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Objection Under State Environmental Planning Policy No. 1 – Development Standards

Property Description: 36 – 40A Culworth Avenue, Killara

Development: Demolition and Construction of a Residential Flat Building with Basement Car Park

Development Standard: Deep Soil Landscape Area

Introduction

This State Environmental Planning Policy No: 1 – Development Standards (SEPP 1) objection is submitted for consideration by the Joint Regional Planning Panel – Sydney West (JRPP). The Council officer's report to the JRPP meeting on 23 February 2012 identified a breach of the deep soil landscape area development standard. The applicant does not support that contention, however, as a precaution so as not to expose any potential consent to a challenge under section 123 of the Environmental Planning and Assessment Act, 1979 (the Act) a SEPP 1 objection is submitted for the JRPP's consideration under section 79C of the Act.

The landscape plan and deep soil calculation plan are at **annexure 1** and based on this plan it is the applicant's position that the proposal complies

The SEPP 1 Objection applies the principles established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46 (6 April 2001):

Is the planning control in question a development standard?

The development standard is contained in clause 25I(2) of the Ku-ring-gai Planning Scheme Ordinance (PSO) are as follows:

Clause 25I(2) states:

Minimum standards for deep soil landscaping

The following standards relating to deep soil landscaping apply to multi-unit housing:

- (a) deep soil landscaping with a minimum width of 2 metres is to be provided on the site area,*
- (b) a site with an area of less than 1,800 square metres is to have deep soil landscaping for at least 40% of the site area,*
- (c) a site with an area of 1,800 square metres or more is to have deep soil landscaping for at least 50% of the site area.*

The definition of a development standard is provided in Section 4 of the Environmental Planning and Assessment Act, 1979 (the Act) and deep soil landscape area are within this definition.

What is the underlying purpose of the standard?

Clause 25I(2) of the PSO does not include objectives of the standard. In this regard reference is made to the objectives for residential zones (Clause 25D), heads of consideration for consent authority (Clause 25I(1)) and the landscape design objectives contained in Part 4.1 of the Ku-ring-gai Multi-unit Housing Development Control Plan No. 55 (DCP 55). These matters are addressed as follows:

Objectives for Residential Zones

The following objectives are relevant to the deep soil landscape area development standard.

- (a) to provide rear setbacks that ensure rear gardens are adjacent to rear gardens of other properties and that sufficient ground area is available for tall tree planting, consistent with the objectives of this Part,*
- (b) to encourage the protection of existing trees within setback areas and to encourage the provision of sufficient viable deep soil landscaping and tall trees in rear and front gardens where new development is carried out,*
- (c) to provide side setbacks that enable effective landscaping, tree planting between buildings, separation of buildings for privacy and views from the street to rear landscaping,*
- (d) to minimise adverse impacts of car parking on landscape character,*
- (f) to encourage the planting of tree species that are endemic to Ku-ring-gai,*

The development proposal meets the relevant objectives with adequate setbacks and sufficient area for tall tree planting. The landscape plan submitted with the development application includes the planting of over 50 native canopy trees including Sydney Red Gum, Blue Berry Ash and Sydney Blue Gum trees. The proposal provides landscape corridors within the side setbacks and the protection of existing trees within the front setback. The basement car park has been designed within the building footprint to minimise the impacts of parking on the landscape character.

Heads of Consideration

The following heads of consideration are relevant to the deep soil landscape area development standard.

- (a) *the desirability to provide a high proportion of deep soil landscape to the site area,*
- (e) *the desirability of adequate landscaping so that the built form does not dominate the landscape,*

The proposal has a high proportion of deep soil landscape area with the applicant's calculation being 2218m² and 50.65% of the site area. The retention of trees within the front setback, the large landscape area at the south-east corner of the site and setbacks ensure the built form will be viewed in a landscape setting.

Landscape Design Objectives

The following landscape design objectives are relevant to the deep soil landscape area development standard.

- O-2 Sufficient deep soil for planting and retaining large canopy trees on every site.*
- O-3 Landscaping that is appropriate to the scale of the development.*
- O-6 Maintenance and increase to the tree canopy of Ku-ring-gai.*
- O-7 Development characterised by native planting, including trees, understorey and ground cover, to provide habitat for indigenous fauna and reduced the need for water, energy, fertilisers and herbicides.*

The development proposal provides adequate deep soil landscape area to retain the large canopy trees in the front setback, the landscape plan includes the planting of canopy trees, small trees and shrubs and ground covers. Further, the

landscape works will increase the number of canopy trees currently on the site with a maturity height of 13m – 28m being appropriate to the scale of development.

Is compliance with the development standard consistent with the aims of the Policy?

The aims of SEPP 1 are to provide flexibility in the application of planning controls where strict compliance with those standards would be, in any particular case, be unreasonable and unnecessary or tend to hinder the attainment of the objectives of 5(a)(i) and (ii) of the Act.

Objects 5(a)(i) and (ii) of the Act are:

(a) to encourage:

- (i) 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,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,*

If the deep soil calculation contained in the Council's officers report to the JRPP meeting on 23 February 2012 is used the proposal represents a minor variation of 1.3% to the 50% deep soil landscaped area control. As addressed in this SEPP 1 objection, the minor variation does not hinder attainment of the objects of the Act. The proposal provides adequate area surrounding the building for deep soil planting, a generous front setback and a large area at the south-east corner of the development site to ensure built form will be viewed in a landscape setting.

Further, the development proposal is consistent with the scale and form of development in the 2(d3) zone being an orderly and economic use of the land.

Is compliance with the standard unreasonable and unnecessary in the circumstances of the case?

If the assessment in the Council officers report is accepted by the JRPP the variation to the deep soil landscape area development standard is reasonable in

the circumstances of this case and compliance with the development standards is considered unreasonable and unnecessary for the following reasons:

- The variation is minor being 90m² or 1.3% on a site area of 4378.6m². Based on this calculation the deep soil landscape area is 2139m² being adequate area to accommodate canopy tree planting and ensure the built form will be viewed in a landscape setting.
- There is sufficient area in the front setback and surrounding the building to accommodate canopy trees, small trees and shrubs, and under-storey species contributing to the landscape setting of the development site and between buildings.
- The development application is supported by a landscape plan with the planting of over 50 native canopy trees increasing the number of trees on the development site.
- The development proposal retains the established trees within the front setback of the subject site.
- The deep soil landscape area and proposed landscape works ensure the built form will be viewed in a landscape setting meeting the relevant objectives for the residential zones, the heads of consideration and the landscape design objectives contained in DCP 55.

Is the objection well founded?

The development proposal has been designed with adequate setbacks and landscape portions on the site in excess of 300m² to accommodate deep soil planting areas surrounding the building. The landscape plan submitted with the development application ensures the built form will be viewed within a landscape setting. The area in contention is minor with adequate deep soil planting area to accommodate canopy tree planting and a landscape setting surrounding the building.

Reference is made to *Wehbe v Pittwater Council (2007) NSW LEC 827* and Preston CJ noted that there is public benefit in maintaining planning controls and SEPP 1 should not be used in an attempt to effect general planning changes throughout the area. This SEPP 1 objection does not attempt to affect the planning outcomes for the area, rather if there is a breach of the development standard, it is technical and minor in nature and will not affect the landscape setting surrounding the built form.

In my opinion the SEPP 1 objection is well founded and as addressed the development proposal does not hinder attainment of the Objects of the Act or the

aims and objectives of the PSO. The minor variation to the deep soil landscape area control interpreted in the Council officers report, should be supported.

Garry Chapman
Chapman Planning Pty Ltd

Annexure 1

Landscape Plan and Deep Soil Calculation Plan



