered to be valid as the DCP stipulates no more than 40% of the total number of apartments
- The applicant's comparison with approved development at Nos. 112-114 and 105 Anzac Parade is not useful for the purpose of assessing the subject application as any comparison needs to be taken within a similar context for a fair evaluation to be made. In accordance with the purpose for the maximum building height and number of storeys development standard as outlined in the DCP and LEP, Anzac Parade can visually support slightly taller buildings along the main street, with a visual transition to lower heights 'behind' the main street. Generally, this means that the maximum height of any building along Anzac Parade will be 4 storeys setting back to 6 storeys, with an opportunity of habitable space within a roof form, and the maximum height of any other building will be 3 storeys setting back to 5 storeys (for buildings not fronting Anzac Parade, e.g. Goodwood and Ascot Streets). By exceeding the height of development along Anzac Parade, the proposal fails to offer a reasonable visual transition from Anzac Parade to the lower density development on sites moving away from Anzac parade.

- The proposal interrupts the prevailing height/setback characteristics in a significant and undesirable manner. If approved, it would set precedent for similar height and setback characteristics for future development in the area and severely compromise the integrity of the controls set out by the DCP - Kensington Town and RLEP 1998. Further breaches would impact on the surrounding town centre and streetscape in an undesirable manner.
- The applicant presents 2 examples in support of the claim that the development standard has been virtually abandoned or destroyed by Council's actions in granting previous consents.

Example 1 - 'The Phoenix'; the applicant claims the building presents 8 storeys to Anzac Parade, where the envelope controls prescribe 6. The building is in fact 7 storeys. The ground level is approximately 1 and a half storeys high due to the sloping topography of the site and flooding constraints. The 7th storey is set within a roof-like structure in accordance with the Kensington Town Centre LEP/DCP.

Example 2 - 'The Capella'; the applicant argues that the approved development is 9 storeys where the envelope prescribes 8. The 9th storey is actually recessed from the storeys below, again in compliance with the Kensington Town Centre LEP/DCP.

The applicant provides another 2 examples in Kingsford (the 'Ravina' and the 'Lincoln') where height variations have been granted under SEPP 1. However, Kingsford does not have specific town centre development controls and these 2 sites are not subject to the Kensington Town Centre LEP/DCP.

More importantly, the proposed development is considered to be 'transitional development', which, under the DCP, should have a height and scale that would achieve an effective visual transition between the heights of buildings on Anzac Parade and the heights of buildings behind the main streets. The subject site is set back from Anzac Parade and addresses secondary streets as well as Kokoda Park.

Council cannot be said to have perverted its development standards in such a manner as to have abandoned or destroyed them. Council have, in fact, upheld the development standards for these approvals.

For the reasons stated above, the SEPP 1 objection fails and the development application is refused accordingly.

- The proposed development is inconsistent with planning objectives for the locality in that:
  - The scale is excessive and inappropriate when seen in context with the existing and recently approved development.

- Overshadowing, access to sunlight and privacy matters have not been appropriately managed.
- The proposal does not achieve a visual transition between the heights of buildings on Anzac Parade and the height of the proposed buildings behind the main streets.
- The proposal is inconsistent with the stated objectives of the zone 3B (3B Local Business), specifically in that it does not effectively provide residential accommodation whilst minimise the impact of development on adjoining and nearby residential zones.
- The proposal is inconsistent with the objectives contained in Clause 42C(2) of the Randwick LEP, namely to:
  - (a) to achieve high quality design in all new development and improvements undertaken in the public domain,
  - (d) to encourage a variety of medium density housing forms that compliment the development within the town centre and that do not have an adverse impact on surrounding residential areas,
  - (e) to encourage the amalgamation of land to facilitate redevelopment within the town centre, and
  - (h) to encourage and facilitate the provision of vehicular access and off-street parking to support the local businesses.

In conclusion, the proposal has not adequately addressed the consistency of the proposed development with the underlying and stated purposes of the standard and the local planning objectives for the locality and objectives of the Act. The SEPP 1 objection provided does not appropriately justify that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

## **Matter 2**

*The Court must be of the opinion that “granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3” (clause 7 of SEPP 1).*

*The aims and objects of SEPP 1 set out in clause 3 are to provide “flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Act”. The last mentioned objects in section 5(a)(i) and (ii) of the Act are to encourage:*

- “(1) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (2) the promotion and coordination of the orderly and economic use of developed land.”*



**Comments:**

The applicant has not presented a case to establish that compliance with the standards would hinder the attainment of the objects of the Act. The proposed development would have an unacceptable impact on the character of the locality and this is not consistent with the objects as quoted in the SEPP. The variation from the maximum number of storeys and maximum building height standards is not consistent with the aims of SEPP 1 as it would detract from the objects of the Environmental Planning and Assessment Act embodied in Section 5(a)(i) and (ii). Specifically, the resultant development would not promote the orderly and economic use of the land, and would result in significant adverse environmental impacts.

**Matter 3**

*The Court must be satisfied that a consideration of the matters in clause 8(a) and (b) of SEPP 1 justifies the upholding of the SEPP 1 objection. The matters in clause 8(a) and (b) are:*

*“(a) whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning, and  
(b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument”.*

**Comments:**

The proposed development and variation from the development standards do not raise any matters of significance for State or regional environmental planning. The strict adherence to the numerical standard will allow the best economic use of the site and the delivery of a suitably scaled in-fill development in an established neighbourhood.

**Ways of establishing that compliance is unreasonable or unnecessary**

Preston C J expressed the view that an objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways:

First *The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

*The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.*

**Comments:**

As discussed above, strict compliance with the development standards is necessary as the design scheme will not achieve the objectives of the development standards.

Second *A second way is to establish that the underlying objective or*

*purpose is not relevant to the development with the consequence that compliance is unnecessary.*

**Comments:**

Third      The underlying objective or purpose of the standard is relevant to the subject development.  
*A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

**Comments:**

The underlying objective of the standards would be defeated or thwarted as full compliance in this instance is reasonable.

Fourth      *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*

**Comments:**

Fifth      The maximum number of storeys and maximum building height standards have not been abandoned or discarded by any decision or actions of Council.  
*A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

**Comments:**

The existing 3B Local Business zoning is not considered to be inappropriate for the locality, which is characterised by medium density residential and mixed use development.

## **6. Notification/Advertising**

The subject application was advertised and notified as integrated development from 30 March 2011 to 4 May 2011 in accordance with Development Control Plan – Public Notification of Development Proposals and Council Plans and the EPA Act 1979.

Council has received 110 submissions in response to the notification/advertising of the DA which raised the following issues (issues have been grouped to avoid repetition):

- **The proposed development is excessive in height and does not comply with the relevant height/number of storeys requirements as contained in**

**the DCP – Kensington Town Centre and Randwick LEP 1998 (Consolidation)**

- **The proposal provides a predominantly nil setback for the entire 7 storey height along both street frontages and to Kokoda Park. This creates a significant number of negative impacts including visual bulk, overshadowing and amenity impacts to surrounding sites.**
- **The proposal represents an overdevelopment of the site and fails to meet the applicable objectives of Randwick LEP 1998 and Kensington Town Centre DCP 2002.**
- **The non-compliant height, setbacks, building envelope and parking, result in numerous amenity impacts on surrounding residential developments.**
- **The scale of the development is dominant when viewed in conjunction with the open nature of the park and compromises the visual integrity of the area.**
- **The proposed development is within close proximity of two recently approved developments, both of which are significant in terms of density.**
- **The proposed GFA is excessive and does not comply with the requirements of the DCP**
- **Corner elements should be recessive and not emphasise the top floors, exacerbating the height of the development**
- **There is insufficient communal open space for future occupants of the site and is overshadowed**
- **The proposed development is visually inconsistent with the surrounding streetscape and will dominate the park**

The objections regarding bulk, height, scale and other matters relating to density, building envelope and resultant adverse impacts to the amenity of surrounding and adjacent development, as well as that of Kokoda Park are supported. The proposed buildings fail the objectives of the height standard as it cannot be said to achieve the necessary transition from higher buildings fronting Anzac Parade to 5 storeys to Goodwood and Ascot Streets. It does not adopt an appropriate scale for the street-width or the local context and fails to achieve compliance with the relevant controls of the Randwick LEP 1998 (Consolidation) and the DCP – Kensington Town Centre. Accordingly, the proposal is recommended for refusal.

- **The proposal does not meet the requirements under Council's DCP for Parking and will further exacerbate parking and traffic congestion in the area**
- **The surrounding streets are already hazardous for motorists and pedestrians and the application does not consider the cumulative impacts to traffic and safety or the existing high density development in the vicinity**

Refer to the parking and traffic comments in Section 7.1.1 of this report.

- **The proposal will result in a dramatic reduction to the solar access presently enjoyed by locals using Kokoda Park for recreational purposes**

- **The proposed development will result in loss of sunlight to Nos. 3-5 Goodwood Street and 8-12 Ascot Street**

Refer to the detailed assessment in Section 10 of this report.

- **The development will have adverse environmental impacts as it will necessitate the removal of heritage listed trees in and around the Kokoda Memorial Park**

Council's Register of Significant Trees identifies a single Port Jackson Fig located in the northern lawn area of the Kokoda Memorial Park, adjacent to the park's boundary with Goodwood Street. This specimen is considered to have individual significance at the local level in terms of its historical, cultural, social, biodiversity, visual and aesthetic values. The eastern side boundary of the subject site is located a minimum distance of 20m from the canopy of this tree and it is unlikely that any development within the boundaries of the site will impact the tree. For any future development approval on the subject site, Council may allow the removal of insignificant vegetation in and around the subject site, but will not consider removal of trees with significant heritage and environmental value.

The application was discussed with Council's Landscape Engineer and it was also noted that there are a variety of semi-mature to mature native trees (although not heritage listed) within the adjoining public reserve comprising She Oaks (*Allocasurina's*), Gum Trees (*Eucalyptus*) & Lilly Pillies (*Acmena's*), that are either right on or close to the common boundary with the RSL carpark, ranging between 5-20m in height.

Although the works proposed under the current application are contained wholly within the boundaries of the subject site, due to the close proximity of the proposed basement levels to the site's eastern boundary, the application seeks to remove 3 She Oaks (*Allocasurina's*) located adjacent to Kokoda Park's western side boundary and in the park's south western corner. Due to their location, major excavations or building alignments proposed in close proximity would necessitate their removal given the extensive root system and canopy required to be completely removed.

Council would not support their removal or damage in any way and encourage a re-design to ensure their retention as these trees are established, contribute to the local environment, and also perform an important amenity function for park & playground users in terms of shade, and would also assist with screening such a high rise building. The Heritage & Historical significance of the park (including War Memorial) also need to be treated with a high degree of sensitivity.

- **There was no notification of the sale of the Kensington War Memorial Club**
- **Demolition of the Kensington War Memorial Club will remove the opportunity for local residents to pay their respects to the fallen soldiers by taking part in memorial services**
- **The proposal diminishes the significance of the Kokoda Park War Memorial**

- **Loss of the Memorial Club will result in neglect of the war memorial and make it more susceptible to vandalism**

The Kensington War Memorial Club is privately owned and it is not Council's responsibility to notify surrounding residents of its sale. Sale of the Club for demolition and residential redevelopment purposes is at the discretion of the Club owners and ultimately not a decision that requires Council involvement.

The Kensington War Memorial was remodelled and is now located approximately 4.4m (at its closest point) from the eastern boundary of the subject site. The Memorial is generally used for Anzac Day memorial services and will not be affected as a result of this proposal.

- **Noise from construction zones (approved and proposed) will have a detrimental impact upon the amenity of surrounding residents**

There are provisions under the Protection of the Environment Operation Act 1997 that protect the amenity of residents in relation to noise and vibration issues. The current application is recommended for refusal, however, should approval be granted in the future for a development application on the subject site, appropriate conditions will be included in the recommendation to ensure the noise and vibration emissions during the construction of the building and associated site works are carried out within the permitted hours and must not result in an unreasonable loss of amenity to nearby residents.

- **Existing residential flat buildings in Ascot and Goodwood Streets will suffer loss of privacy. Enforcing the current building codes and the implementation of screening on windows would serve to mitigate some of the adverse impacts of the development proposal.**

Refer to the detailed assessment in Section 10 of this report.

- **The proposed basement level car parks will be below the water table in Kensington and will necessitate the use of full time pumps to extract the water, which is not an energy efficient practice. As noted in the DCP, the Department of Land and Water Conservation will not endorse continuous extraction of groundwater.**

The subject application is recommended for refusal. However, any future development approval for the site will be subject to approval from the NSW Office of Water and Councils Development Engineers. Appropriate conditions of consent will be imposed to ensure any basement carpark or similar structures are to be suitably tanked and waterproofed. Additionally, a report, prepared by suitably qualified and experienced Geotechnical, Hydrological and Structural Engineers will be required to be submitted to and approved by the Certifying Authority or an accredited certifier, prior to issuing a Construction Certificate, detailing the proposed method of excavation and dewatering process.

- **The accompanying SEPP 1 objection is not well founded and should not be supported**



- **The submissions do not adequately address the adverse impact resultant from the proposed development and does not meet the requirements of the Kensington Town Centre**

The proposed development will result in inconsistencies with the objectives of the Local Business Zone and Kensington Town Centre under Randwick Local Environmental Plan 1998 (Consolidation). The applicant has submitted an objection under SEPP No. 1 – Development Standards justifying that the height and number of storeys breach will not result in significant adverse amenity or visual impacts on the area. An assessment of the SEPP No. 1 objection indicates that it has failed to:

- Articulate the underlying stated objectives of the standard clearly.
- Demonstrate that there are no unacceptable adverse environmental impacts arising from the proposed development in terms of views and outlooks, loss of privacy, overshadowing and general overbearing impacts.
- Address the consistency of the proposed development with the underlying stated objectives of the standard, the local planning objectives for the locality, and objectives of the Act.

As such, the SEPP 1 is not considered to be well founded and is not supported. Refer to Section 5 of this report for detailed assessment.

- **Habitable rooms should be set back 9m but the proposed studio rooms are only 3m from the park.**
- **The studios facing Kokoda Park afford residents and park users with little privacy and the orientation of the main frontages privatises the park.**

The DCP – Kensington Town Centre stipulates a horizontal separation of at least 12m between habitable rooms of adjacent buildings. This performance criteria is, however, not applicable to overlooking into the public domain as it is not possible to ensure privacy to an already public area.

- **Studio apartments will attract more students and will encourage derelict areas and affect the value of surrounding properties**

There is no evidence to suggest that provision of studio apartments for standard residential purposes will contribute to negative social impacts. Ultimately, property valuation is a matter that goes beyond the scope of matters of consideration under Section 79C of the EP&A Act as any claim that the subject proposal would affect the value of adjoining and surrounding properties will be tenuous and a matter of speculation.

- **Loss of outlook to the park and district views (toward the CBD) will result in loss of property value**

Some units within the existing residential flat buildings adjacent to the subject site current enjoy distant district views and views to Kokoda Park across the site to the east. These views, although not iconic, provide a high degree of visual, and subsequent living amenity for the existing occupants of residential buildings adjacent to, and surrounding the subject site.

In terms of views, the proposal does not maintain the view provision objectives of the Kensington Town Centre DCP in that the proposal is inconsistent with the building envelopes outlined in the DCP – Kensington Town Centre for Block 02.

Kokoda Park is centrally located near the Town Centre, which is itself surrounded by open space assets including Centennial Park, Moore Park and the Randwick Racecourse. The proposed development, due to its height, scale and generally visually imposing presentation to the adjacent Kokoda Park, does not adequately maintain views and vistas from the Town Centre into the surrounding open spaces such as Centennial Park.

It should be noted however, that property valuation is considered a complex issue because there are numerous factors that potentially can affect the monetary value of a property, potentially ranging from the overall state of the property market and the policy of financial institutions to the physical and locational conditions of a particular property and how these are shaped by personal perceptions and preferences of potential buyers and sellers in the market. Accordingly, property valuation is a matter that goes beyond the scope of matters of consideration under Section 79C of the EP&A Act as any claim that the subject proposal would affect the value of adjoining and surrounding properties will be tenuous and a matter of speculation.

- **Development on the subject site should not be permitted to extend any higher than a two storey height in order to uphold the aesthetic value of the surrounding area and maintain the established character of the area**

The DCP – Kensington Town Centre allows for a block-perimeter envelope with a maximum height of 5 storeys along Goodwood Street (with upper 2 levels setback by 4m); 4 storeys along the Kokoda Park frontage; and 5 storeys along Ascot Street (with upper 2 levels setback by 4m). Subject to compliance with the requirements outlined above, it is considered that the site is suitable for medium density development is able to visually support development up to 5 storeys.

- **More pressure will be placed on existing infrastructure (e.g. retail, essential services etc)**

High quality medium density residential development with associated retail uses is consistent with the overall objectives and direction of the DCP – Kensington Town Centre in that it will contribute to public improvements and a medium density Town Centre, where walking, cycling and public transport use are promoted, and where a mix of retail, commercial, residential and leisure uses caters primarily for the needs of the local community. Development, subject to compliance with the relevant planning controls, will serve to promote the vitality of the retail, commercial, residential and leisure mix and encourage users of major facilities such as Randwick Race Course, Centennial Park and the University to

enjoy local community life. In this sense, existing infrastructure will in fact be improved to accommodate new residents and over time and serve to promote a positive cycle of service provision and increase in population. Notwithstanding this, the current proposal does not adopt an appropriate scale and density for the site and surrounding town centre and fails to achieve compliance with the relevant controls of the Randwick LEP 1998 (Consolidation) and the DCP – Kensington Town Centre. Accordingly, the proposal is recommended for refusal.

- **The proposed studio units are too small and insufficient to accommodate the needs of future occupants**

The DCP – Kensington Town Centre stipulates a number of performance criteria in relation to minimum apartment sizes. The proposed units generally comply with the minimum unit sizes as recommended by SEPP 65 and the DCP. Variations on the minimum apartment size criteria are considered to be minimal and achieve a reasonable level of internal amenity. Notwithstanding this, it is considered that the overall number of apartments proposed results in a development which is excessive in GFA, bulk and scale. Any future development proposal for medium density residential development on the subject site should seek to provide a smaller number of apartments and maximise the amenity of each individual unit by providing compliant minimum apartment areas.

- **Noise from the Randwick Racecourse would reverberate off the proposed buildings onto adjoining buildings.**

It is considered that there is adequate separation distance between the Racecourse and the proposed development. Further, as the subject site is closer to the Racecourse in relation to the adjacent residential flat buildings, future development at 2-6 Goodwood Street would in fact act as a buffer for noise emanating from the Racecourse on race event days.

- **The high percentage of studio apartments exceeds DCP guidelines and is not conducive to maintaining a healthy population mix in Kensington and will encourage a more transient population**

Refer to the detailed assessment in Section 9 of this report.

## **7. Technical officer and external comments**

The application has been referred to the relevant technical officers, including where necessary external bodies and the following comments have been provided:-

## **7.1 Technical officer comments**

### **7.1.1 Development Engineering Comments**

The development application was referred to Council's Development Engineering Department primarily in relation to stormwater drainage and landscaping. No objection is raised to the proposed development subject to conditions of consent.

#### **General Comments**

The Development Engineer notes from the above table that the proposal is non compliant with respect to many planning considerations and the Assessment Planner has advised that a recommendation for refusal is likely. Council's Landscape Technician has identified an issue with respect to the proposed removal of trees from the Council reserve to the east of the development site. The proposed removal is not supported and retention of these trees will require a redesign of the development proposal including the carpark levels. Comments from the Landscape Technician have previously been forwarded to the Assessment Planner.

Detailed 1% ARI flood levels were provided to the applicant prior to lodgment of the development application. Whilst a detailed assessment of all habitable floor levels and openings has not been undertaken it appears that Council's requirements for protection of the basement carpark levels and protection of openings/habitable floor levels can be achieved.

#### **Parking Provision**

The Assessment Planner is advised that the proposed parking provision falls 15 carspaces short of that required under Council's DCP-Parking. A Traffic Impact Assessment (TIA) has been provided with the application, (prepared by Traffix and dated march 2011). The TIA provides supporting evidence for the deficiency in the onsite parking provision and this evidence is summarized as follows:

- Proximity to public transport;
- State Government planning policies which seek to reduce parking provision and encourage alternate transport modes;
- Census data provides a lower car ownership rate than Council's DCP-Parking;
- RTA Guidelines specifies a lower rate of visitor parking;
- Parking credits apply to 2 Goodwood Street;
- Some additional on-street parking spaces will be established as part of the works; and
- Only 2 commercial spaces are required.

The Assessment Planner is advised that whilst some reduction in the resident and visitor parking provision can be considered, given the site's proximity to public transport, the level of non-compliance with respect to Council's DCP-Parking is considered excessive. A recent Section 96 Application for a mixed residential/commercial development in very close proximity to the development site has stated that car ownership for that development is anticipated to be high.

Site visits undertaken at various times of the day have revealed that very few spaces are available for visitors on-street excepting some parking in Anzac Parade after business hours and after bus clearway restrictions have ceased.

Parking credits are generally only relevant where part of the existing development is being retained, (e.g. alterations and additions). Where structures are completely demolished and a new development constructed on the site, parking credits are generally not considered.

The Landscape Technician's requirements for trees within the adjoining reserve to be retained will, most likely, require a redesign of the basement carpark levels and the impact of this redesign on parking provision cannot be assessed.

### **Summary**

The proposed parking provision is not supported being significantly deficient when measured against Council's DCP-Parking requirements (in the order of 14-15% less than the DCP) and likely to be further impacted on by the requirement for a redesign of at least one of the basement carpark levels.

### **7.1.2 Building Services and Environmental Health Comments**

The development application was referred to Council's Building Services and Environmental Health sections. No objection is raised to the proposed development subject to conditions of consent.

### **Building Services Comments**

#### **The proposal**

Demolition of the existing single storey club and the two adjoining semi detached dwellings and the construction of three (3) blocks of multi unit housing with

1. Blocks A and C being 7 storeys high.
2. Block B being between 3 to 7 storeys high.

#### **BCA Building Classification**

Class 2 – Residential units

Class 5/6 – commercial unit

Class 7a – car park

#### **Description of the Building**

In summary, the buildings incorporate;

- A 'rise in storeys' of 7 (Blocks A and C) and varying from 3 to 7 (Block B)
- Masonry walls, concrete floors and roof.
- One exit stairway, of masonry construction
- A total of 103 sole occupancy units
- External balconies

#### **Key Issues**

Building Code of Australia (BCA):

Full details of compliance with BCA and fire safety provisions are not included in the DA documentation and therefore further detailed information is required to be incorporated in the documentation for a construction certificate.



**Site Management:**

Standard conditions are proposed to be included in the consent to address construction site management issues, such as the location of stock piled material or the storage and disposal of excavated materials, sediment and erosion control, public safety and perimeter safety fencing.

**Recommendation:**

Should the approval be granted to the application, appropriate nominated conditions shall be included in the development consent.

**7.1.3 Environmental Health Comments****Contamination**

Upon assessment of the above-mentioned application, it is considered that further information is required in relation land contamination prior to an adequate assessment being made by the Environmental Health Unit.

Council needs to ensure that the land is suitable for the proposed development, in accordance with the provisions of the Environmental Planning & Assessment Act 1979, SEPP 55, Contaminated Land Management Act 1997 and Council's Contaminated Land Policy 1999.

**RECOMMENDATION**

The following information is required to be submitted to Council prior to a determination of the development application.

1. A Preliminary Site Contamination Investigation must be undertaken and details are to be submitted to and accepted by Council.

This Preliminary Investigation shall be carried out in accordance with the requirements of the NSW EPA Guidelines and is to be undertaken by a suitably qualified consultant. The Preliminary Site Contamination Investigation is to identify any past or present potentially contaminating activities and must be provided to Council, in accordance with Council's Land Contaminated Land Policy. The Preliminary Site Contamination Investigation report is to be submitted to Council prior to any consent being granted.

Should the Preliminary Site Contamination Investigation be unable to justifiably conclude that the site is suitable for the proposed use, a detailed site contamination investigation must be undertaken by an independent appropriately qualified environmental consultant.

The report is to be carried out in accordance with Council's Contaminated Land Policy 1999 and relevant NSW EPA Guidelines for Contaminate Sites. Also, as detailed in the Planning Guidelines to SEPP 55 – Remediation of Land, the report is to assess the nature, extent and degree of contamination upon the land. The detailed site contamination report must be sufficiently detailed and be submitted to and approved by Council's Manager Environmental Health & Building Services.

- i) Should the Detailed Site Investigation Report not find any site contamination to both land and groundwater, the conclusion to the report must clearly state that 'the land is suitable for its intended land use' posing no immediate or long term risk to public health or the environment and is fit for occupation by persons, together with clear justification for the statement.
- ii) Should the Detailed Site Investigation Report identify that the land is contaminated and the land requires remedial works to meet the relevant Health Based Investigation Level:-
  - a) A Remediation Action Plan (RAP) is required to be submitted to and approved by Council prior to commencing remediation works. The RAP is also required to be reviewed and be acceptable to the accredited site auditor.

The RAP is to be prepared in accordance with the relevant Guidelines made or approved by NSW Department of Environment and Conservation (DEC), including the Guidelines for Consultants Reporting on Contaminated Sites.

This RAP is to include procedures for the following:

- Excavation of Hydrocarbon-contaminated soil,
- Validation sampling and analysis,
- Prevention of cross contamination and migration or release of contaminants,
- Site management planning,
- Ground water remediation, dewatering, drainage, monitoring and validation,
- Unexpected finds.

**Comment:**

A proposal for a Stage 1 Environmental Site Assessment (ESA1) prepared by Environmental Investigations, numbered EP1639.1 and dated 12 April 2011 was received by Council on 4 May 2011. The document outlines a general scope of works and proposes the following:

- A detailed site walkover inspection;
- A search of historical aerial photographs archived at the NSW Department of Lands in order to review previous site use and the historical sequence of land development in the neighbouring area;
- A land titles search, conducted through the NSW Land and Property Management
- A site history survey involving a detailed search of Council for information relating to operational site history;
- Search of NSW WorkCover Authority records for information relating to possible underground tank approvals and locations;

- Search through the NSW EPA / DECC Land Information records to confirm relevant statutory notices current on the site under the *Unhealthy Building Land Act* (1990) or the *Contaminated Land Management Act* (1997);
- A review of underground service plans; and
- Data interpretation and reporting.

The document also briefly discusses estimates for fees and timing for the report subject to approval to proceed with the final report.

The report was reviewed by Council's Senior Environmental Health Officer and the following comments were provided:

SEPP 55 provides that the proponent is responsible for investigating contamination issues on the land and demonstrating to the planning authority that the proposal can proceed. The planning authority must evaluate the information it already has and the information provided by the proponent before making a decision. The planning authority should seek further information from the proponent if the information available is insufficient.

SEPP 55 also requires that the land is suitable for the proposed use or can be remediated to make it suitable. If remediation is necessary, the planning authority must be satisfied that suitable planning controls are in place to ensure that this occurs. To assist in considering these matters, the SEPP requires consideration of a report on a preliminary investigation where a rezoning/development allows a change of use that may increase the risk to health or the environment from contamination.

This may initially be in the form of a preliminary investigation and should contain a detailed appraisal of the site's history and a report based on a visual site inspection and assessment. It is important that all relevant information about the site is assessed to determine the potential for site contamination. Where contaminating activities are suspected to have had an impact on the land, sampling and analysis will be required to confirm and support any conclusion reached from the site history appraisal. Through the assessment of sampling results, an assessment of contamination can be established.

At this stage no information has been provided to confirm the suitability of the land in its current form or if remediation is required to make it suitable for the intended use.

It is therefore considered that the application cannot be supported without the relevant information detailing the contamination status of the proposal.

## **7.2 External authority comments**

The application was referred to the following external referral agencies:

- The Office of Environment and Heritage (OEH) – Dewatering
- NSW Police Service - Crime and safety prevention protocol
- RTA - Development Assessment Unit

- Sydney Airport Corporation Limited
- Joint Regional Planning Panel
- Design Review Panel - SEPP 65 Design Quality of Residential Flat Buildings.

### **7.2.1 The Office of Environment and Heritage (OEH)**

#### **Section 91 Environmental Planning and Assessment Act 1979 - Integrated Development**

The development requires a site dewatering permit from the Office of Environment and Heritage (formerly known as the Department of Environment, Climate Change and Water (DECCW) under Part 5 of the Water Act 1919. The application was referred to the OEH on 18 March 2011. The NSW Office of Water has provided a preliminary comment indicating that the site will not require a Controlled Activity Approval under the Water Management Act 2000. However, no GTAs or further response has been received by Council to date, as such, pursuant to Clause 70(1)(a) – ‘Notification of general terms of approval’ as outlined by the Environmental Planning and Assessment Regulation 2000 which states that:

- (1) *An approval body that has received a development application from a consent authority must give written notice to the consent authority of its decision concerning the general terms of approval in relation to the development application (including whether or not it will grant an approval): (a) within 40 days after receipt of the copy of the application.*

the application is recommended for refusal and copies of all submissions received, as well as a copy the determination will be forwarded to the OEH, as the approval body.

### **7.2.2 NSW Police Service - Crime and safety prevention protocol**

The application was referred to NSW Police on 18 March 2011 in relation to Crime Risk Assessment and measures to achieve Crime Prevention Through Environmental Design (CPTED).

No response has been received from the Crime Prevention Officer in relation to this referral. As the application is recommended for refusal, detailed comments are not considered necessary at this stage.

### **7.2.3 Roads and Traffic Authority - Development Assessment Unit**

The proposal was referred to RTA in relation to traffic. The relevant comments were received on 14 April 2011 and are reproduced below:

The RTA has reviewed the traffic impact assessment associated with this development application (DA) and provides the following preliminary comments to Council:

1. The report fails to comment on the pedestrian trips generated to and from the nearby bus stops and whether any pedestrian safety mitigation treatments are required. This needs to be addressed to Council's satisfaction.
2. The electronic copy of SIDRA model should be submitted to Council and the RTA for review and approval prior to the determination of the development application to ensure that right turn queuing (defined as 95% back of queue) on Anzac Parade South approach at the intersection with Carlton Street doesn't exceed the length of the existing right turn bay on Anzac Parade.
3. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1 – 2004, AS 2890.2 – 2002, and AS 2890.6 – 2009.
4. The required sight lines to pedestrians and / or other vehicles in or around the entrances are not to be compromised by landscaping, signage, fencing or other materials.
5. All vehicles are to enter and leave the site in a forward direction.
6. A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council, for approval, prior to the issue of a construction certificate.
7. Any redundant driveways on Ascot Street and Goodwood Street should be removed with kerb and gutter reinstated to Council's requirements.
8. All works associated with the proposed development shall be at no cost to the RTA.

As the subject application is recommended for refusal, additional information from the applicant addressing the matters raised by the RTA in the above referral is not considered necessary at this stage.

#### **7.2.4 Sydney Airport Corporation Ltd**

Under the provisions of the Air Navigation (Building Control) Regulations, the concurrence of the Sydney Airports Corporation is required as the building proposed on the subject site has a maximum height in excess of 15 metres and may fall within the Conical Surface of the Obstacle Limitation Surfaces for Sydney Airport.

Sydney Airport Corporation's advice was received on 5 April 2011 incorporating the relevant comments and requirements. The Corporation's comments are reproduced below.

The site at 2-6 GOODWOOD STREET, KENSINGTON lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 150 feet (45.72 metres) above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.

The Sydney Airport Corporation Ltd (SACL) has no objection to the Property Development at 2-6 GOODWOOD STREET, KENSINGTON to a height of 52.2 metres above Australian Height Datum (AHD).

The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.

Should you wish to exceed 52.2 metres above Australian Height Datum (AHD), a new application must be submitted.

Should the height of any temporary structure and/or equipment be greater than 150 feet (45.72 metres) above existing ground height (AEGH), a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.

**Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.**

SACL advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.

Information required by SACL prior to any approval is to include:

- the location of any temporary structure or equipment, ie. construction cranes, planned to be used during construction relative to Mapping Grid of Australia 1994 (MGA94);



- the swing circle of any temporary structure/equipment used during construction;
- the maximum height, relative to Australian Height Datum (AHD), of any temporary structure or equipment ie. construction cranes, intended to be used in the erection of the proposed structure/activity;
- the period of the proposed operation (ie. construction cranes) and desired operating hours for any temporary structures.

Any application for approval containing the above information, should be submitted to this Corporation at least 35 days prior to commencement of works in accordance with the Airports (Protection of Airspace) Regulations Statutory Rules 1996 No. 293, which now apply to this Airport.

For further information on Height Restrictions please contact Ms Lynne Barrington on (02) 9667-9217.

Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed "controlled activity" and is punishable by a fine of up to 50 penalty units.

The height of the prescribed airspace at the site is 80 metres above Australian Height Datum (AHD). In accordance with Regulation 9 of the Airports (Protection of Airspace) Regulations Statutory Rules 1996 No. 293, "a thing to be used in erecting the building, structure or thing would, during the erection of the building, structure or thing, intrude into PANS OPS airspace for the Airport, cannot be approved".

#### Bird and Obstacle Hazard Management

The area in which the proposed development is located is in the vicinity of Sydney (KS) Airport.

To minimise the potential for bird habitation and roosting, the Proponent must ensure that non-bird attracting plant species are used in any landscaping design.

Any landscaping design must minimise the attractiveness for foraging birds, i.e. site is kept clean regularly, refuse bins are covered, and detention ponds are netted.

All trees to be planted shall not be capable of intruding into the Obstacle Limitation Surface when mature.

#### Planning for Aircraft Noise and Public Safety Zones

Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use as the land use planning tool for Sydney Airport was endorsed by Airservices Australia on 13 March 2009 (Sydney Airport 2029 ANEF).

Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport boundary, it is recommended that proposed land uses which have high population densities should be avoided.



### **7.2.5 Joint Regional Planning Panel**

The provisions of SEPP – Major Development 2005 apply to the proposed development as the capital investment value is in excess of \$10 million. In accordance with the requirements of Clause 13B (1)(a) the submitted application is classified as ‘regional development’ with the determining authority for the application being the Joint Regional Planning Panel (Eastern Region). The submitted application is referred to the Joint Regional Planning Panel for determination in accordance with the applicable provisions of SEPP (Major Development).

### **7.2.6 Design Review Panel - SEPP 65 Design Quality of Residential Flat Buildings.**

The application was referred to the Design Review Panel (DRP) convened under SEPP 65. The DRP recommendations in relation to the design quality principles for residential flat buildings, as set out in Part 2 of SEPP 65, from its meeting on 4 April 2011, are set out below (in italics), followed by Council’s comments to conclude: -

#### **PANEL COMMENTS**

*It was noted that this was a Development Application and the second Panel meeting with the applicant for this proposal. The proposal is for the redevelopment of single storey buildings belonging to the RSL, and is one of the most important sites within the area of the Kensington DCP.*

*The Panel’s report from the October 2010 meeting is listed below and new comments added in italics. The Panel has visited the site.*

#### **1 Relationship to the Context of the Proposal**

*This Pre-DA consists of massing studies that explore a variation to the building envelopes in the Kensington DCP. As such, it is a commendable way in which to commence discussion about this fairly major proposal.*

*The site is a large one situated between a major residential redevelopment (4 – 7 storeys) with frontage to Anzac Parade, which is under construction at present, and to its east, Kokoda Park. The park is a simple grassed area with some stands of mature trees, at present surrounded by single storey buildings on its east and west sides and buildings of various sizes on the opposite sides of Goodwood and Ascot Streets. The park has the latent potential to become a fine green square, much in the manner of fine London squares, which was after all the original design motivation for the suburb of Kensington.*

*The site planning strategy has been further developed since the last meeting and is commendable as a framework to deliver quality apartments with good natural light and ventilation and clear consolidated landscaped areas. The site planning arrangement as submitted is a much more sophisticated design than that suggested by the DCP’s block envelopes. It creates positive, landscaped spaces between the buildings, and generally an equitable relationship to the neighbouring buildings.*

*The landscaped area could be further improved if Unit G04 (and at least two more floors above) were not splayed to the north, and the throat to the courtyard widened.*

*The northern street frontage (Goodwood Street) is unfortunately compromised by the amount of services facing the street - any ability to reduce the services frontage would be welcome.*

*More contextual information for both Ascot and Goodwood street setbacks would be good to consider. These facades may be better brought forward to the boundary lines.*

*Shadow information was not provided for Panel review and yet the impacts on the park and neighbours are potentially severe. The shadow over the park on a winter's afternoon seems excessive, and needs to be reduced. The height of the proposal may have to be reduced substantially.*

*In the Panel's opinion, the principle of higher density where there is higher amenity is perfectly demonstrated by this project. This is the most desirable site for good quality housing in the Kensington DCP area. The positive frontage, address and setbacks of the project to the park are supported, whereas concerns are raised specifically about the height and overshadowing. The presence of a café on the north-east corner is a positive element.*

*Dedication to Council of a strip of land along the eastern boundary should be clearly dimensioned. This area would best be paved as footpath, with a suggested width of at least 1 metre. The car park basements appropriately do not extend under the dedicated land.*

*An urban design assessment by Roberts Day, an independent Urban Designer, was also presented to the Panel. The Panel found the presentation of their arguments unconvincing, and of no direct relevance to the merits and impacts of the proposal.*

## **2. The Scale of the Proposal**

*The overall scale of the option presented is broadly suitable to its context, but marginally above the density implied by the DCP (85% of the prescribed building envelope).*

*The applicant believes that the form set in the DCP envelope would not result in the best overall design, as the 20+ metre wide buildings it proposes would be too wide for good residential development, particularly of small apartments. It would in fact be wider than the recommended RFDC width range of 10–18 metres. Existing flat buildings on neighbouring sites do not conform to the DCP which also reduces the effectiveness of the DCP for this site.*

*For these reasons, the Panel has sympathy for the applicant's view, but is not yet convinced by the proposed modification. The issues that should be examined to arrive at a preferred option are discussed below.*

*It is the Panel's view that the DA documentation shows the proposed building is over scaled and has negative impacts on the park and surrounding buildings. A smaller*

*building piece on the north east and south east corners would substantially reduce these impacts.*

*The proposal should be consistent with the overall volumes of the DCP, albeit redistributed to achieve a better urban form and residential site plan. The 7 storey height is too widely distributed, and lower heights in part need to be considered.*

### **3. The Built Form of the Proposal**

*Built form is the essential issue being considered in the proposed departure from the DCP. The applicant proposes that the DCP's 4 storey 20 metre wide envelope be replaced by a 7 storey 12 metre wide envelope with the top 2 floors set back from the park. A 12 metre wide gap between the building with frontage to Goodwood Street and the building with park frontage is also proposed.*

*A setback from the park is not proposed either in the DCP or the applicant's variation to it.*

*The potential benefits of the reconfiguration are:*

- *Better internal conditions and ease of achieving cross ventilation*
- *The opportunity for more landscaping and some minor setback from the park boundary.*
- *The shaft of open space extending westward into the development would benefit additional apartments in the development and adjacent to it. (it is not clear whether public access would be allowed to this area.)*

*Disadvantages are that the buildings:*

- *Are likely to cast additional shadow on the park*
- *The buildings on Ascot and Goodwood Streets may be too high.*

*The Panel notes that much of the advantage of extra ground space is negated by the proposed multi-level access balconies. It is suggested that these be replaced by additional lifts and stairs (might not be more expensive). Likewise the high level walkways across the proposed 12 metre wide break in the western façade to the park would somewhat negate its benefits.*

*The Panel recommends that the applicant:*

- *Prepare solar diagrams that compare the shadow cast by the 7 storeys compared to the DCP envelope.*
- *Provide additional contextual analyses to evaluate effect of 7 storeys on the surrounding streets.*
- *Illustrate the effect of the change in height proposed on the visual amenity of the Park.*
- *Test the effect on solar access for the park and adjacent buildings of reducing building height on the north-east corner of the development to 4 storeys.*

*The removal of the internal bridges has been adequately addressed however the remaining issues remain of concern to the Panel.*

*1:50 sections through roofs, balconies, screens, sunshades, balustrades, glazing, shopfronts etc. should be provided for assessment.*

*Retail exhausts, air-conditioning plant, air-intake grilles etc should be clearly shown on the drawings.*

#### **4. The Proposed Density**

*The Panel at present sees no justification for additional floor space beyond 85% occupation of the DCP envelope, albeit in the improved configuration. This would still give a substantial yield.*

#### **5. Resource and Energy Use and Water Efficiency**

*The narrower building proposed would provide an opportunity for buildings of significantly better environmental performance.*

*The thin cross section design has been consistently and intelligently applied throughout, providing benefits of good daylighting and cross ventilation.*

*Ceiling fans should be provided in all bedrooms (and clearly indicated on the plans).*

*The sunshading and glazing strategies need to be clearly documented to enable assessment.*

#### **6. The Proposed Landscape**

*A full landscape plan has not yet been prepared, however it is clear that the taller narrower option provides opportunities for more useful landscape treatments. However, as noted above, the Panel is not convinced by the access balconies proposed and their landscape treatment.*

*As the development would benefit greatly from its frontage to Kokoda Park, it would be reasonable for the applicant to contribute to the landscape in the park to improve its quality and to provide enhanced planting in front of the proposed buildings in an appropriate manner.*

*A detailed landscape was provided to the Panel at A4 size which is too small to read for assessment.*

#### **7. The Amenity of the Proposal for its Users**

*Due to the proposed improvements in the site planning and the inherent qualities of the site, the proposed apartments could enjoy a high level of amenity.*

*The apartment planning is consistently well resolved, and far superior to most applications reviewed by the Panel. While most units are compact, they are well laid out to give usable spaces throughout. The balconies are consistently well related to the living rooms, and are placed to benefit from the best available outlook and orientation, the ventilation slots over the common walkways are used intelligently.*

## **8. The Safety and Security Characteristics of the Proposal**

*The “eyes on the park” and the additional population should enhance the security of the park and streets.*

## **9. Social issues**

*Additional population in this area should increase the vitality of Kensington generally.*

*The street frontage and cafe design should be provided in a larger scale for assessment.*

## **10. The Aesthetics of the Proposal**

*Generally, there is no reason why this proposal should not achieve a high aesthetic standard.*

*However the Panel considers that some of the upper elements are overbearing in their massing, making the scheme more monolithic and bulky than it need be.*

## **SUMMARY AND RECOMMENDATIONS**

*The Panel believes that this is an excellent site for higher density housing, as it is sunny, green away from the Anzac Parade frontage, but comfortably separated from other residential neighbours.*

*There are clear advantages to be gained from the proposed changes to the DCP envelope, but the applicant needs to fully analyse their implications.*

*The Panel would like to review this DA again after the matters raised have been addressed.*

### **Comment:**

Council's main issue with the proposed development mirrors advice from the Design Review Panel. Whilst the current design has the potential to provide high quality medium density residential development, any future development proposal needs to be moderated to improve the amenity of adjacent and surrounding development and Kokoda Park, and achieve a better contextual relationship with surrounding buildings. It is Council's view that the proposal will severely compromise the amenity of the adjacent development and Kokoda Park users. The RLEP ordinarily restricts GFA, building height and maximum number of storeys within the Kensington Town Centre for this reason.

In addition, it should be noted that the proposal was submitted for consideration under Council's prelodgement service. At the time, the recommendation provided to the applicant by both the Design Review Panel and Council explicitly advised that the maximum number of storeys and building height controls would have deciding weight in the final assessment and a reduction should be reflected in any formal development application. The current proposal is successful in addressing some of the matters raised by the Panel in relation to building footprints and general amenity

for future occupants, but fails to provide any reasonable grounds for Council to support the extra storeys. As such, the application is recommended for refusal.

## **8. Relevant Environmental Instruments**

The subject site is zoned Local Business 3B and forms Block 2, part of the wider Kensington Town Centre site as identified by Clause 42C(1) of the Randwick LEP 1998 (Consolidation). The proposal is permissible with development consent.

The Development Application has been assessed in accordance with the provisions of the following relevant planning documents:

- Environmental Planning and Assessment Act 1979, as amended
- Environmental Planning and Assessment Regulation 2000, as amended
- Randwick Local Environmental Plan (Consolidation) 1998
- Randwick Development Control Plan – Kensington Town Centre
- Randwick Development Control Plan – Parking
- Randwick Section 94A Development Contributions Plan
- Building Code of Australia

The following relevant clauses of the Randwick Local Environmental Plan (Consolidation) 1998 apply to the proposal (and are addressed in detail in Section 9.1 and 10 below):

- Clause 14 - Zone No 3B (Local Business 3B)
- Clause 40 - Earthworks
- Clause 42C - Kensington Town Centre

Additionally, the following statutory controls apply in the assessment of the proposed development:

1. State Environmental Planning Policy (Major Development) 2005
2. State Environmental Planning Policy No. 55 – Remediation of Land
3. State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development
4. State Environmental Planning Policy (Building Sustainability Index BASIX) 2004

An assessment of the proposed development under the planning controls is provided in Sections 7 and 10 of this report.

## **9. Policy Controls**

### **9.1 Development Control Plan - Kensington Town Centre**

The proposal has been assessed in relation to the Kensington Town Centre Development Control Plan. The DCP provides a framework for the redevelopment of the wider Kensington Town Centre and surrounds containing performance criteria and controls to guide built form, provide environmental and amenity standards, and

give appropriate protection for local business, open space and residential development both on a block-by-block basis as well as a general overview.

The proposal does not comply with a number of applicable and critical block-specific controls of the DCP. These non-compliances are assessed and discussed in detail in the following sections of this report.

### 9.1.1 New Built form

**Clause 4.2.1** of the Kensington Town Centre DCP serves to achieve a new built form that responds to the Building Envelope Controls of the DCP.

Specifically, the DCP requires new built form in the Town Centre to occur within designated building envelopes as outlined by the block controls. A key performance criteria under this clause is that new development must demonstrate that the achieved gross floor area occupies no more than 80 - 85% of the building envelope.

The proposed gross floor area of the proposed scheme is in the order of 116.5% of the gross floor area of the envelope, while the DCP describes a maximum yield of 85% approximately 2.4:1) The breaches in gross floor is clearly reflected in the resultant building height and excessive number of storeys and translates directly into a perceptibly more bulky development that do not relate appropriately with the context of the surrounding development and natural environment. In light of the significant and excessive departure from the performance criteria stated by the DCP, the proposal is not considered to comply with the relevant objectives of this clause of the DCP.

### 9.1.2 Building Heights

**Clause 4.2.4** of the DCP acknowledges that Anzac Parade can visually support slightly taller buildings along the main street, with a visual transition to lower heights 'behind' the main street. This means that generally, the maximum height of any building along Anzac Parade should be 4 storeys setting back to 6 storeys, and the maximum height of any other building will be 3 storeys setting back to 5 storeys. This ensures that buildings reflect an appropriate scale relationship between new development, street width, local context, and the scale of adjacent dwellings.

The DCP requires new development to meet with the relevant performance criteria through compliance with the maximum envelope heights specified in the Block by Block controls. These controls are compared in the table below to the proposed height and number of storeys:

Transitional development fronting other streets	Floor	Building height controls (to the underside of topmost ceiling)		Proposed	Compliance
	Ground/storey 1	Min 3.5m	Max 3.5m	4.6m	No
	Storey 2	Min 7.2m	Max 7.2m	7.8m	No
	Storey 3	Min	Max 10.5m	11.6m	No

	10.1m			
Storey 4	Min 13m	Max 13.8m	14.3m	No
Storey 5	Min 15.9m	Max 17.1m	17.6 – 24.7m	No
Storey 6	N/A	N/A		No
Storey 7	N/A	N/A		No

Whilst the DCP does allow for flexibility in block footprints in order to reduce building zone depths and provide for better open spaces between buildings, the variations being sought in the current application go significantly beyond the DCP provisions in that it introduces significant height, bulk and scale that does not accord with the DCP's design objectives for Block 02. In this sense, the proposal's provision of a wider shaft of open space between the proposed buildings should not be compensated and negated by compressing building forms into higher building elements within the designated DCP building zones and envelopes.

Overall height and number of storeys upper levels are significant elements of the envelope and carry determinative weight in Council's assessment of the application. The level of non-compliance is substantial and can be regarded as over-development of the site. Impacts on the desired future character of Kensington and the amenity of private and public spaces cannot be adequately justified as the impact is resultant from portions of the building that are wholly non-complying.

The proposal therefore fails to satisfy the relevant objectives of this clause in that:

- The proposed buildings are not well-proportioned
- Resultant overshadowing, access to sunlight and privacy is not well managed or justified
- The proposed development does not achieve a visual transition between the heights of buildings on Anzac Parade and the heights of buildings 'behind' the main street.

### 9.1.3 Building Zone

**Clause 4.2.5** for Building Zones aims to optimise the position of new development in relation to the lot, the street edge and neighbouring development in order to achieve the following objectives through Location of buildings within the building zones indicated on the block-by-block controls (refer to Section 9.1.5 below for detailed assessment):

- *To achieve a strong street edge to Anzac Parade.*
- *To achieve environmentally sustainable, dual aspect apartments with natural cross-ventilation.*
- *To achieve a high standard of environmental amenity for residents of new development.*
- *To ensure the bulk and scale of new development reinforces positive neighbourhood amenity and character and responds to the scale of the street and surrounding buildings.*



- *To distribute building bulk and height in order to maximise accessible, well configured communal open space.*

The proposal is not seen to meet these objectives in that the bulk and scale of the new buildings does not reinforce positive neighbourhood amenity and character and fails to respond to the scale of the street and surrounding buildings.

#### 9.1.4 Setbacks

Consistent with the purpose of clause 4.2.5 for Building Zones above, **Clause 4.2.10** of the DCP – Kensington Town Centre aims to: -

- *Reinforce the prevailing character of the Town Centre.*
- *Provide visual and acoustic privacy between neighbouring buildings.*
- *Orientate buildings and habitable rooms towards the street, and towards communal open space.*
- *Minimise any negative impact on the amenity of adjacent sites.*

The proposal does not comply with the requirements for transitional development setbacks. A visual and numerical comparison is made below:-



Figure 6 – Block layout and setbacks as prescribed by the LEP/DCP building envelope for Block 02 with Goodwood Street to the north and Ascot Street to the south.

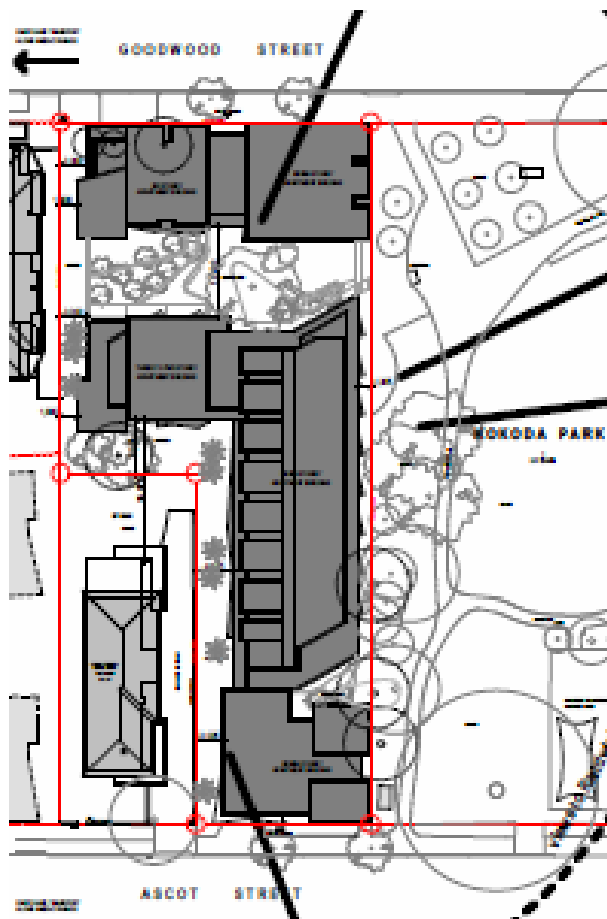


Figure 7 – Proposed layout and setbacks in relation to the site boundaries (shown in red).

Rear and side setbacks create the relationships between neighbouring buildings, create opportunities for landscaped open space and are important contributors to visual and acoustic privacy. Importantly, in the context of the site's proximity to Kokoda Park, upper levels should be set back to soften the built form, and assist buildings to achieve a human scale. The proposed development, with its excessive height and scale, combined with lack of setbacks at the upper floors is considered to be visually dominating and overbearing. As indicated in the table below, the proposal does not achieve satisfactory setbacks from the streets or adjoining residential flat buildings. This arrangement compromises the solar access, privacy and amenity of the adjoining Kokoda Park and the existing development to the west at Nos. 5 – 7 Ascot Street and 8-10 Goodwood Street.

Location	Building	Setback distance	Setback from	Proposed
Transitional Development	First 3 storeys	0m	Front & side boundaries	0m-1.2m
	4th & 5th storeys	4m	Front boundaries	1.2m
	All storeys adjoining strata titles	6m (min)	Property boundary existing strata title building unlikely to change	2.8m

	buildings			
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### 9.1.5 Block 02 Controls

In relation to Block 2, the DCP for Kensington Town Centre notes that:

*“Block 2 abuts Kokoda Park, a formal memorial park with some child play facilities. Ascot Street is the main taxi and chauffeur driven vehicle entrance to the Race Course on Race days. As such it provides an opportunity to impress race-goers with the qualities of the Kensington Town Centre: if well presented, Ascot Street could encourage race-goers to use the Town Centre on Race days or to return to the Town Centre in future”*

The DCP also stipulates that no ground floor uses should encroach on the public spaces of Kokoda Park. Although the works proposed under the current application are contained wholly within the boundaries of the subject site, due to the close proximity of the proposed basement levels to the site’s eastern boundary, the application seeks to remove existing and matures trees from the south western corner of Kokoda Park. The damage or removal of these trees will not be supported as they contribute to the local environment and maintain a high level of amenity for Kokoda Park users both in terms of shade provision and aesthetic amenity. The removal of these trees will also expose future development of the subject site, further exacerbating the scale of any buildings adjacent to the park.

**Clause 4.3.2** clearly indicate building envelope controls and it is considered that adherence to these controls will promote development which enhances the visual and environmental amenity of the Town Centre.

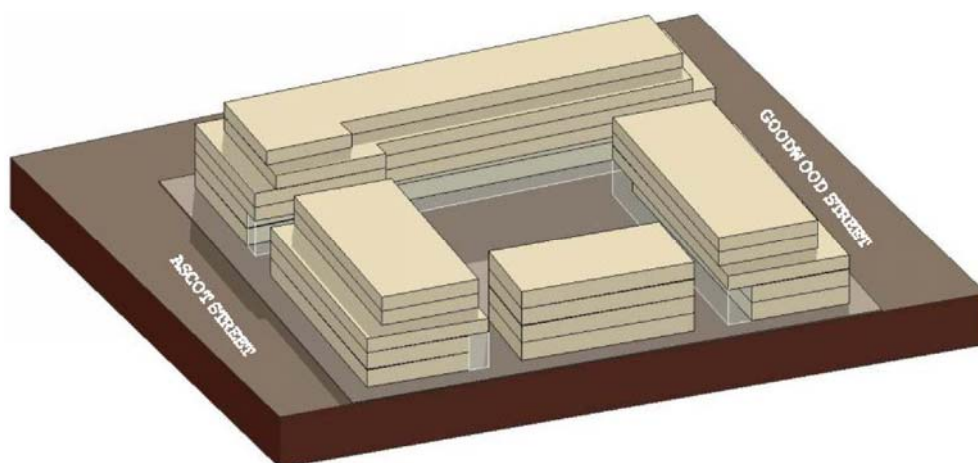


Figure 7 – LEP/DCP building envelope building envelopes fro Block 02 as seen from Kokoda Park

The DCP – Kensington Town Centre describes a block-perimeter envelope with a maximum height of 5 storeys along Goodwood Street (with upper 2 levels setback by 4m); 4 storeys along the Kokoda Park frontage; and 5 storeys along Ascot Street (with upper 2 levels setback by 4m). The proposal will have a maximum of 7 storeys such that it will exceed the designated envelopes on the street frontages by 2 storeys and on the Kokoda Park frontage by 3 storeys.

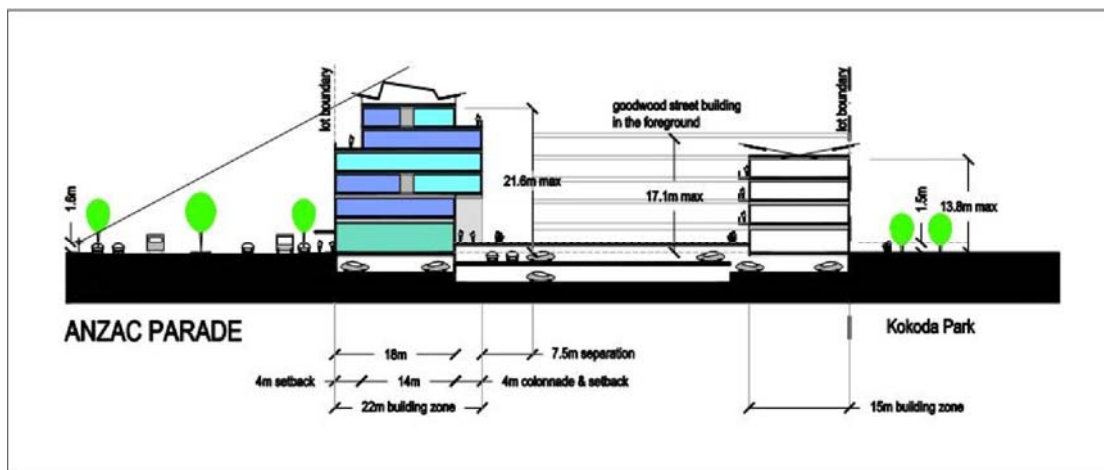


Figure 8 - A cross section of the LEP/DCP building envelope indicating a maximum number of 5 storeys for buildings fronting Goodwood and Ascot Streets and a 4 storey height limit for buildings addressing Kokoda Park.

Figure 8 shows a cross section of the building envelope as prescribed by the DCP, distinctly indicating a maximum number of 5 storeys for buildings fronting Goodwood and Ascot Streets and a 4 storey height limit for buildings addressing Kokoda Park. Figures 9 and 10 shows the elevations of the proposed building where the top storeys can be seen to have none of the necessary height and setback.

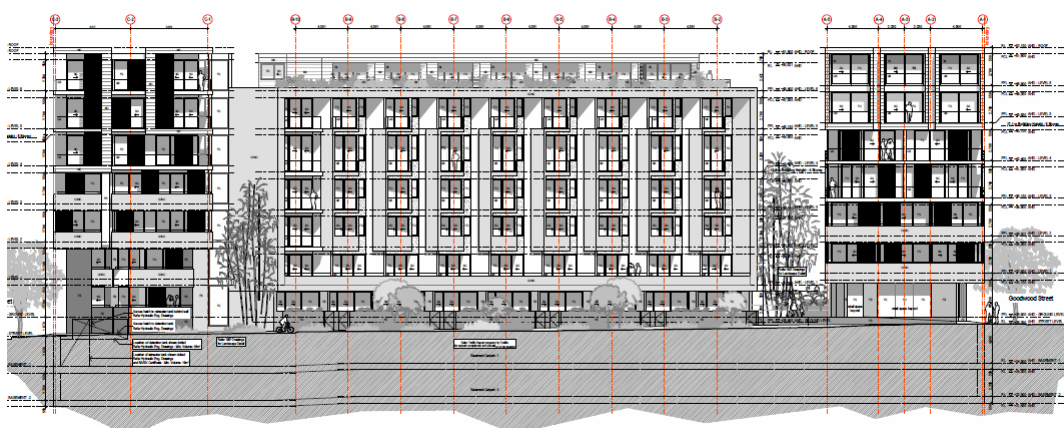


Figure 9 - The eastern elevation of the building showing an additional 2 and 3 storeys above the DCP's limit distributed along the entire eastern elevation with no visual relief.

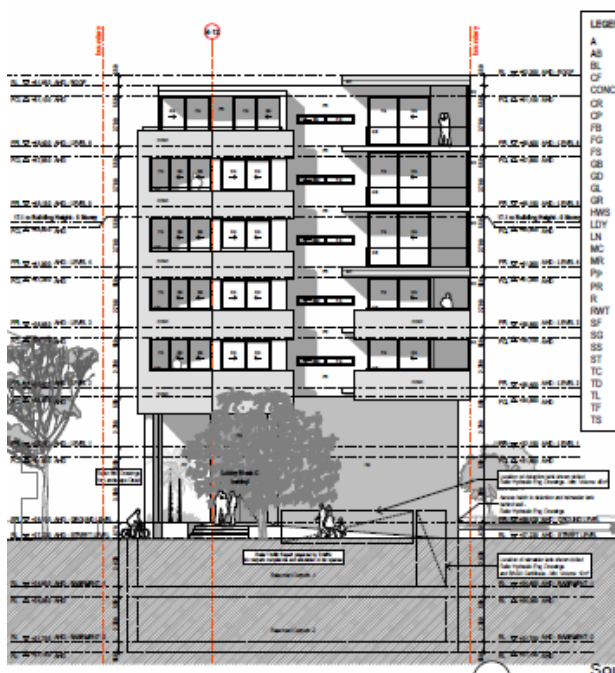


Figure 10 – The southern elevation (Kokoda Park to its right) of the building corresponding with Figure 8 above, illustrating an evident and excessive breach in height.

The excessive GFA and resultant height and number of storeys proposed erodes the benefits of distributing floor space over three (3) separate blocks and will result in significant adverse impacts to the adjoining development and Kokoda Park. As such, the development does not meet the relevant envelope controls for Block 02 clause.

#### 9.1.6 On-Site Parking

The relevant objectives of **Clause 4.5.2** of the DCP in relation to on site parking provision are:

- *To provide on site parking for commercial users, residents and visitors.*
- *To ensure that on-site parking does not significantly affect the groundwater system.*
- *To ensure that carparking access and garaging do not dominate the street or the site.*
- *To integrate parking facilities with the overall site planning and maximise on-site open space.*
- *To ensure that development makes adequate provision for service and delivery vehicles, including access circulation, manoeuvring, safety and headroom.*

The proposal provides a total of 92 spaces within 2 levels of basement carparking and does not comply with the parking rates specified in the DCP – Parking by a shortfall of 15 spaces. Given the site's proximity to public transport, the level of non-compliance with respect to Council's DCP-Parking is considered excessive. A recent Section 96 Application for a mixed residential/commercial development in very close proximity to the development site has stated that car ownership for that development is anticipated to be high.

Taking into consideration the significance of the proposed parking deficiency when measured numerically against Council's DCP-Parking requirements (in the order of 14-15% less than the DCP) the proposal is not considered to meet the relevant objectives of the DCP – Kensington Town Centre and fails to provide reasonable access to on site parking for commercial users, residents and visitors.

### **9.1.7 Solar Access, Overshadowing & Natural Daylight**

**Clause 4.6.11** of the DCP describes solar access as a major determinant of personal environmental comfort. As such, new development must recognise that existing adjacent buildings require reasonable access to sunlight for living spaces, and private and public open spaces.

Relevant objectives include:

- *To minimise the negative impact of overshadowing on the internal and outdoor areas of neighbouring buildings.*
- *To optimise solar access to habitable rooms and to minimise the need for artificial lighting during daylight hours*
- *To retain the amenity of the public domain by maximising solar access.*

By virtue of the orientation of the subject site in relation to the adjoining residential flat buildings to the west at Nos. 5 – 7 Ascot Street and 8-10 Goodwood Street (both presently occupied by existing four (4) storey strata titled residential flat buildings), the proposed development generally maintains a minimum of 3 hours sunlight during the winter. The neighbouring residential flat building to the west at the northern end of the site at 8-10 Goodwood Street has its sunlight maintained as the units at the northern end are unaffected while the units at the southern end will continue to receive morning and afternoon sunlight.

The neighbouring residential flat building to the west at the southern end of the site at 5- 7 Ascot Street will continue to receive at least 3 hours solar access to its north-facing living room and balconies.

Notwithstanding this, the proposal's extensive and undesirable overshadowing impacts on Kokoda Park are a direct consequence of the proposal's excessive height and number storeys. These impacts are particularly apparent in the winter afternoons, where use of Kokoda Park and associated children's play areas is anticipated to be quite high given the warmth and pleasant environment in the park. The development overshadows the park entirely, restricting the use and enjoyment by the public. The resultant overshadowing is clearly demonstrated in accompanying shadow diagrams and when compared to overshadowing impacts generated by a more compliant development, it is evident that a development which meets the relevant controls lends a tangibly higher degree of amenity to the surrounding development and Kokoda Park users. Given the reasons stated above, the proposed development does not satisfy the relevant objectives of the DCP for solar access and does not adequately retain the amenity of the public domain as it limits, rather than maximises solar access.



### 9.1.8 Apartment Mix

The main objective of **clause 4.7.3** is to provide a mixture of apartment types and sizes to accommodate a range of household types. The proposal's main areas of non-compliance with relevant performance criteria are assessed as follows: -

- *Provide a mix of Studios, 1 Bedroom, 2 Bedroom and 3 or more Bedroom apartments.*
- *Provide a mix of layouts and sizes, and consider the design needs of those who work from home.*
- *Ensure that Studios and 1 Bedroom apartments comprise no more than 40% of the total number of apartments.*

DCP – Kensington Town Centre stipulates no more than 40% of the total number of apartments comprise of studio/1 bedroom apartments. An interrelated argument for the parking deficiency is the provision of more studio/1 bedroom units (73% of the proposed apartment mix). The proposed development provides no 3 bedroom units, and a minimal number of 2 bedroom units. This does not satisfy the stated objectives of the DCP and it is evident that the apartment mix is designed to mitigate impacts caused by the provision of too many units rather than addressing important issues of amenity and housing diversity.

Provision of a reasonable apartment mix is intrinsic to higher levels of amenity for existing and future residents. Failure to do so results in lack of housing options for future residents who may wish to move to the Town Centre. The proposal is not satisfactory based on these reasons and cannot be supported.

## 9.2 Development Control Plan – Parking

The DCP – Parking requires, amongst other things, car parking to be provided for multi-unit residential development at a rate of 1.2 spaces per 2 bedroom dwelling, 1.5 spaces per 3 bedroom dwelling and 1 visitor space per 4 dwelling units. Car parking provision is assessed in the table below: -

Requirement (DCP – parking)	Proposed number and/or floor area	Required provision	Proposed provision
Business Premises at 1 per 40m <sup>2</sup> GFA	101sqm of retail floor space	2.5 spaces	
1 per 2 dwellings for studio units	60 x studio dwellings	30 spaces	
1 space per one bedroom dwelling	17 x one bedroom dwellings	17 spaces	
1.2 spaces per two bedroom dwelling	26 x two bedroom + study dwellings	31.2 spaces	
1.5 spaces per three bedroom dwelling	No 3 bedroom dwellings proposed	N/A	
Visitor: 1 space per 4 units	Total dwellings = 103	40.75 spaces	

**TOTAL****107 spaces****92 spaces**

The proposal provides a total of 92 spaces within 2 levels of basement carparking and does not comply with the parking rates specified in the DCP – Parking by a shortfall of 15 spaces. Refer to Development Engineer's comments (in Section 7.1.1 of this report) for further discussion on the shortfall of parking requirements.

**9.3 Section 94 Contributions Plan**

The Section 94A Development Contributions Plan, effective from 2 July 2007, is applicable to the proposal. In accordance with the Plan, the following monetary levy is required:

<b>Category</b>	<b>Cost</b>	<b>Applicable Levy</b>	<b>S94A Levy</b>
Development Cost more than \$200,000	\$20302645	1%	\$203026.45

**10. Section 79C Considerations**

The following sections summarise the assessment of the proposal in terms of the heads of consideration in Section 79C of the Environmental Planning and Assessment Act 1979.

**(a) The provisions of:****(i) Any Environmental Planning Instrument****10.1 State Environmental Planning Policy (Major Development) 2005**

The provisions of SEPP – Major Development 2005 apply to the proposed development as the capital investment value is in excess of \$10 million. In accordance with the requirements of Clause 13B (1)(a) the submitted application is classified as 'regional development' with the determining authority for the application being the Joint Regional Planning Panel (Eastern Region). The submitted application is referred to the Joint Regional Planning Panel for determination in accordance with the applicable provisions of SEPP (Major Development).

**10.2 State Environmental Planning Policy No. 55 – Remediation of Land**

SEPP No. 55 aims to promote the remediation of contaminated land for the purposes of reducing risk of harm to human health or any other aspect of the environment. To assist in considering these matters, the SEPP requires consideration of a report on a preliminary investigation where a rezoning/development allows a change of use that may increase the risk to health or the environment from contamination.

At this stage no information has been provided to confirm the suitability of the land in its current form or if remediation is required to make it suitable for the intended use. It is therefore considered that the application cannot be supported without the relevant information detailing the contamination status of the proposal and its compliance with the requirements under SEPP 55.



### **10.3 State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development**

State Environmental Planning Policy No. 65 aims to promote quality design of Residential Flat Buildings. The proposal is subject to the Policy as it involves development of a residential flat building being 3 storeys and more in height. The application also has been considered by Council's Design Review Panel (the Panel's comments are addressed in section below).

### **10.4 State Environmental Planning Policy (Building Sustainability Index BASIX) 2004**

SEPP: BASIX applies to the proposed development. The development application is accompanied with BASIX Certificate dated 16 March 2011 and numbered 362943M. The commitments listed in the above certificate will be imposed by appropriate standard conditions pursuant to Clause 97A of the Environmental Planning and Assessment Regulation 2000.

### **10.5 Randwick Local Environmental Plan 1998 (Consolidation)**

The following relevant clauses of the Randwick LEP 1998 (Consolidation) apply to the proposal:

#### **Clause 9 - Objectives**

Clause 9 of RLEP 1998 requires Council to consider the aims of the LEP and Zone objectives prior to determining any DA on land to which the RLEP applies. The purpose of this Clause is *"To require the general aims of this plan and the specific objectives of each zone to be taken into account in the assessment and determination of development applications"*. With reference to the general aims, the proposed development will compromise the aims of the LEP in relation to aesthetic character, sustainability, environmental qualities and social amenity of the locality and will result in a development that compromises the amenity of the residential area. The proposal is inconsistent with the specific zone objectives and is recommended for refusal.

#### **Clause 14 - Zone No 3B (Local Business 3B Zone)**

The land is zoned 3B local business and the proposal is permissible with development consent. The relevant objectives of the zone are as follows: -

- (a) *to provide opportunities for local retail and business development in the City of Randwick, and*
- (b) *to provide opportunities for associated development such as car parking and service industries, and*
- (c) *to provide opportunities for residential accommodation in local business centres where it does not interfere with the primary business function of the zone, and*
- (d) *to minimise the impact of development on adjoining and nearby residential zones, and*
- (e) *to encourage housing affordability, and*
- (f) *to encourage the provision and use of public transport.*

Specifically, in terms of objective (c) and (d), the proposal is a large scale development on an important and prominent site within the Kensington Town Centre to be redeveloped for residential purposes. While this in principle is consistent with

the objectives of the RLEP and DCP – Kensington Town Centre, the proposal does not effectively minimise adverse impacts to the amenity of the adjacent and nearby residential development, as well as that of Kokoda Park. The resultant bulk and scale is not seen to be suitable for the site or commensurate with the surrounding development. As such, the proposal is not considered to satisfactorily address the relevant zone objectives.

#### **Clause 40 - Earthworks**

Clause 40 of the RLEP contains provisions for undertaking of excavation and filling of land. The proposal will require earthworks to be undertaken to construct the common basement carpark (involving the excavation of 2 basement levels under the buildings) of the proposed development and foundations for the buildings and is not anticipated to result in any significant impact on the topography of the site, is unlikely to interrupt the drainage patterns of the site or result in soil instability and will not adversely impact upon the scenic quality of the site and locality. Accordingly, the proposal is acceptable in relation to the provisions of Clause 40.

#### **Clause 42B - Contaminated land**

Clause 42B contains provisions for remediation of contaminated land to ensure that such land will be suitable for the purpose for which development is proposed. As indicated above, the applicant has not submitted a Preliminary Site Contamination Investigation to Council's satisfaction indicating that the site has been remediated in accordance with the relevant standards for residential development contained in the Contaminated Lands Management Act 1997 and is suitable for the intended use. Accordingly, the application is not supported as it cannot be demonstrated to comply with Clause 42B of the RLEP 1998

#### **Clause 42C - Kensington Town Centre**

Clause 42C outlines the relevant objectives and development standards applicable to land comprising the Kensington Town Centre, as shown edged heavy black on the map marked "Randwick Local Environmental Plan 1998 (Amendment No 27)" deposited in the office of Randwick City Council. Clause 42C states that the controls applicable to the subject site are as follows:

#### **Kensington Town Centre**

<b>Clause No.</b>	<b>Requirement</b>	<b>Provided</b>	<b>Compliance</b>
<b>42C(4) Development Controls</b>			
(a) Maximum number of storeys	5 storeys along Goodwood and Ascot Streets	Maximum of 7 storeys along Goodwood Street (Block A), Ascot Street (Block C) and Kokoda Park (Block B)	No (SEPP 1 Objection submitted)
	4 storeys along the Kokoda Park frontage	(a breach of 2-3 full storeys)	
(b) Maximum height for development	17.1m	24.7m (a breach of 7.6m, or 30.7%)	No (SEPP 1 Objection submitted)
(c) Minimum	20m	35.14m to Goodwood	Yes

frontage for development		Street	
(d) Minimum allotment size for development	900m <sup>2</sup>	2211m <sup>2</sup>	Yes
Other clauses	Effect	Applies	Comment
22 - Services	Adequate facilities for the supply of water and for the removal or disposal of sewage and drainage are available to the land	Yes	The site is within an established area and adequate facilities are available to the site
40 - Excavation and filling of land	Provision for undertaking of excavation and filling of land	Yes	The proposal will require earthworks to be undertaken to construct the building and basement car parking.

The subject site is not located within a heritage conservation area or foreshore scenic protection area. Non-compliance with LEP controls has been discussed in detail under Section 5 of this report.

#### **(ii) Any Draft Environmental Planning Instrument**

No draft Environmental Planning Instrument applies in the assessment of the subject DA.

#### **(iii) Any Development Control Plan**

The Development Control Plans – Kensington Town Centre and Parking apply to the proposed development. Compliance with these DCPs is outlined in Section 9 above.

#### **(b) The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

#### **Natural Environment**

The subject site does not contain any threatened flora or fauna and is currently occupied by the Kensington War Memorial Club and adjoining car parking area, and a pair of single storey semi detached residential dwellings.

There are a variety of semi-mature to mature native trees within the adjoining public reserve (Kokoda Park) comprising She Oaks (Allocasurina's), Gum Trees (Eucalyptus) & Lilly Pillies (Acmena's), that are either right on or close to the common boundary with the RSL carpark, ranging between 5-20m in height.

Although the works proposed under the current application are contained wholly within the boundaries of the subject site, due to the close proximity of the proposed basement levels to the site's eastern boundary, the application seeks to remove 3 She Oaks (Allocasurina's) located adjacent to Kokoda Park's western side boundary and in the park's south western corner. Due to their location, major excavations or building alignments proposed in close proximity would necessitate their removal given the extensive root system and canopy required to be completely removed.

Council does not support their removal or damage in any way as these trees are established, contribute to the local environment, and also perform an important amenity function for park & playground users in terms of shade, and would also assist with screening new residential development on the site.

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### **Urban Design**

Whilst the Design Review Panel in their comments, support the principle of higher density and high amenity design on the site, concerns are raised specifically regarding the resultant height and overshadowing impacts on the adjoining Kokoda Park. Further, the arguments contained within the Urban Design Assessment by Roberts Day accompanying the development application are unconvincing, and of no direct relevance to the merits and impacts of the proposal.

The bulk and scale of the proposal is excessive and ultimately, is an inherent part of the design of the buildings. Taking into consideration the excessive number of storeys and height sought, it is considered that any merits of the design are severely compromised. As such, the application cannot be supported and is recommended for refusal.

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### **Sunlight, Privacy and Views**

#### **Sunlight**

By virtue of the orientation of the subject site in relation to the adjoining residential flat buildings to the west at Nos. 5 – 7 Ascot Street and 8-10 Goodwood Street, the proposed development generally maintains a minimum of 3 hours sunlight during the winter.

Notwithstanding this, the extensive and unacceptable overshadowing impacts on Kokoda Park are a direct consequence of the proposal's excessive height and number storeys. These impacts are particularly apparent in the winter afternoons, when the development overshadows the park entirely, restricting any use and enjoyment by the public. In this respect, the overall building envelope proposed under the current development application is excessive and cannot be supported. For detailed assessment of the proposal's solar access and overshadowing impacts, refers to Section 9.1.7 of this report.

**Privacy**

In terms of privacy, the proposal will perform reasonably well as there are ample separation distances between new buildings existing residential flat buildings (approximately 20m).

**Views**

In terms of views, the proposal does not maintain the view provision objectives of the Kensington Town Centre DCP in that the proposal is inconsistent with the building envelopes outlined in the DCP – Kensington Town Centre for Block 02.

Kokoda Park is centrally located near the Town Centre, which is itself surrounded by open space assets including Centennial Park, Moore Park and the Randwick Racecourse. The proposed development, due to its height, scale and generally visually imposing presentation to the adjacent Kokoda Park, does not adequately maintain views and vistas from the Town Centre into the surrounding open spaces such as Centennial Park.

**Traffic and Access**

The proposal provides a total of 92 spaces within 2 levels of basement carparking and does not comply with the parking rates specified in the DCP – Parking by a shortfall of 15 spaces. Given the site's proximity to public transport, the level of non-compliance with respect to Council's DCP-Parking is considered excessive.

The applicant states in the accompanying traffic study that due to the proposed apartment mix and the site's close proximity to public transport, anticipated numbers for car ownership are low and is consistent with the census data and general direction of the DCP for the Kensington Town Centre. However, in a contradicting statement contained in a recent Section 96 Application for a mixed residential/commercial development within very close proximity to the subject site, the same applicants have stated that car ownership for that development is anticipated to be high. These inconsistencies undermine the value of the report's argument for traffic impacts and make it difficult to assess the veracity of the case put forward by the applicant.

Taking into consideration the significance of the proposed parking deficiency when measured numerically against Council's DCP-Parking requirements (in the order of 14-15% less than the DCP) the proposal is not considered to meet the relevant objectives of the DCP – Kensington Town Centre and fails to provide reasonable access to on site parking for commercial users, residents and visitors.

The proposed parking arrangement (basement area) and numerical provision of parking spaces is not considered to be reasonable and adequate. As such, Council's Development Engineer has indicated that the application will not be supported due to the reasons stated above. The proposed development is unacceptable on traffic grounds and will have an adverse impact upon the adjacent classified road network and intersections and on the amenity of adjoining and surrounding residential streets.

### **Ecologically Sustainable Development**

The applicant has provided a BASIX assessment of the proposal in accordance with BASIX modelling requirements for multi-unit housing. The assessment shows that the proposed development will achieve the energy and water saving, and thermal massing, targets under BASIX.

However, the existing positive ESD attributes can and should be incorporated into a development whose bulk and scale is commensurate with the surrounding development and consistent with the built form controls as set out by Block 02 of the DCP – Kensington Town Centre and RELP 1998 (Consolidation).

### **Site Remediation**

The application has not been accompanied by any information confirming the suitability of the land in its current form or if remediation is required to make it suitable for the intended use. It is therefore considered that the application cannot be supported without the relevant information detailing the contamination status of the proposal and its compliance with the requirements under SEPP 55.

### **Social and Economic Impacts**

Proposed development on the site should increase the availability of housing and promote the objectives of the zone. The added population will generate additional needs for businesses, employees and patrons, which will encourage the location of services and facilities into the broader area. The site provides excellent potential to accommodate quality higher density housing, as it is sunny, green away from the Anzac Parade frontage, but comfortably separated from other residential neighbours. However, the proposed building form generates negative amenity impacts within the site and locality, specifically in terms of bulk, scale, solar access and traffic impacts, which are fatal elements in Council's assessment.

### **Suitability of the site**

The subject site is deemed to be part of the developable land within the Kensington Town Centre and forms Block 2, which is the subject of a Development Control Plan 2002 (DCP) adopted on 26 November 2002 and effective from 22 January 2003. In doing so, Council considered the suitability of a range of proposed landuses and their location within the surrounding Town Centre. Consequently, the subject site is specifically identified in the DCP as being suitable for multi-unit housing development in Block 02. However, the proposal is inconsistent with the terms of the DCP and, as demonstrated above, the new apartment development will have an adverse impact on the overall environmental quality and amenity (for existing residents) within the Kensington Town Centre.

The application has not been accompanied by any information confirming the suitability of the land in its current form or if remediation is required to make it suitable for the intended use. It is therefore considered that the application cannot be supported without the relevant information detailing the contamination status of the proposal.

### **Any submissions made**

The subject application was advertised and notified as integrated development from 30 March 2011 to 4 May 2011 in accordance with Development Control Plan – Public Notification of Development Proposals and Council Plans and the EPA Act 1979.

Council has received 110 submissions in response to the notification and advertising of the DA. The concerns raised in the submissions received have been addressed in relevant sections of this report as indicated in Section 6 above.

### **The public interest**

The proposed development is not considered to be consistent with the Development Control Plan for the Kensington Town Centre. The proposal does not achieve compliance with many of the key objectives and performance criteria in terms of built form, provision of high environmental and amenity standards, and offer appropriate protection for local business, open space and residential development. Further, departures from these controls have not been sufficiently justified. The proposal clearly represents overdevelopment of the site and it would not be in the public interest to approve the development in its current form.

The adverse impacts generated by the development due to non-compliance with the applicable planning controls is not beneficial for the local community and as such, it is not considered to be in the wider public interest as it does not provide high quality residential development in accordance with the Randwick LEP 1998 (Consolidation) and the Kensington Town Centre.

### **Relationship to City Plan**

The relationship with the City Plan is as follows:

Outcome 5:	Excellence in urban design.
Outcome 10:	A healthy environment.
Direction 4a:	Improved design and sustainability across all development.
Direction 10a:	Council is a leader in fostering sustainable practices.

### **Conclusion**

The subject application proposes the demolition of the existing structures on the site and construction of a new part 3, part 7 storey level mixed use development comprising of 3 separate multi-unit buildings to create 103 apartments with basement carparking for 92 vehicles, landscaping and associated works accessed off Goodwood and Ascot Streets.

The proposal does not comply with the maximum number of storeys and maximum height for development standards as prescribed by Clauses 42C(4)(a) and (b) of the Randwick LEP 1998. The proposal has a maximum building height of 24.7m, which exceeds the maximum building height control of 17.1m by 7.6m. The proposal also breaches the maximum 5 storey height having a 7 storey component in all three blocks (A, B & C), with each of the 3 blocks having a maximum height of 24.7m.

State Environmental Planning Policy No.1 (SEPP No.1) objections have been submitted in relation to the breach of these controls. An assessment of the SEPP 1 objections indicates that strict compliance with the controls would be reasonable and necessary

The site is within the Kensington Town Centre, as such, the Kensington Town Centre DCP applies. The proposal does not meet the relevant controls of the DCP and is inconsistent with the overall objectives for the Kensington Town Centre.

The proposal was submitted for consideration under Council's prelodgement service. Council explicitly advised that the maximum number of storeys and building height controls would have deciding weight in the final assessment.

The proposed buildings have a maximum height of 7 storeys along the entire eastern side of the site, fronting Kokoda Park and is a full 2 storeys higher than the Kensington Town Centre DCP and RLEP 1998 (Consolidation) allows. There are no grounds to support the extra storeys as the resultant impacts on solar access and general amenity are significant and detrimental.

Additionally, the proposal does not comply with the DCP – Kensington Town Centre in terms of setbacks for transitional development as outlined in the Kensington Town Centre DCP.

The proposal also fails to achieve compliance with the parking rates specified in the DCP – Parking by a shortfall of 15 spaces.

The scale of the development is not considered to be suitable for the site or in the context of the surrounding Kensington Town Centre and is therefore recommended for refusal.

## **RECOMMENDATION**

That the Joint Regional Planning Panel as the responsible authority refuse its development consent under Section 80(3) of the Environmental Planning and Assessment Act 1979 (as amended) to Development Application No. DA/182/2011 for the demolition of the existing structures on the site and construction of a new part 3 part 7 storey level mixed use development comprising of 3 separate multi-unit buildings to create 103 apartments with basement carparking for 92 vehicles, landscaping and associated works at 2-6 Goodwood Street, Kensington for the following reasons:

1. The proposal does not satisfy the zone objectives of the 3B Local Business Zone specified in Clause 14 of the Randwick Local Environmental Plan 1998 (Consolidation).
2. The proposed development will compromise the aims of the RLEP 1998 (Consolidation) in relation to aesthetic character, sustainability, environmental qualities and social amenity of the locality.
3. The proposal does not satisfy the relevant objectives of the Kensington Town



Centre as contained within Clause 42C(2) of the Randwick Local Environmental Plan 1998 (Consolidation) in that it does not: -

- achieve high quality design in all new development and improvements undertaken in the public domain,
  - to encourage a vibrant and active town centre that provides a range of facilities and services that benefit the locality,
  - encourage a variety of medium density housing forms that compliment the development within the town centre and that do not have an adverse impact on surrounding residential areas,
  - encourage and facilitate the provision of vehicular access and off-street parking to support the local businesses,
  - ensure appropriate conservation of the environmental heritage and recognition of the characteristics of buildings with architectural merit,
  - improve the overall environmental quality of the Kensington Town Centre.
4. The proposal has a maximum number of 7 storeys and exceeds the maximum number of storeys development standard of 4 and 5 storeys specified in Clause 42C(4)(a) of the Randwick Local Environmental Plan 1998 (Consolidation). The proposal has an adverse impact on the aesthetic character and environmental amenity of the area and does not satisfy the purpose for the standard. The accompanying objection to the development standard is not well founded as required by Clause 7 of State Environmental Planning Policy No 1 – Development Standards.
5. The proposal has a maximum building height of 24.7m and exceeds the maximum height of development standard of 17.1m specified in Clause 42C(4)(b) of Randwick Local Environmental Plan 1998 (Consolidation). The proposal has an adverse impact on the aesthetic character and environmental amenity of the area and does not satisfy the purpose for the standard. The accompanying objection to the development standard is not well founded as required by Clause 7 of State Environmental Planning Policy No 1 – Development Standards.
6. The proposal does not satisfy the design principle for Context, Scale, and Built Form specified in Clauses 9, 10 and 11 of State Environmental Planning Policy No 65 –Design Quality of Residential Flat Buildings.
7. The resultant overshadowing from the proposed development on the adjacent Kokoda Park is unacceptable and severely compromises the enjoyment and amenity of park users. Further, resultant overshadowing is significant over the existing children's play area located in the south eastern corner of Kokoda Park. The proposal therefore fails to adequately consider and preserve reasonable levels of solar access for Kokoda Park, which are important elements conducive to a high level of amenity for families living within the Kensington Town Centre.
8. The proposal does not satisfy the objectives or performance criteria for New Built Form set-out in Clause 4.2.1 of Development Control Plan – Kensington

Town Centre.

9. The proposal does not satisfy the objectives or performance criteria for Building Heights set-out in Clause 4.2.4 of Development Control Plan – Kensington Town Centre.
10. The proposal does not satisfy the objectives or performance criteria for Building Zones set-out in Clause 4.2.5 of Development Control Plan – Kensington Town Centre.
11. The proposal does not satisfy the objectives or performance criteria for Setbacks set-out in Clause 4.2.10 of Development Control Plan – Kensington Town Centre.
12. The proposal does not satisfy the objectives or performance criteria for Block 02 Controls set-out in Clause 4.3.2 of Development Control Plan – Kensington Town Centre.
13. The proposal does not satisfy the objectives or performance criteria for On-Site Parking set-out in Clause 4.5.2 of Development Control Plan – Kensington Town Centre.
14. The proposal does not satisfy the objectives or performance criteria for Solar Access, Overshadowing, and Natural Daylight set-out in Clause 4.6.11 of Development Control Plan – Kensington Town Centre.
15. The proposal does not satisfy the objectives or performance criteria for Apartment Mix set-out in Clause 4.7.3 of Development Control Plan – Kensington Town Centre.
16. The proposal provides a total of 92 spaces within 2 levels of basement carparking and does not comply with the parking rate of 107 specified in Clause 2.3 of Council's DCP – Parking, representing a shortfall of 15 spaces. Due to the significance of the proposed parking deficiency the proposal is not considered to meet the relevant objectives of the DCP Parking and fails to provide an appropriate level of off street parking through specific standards to meet parking demand.
17. The proposal to remove mature trees from Council property in the south western corner of Kokoda park is not supported as they contribute to the local environment and maintain a high level of amenity for Kokoda Park users both in terms of shade provision and aesthetic amenity.
18. A Preliminary Site Contamination Investigation has not been carried out to Council's satisfaction in accordance with the requirements of the NSW EPA Guidelines. No information has been provided to confirm the suitability of the land in its current form, detailing the contamination status of the proposal or whether remediation is required to make it suitable for the intended use.
19. The proposed development is unacceptable and unreasonable in that the

proposed height, bulk, scale, built form and design will have an adverse impact on the amenity of neighbouring residents in terms of overbearing height, bulk and scale, and in that regard is not compatible with the scale of residential development in the Kensington Town Centre.

20. The proposal fails to satisfy the relevant considerations under Section 79C(1)(c) Environmental Planning and Assessment Act 1979 for natural environment, sunlight, views, traffic, site remediation, social and economic impacts, suitability of the site, and the public interest.