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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: Maximum Site Coverage

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 site coverage 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 site coverage plan is at **annexure 1** showing a plan view of the building with the third level of the building shown in a dotted line.

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(6) of the Ku-ring-gai Planning Scheme Ordinance (PSO) are as follows:

Clause 25I(6) states:

Maximum site coverage

Buildings of a kind described below are not to occupy a greater percentage of the site area than is specified below for the kind of buildings. If a site is comprised of land in Zone No 2 (d3) and other land, the other land is not to be included in calculating site area.

*Residential flat buildings – 35%,
Townhouses – 40%,
Villas – 50%,
Combination of townhouses and villas – 50%.*

The definition of a development standard is provided in Section 4 of the Environmental Planning and Assessment Act, 1979 (the Act) and site coverage is within this definition.

The definition of site coverage is:

site coverage means the proportion of the building footprint to the site area, expressed as a percentage.

The definition of building footprint is:

building footprint means the total maximum extent of the two dimensional area of the plan view of a building including all levels, but excluding any part of the building below ground and minor ancillary structures such as barbeques, letterboxes and pergolas.

It is noted that the site coverage plan submitted to Council on 3 February 2012 (**annexure 1**) has been prepared in accordance with the *building footprint* definition.

What is the underlying purpose of the standard?

Clause 25I(6) 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 density design objectives contained in Part 4.2 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 objective is relevant to the site coverage development standard.

- (e) *to provide built upon area controls to protect the tree canopy of Ku-ring-gai, and to ensure particularly the provision of viable deep soil landscaping in order to maintain and improve the tree canopy in a sustainable way, so that tree canopy will be in scale with the built form,*

The development proposal meets the objective with adequate setbacks and sufficient area surrounding the building for viable deep soil landscaping. 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 ensuring the built form will be viewed in a landscape setting.

Heads of Consideration

The following heads of consideration are relevant to the site coverage development standard.

- (a) *the desirability to provide a high proportion of deep soil landscape to the site area,*
- (b) *the impact of any overshadowing, and any loss of privacy and loss of outlook, likely to be caused by the proposed development,*
- (c) *the desirability to achieve an appropriate separation between buildings and site boundaries and landscaped corridors along rear fence lines,*
- (d) *the environmental features that are characteristic of the zone in which the site is situated by requiring sufficient space on-site for effective landscaping,*
- (e) *the desirability of adequate landscaping so that the built form does not dominate the landscape,*
- (f) *how the principles of water cycle management can be applied to limit the impacts of runoff and stormwater flows off site.*

The development proposal meets the heads of consideration based on the following assessment:

- 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 minor variation to the site coverage standard purported by Council in the report to the JRPP meeting of 23 February 2012 is 1.1% and the proposed building subject to a minor variation to the site coverage will not result in unreasonable overshadowing, loss of privacy or outlook,
- The development proposal meets the setback controls contained in Part 4.3 of DCP 55,
- The proposal maintains the overland drainage area at the south-east corner of the site and incorporates this area into the landscape setting of the development,

- The proposed landscape works ensure the building will be viewed in a landscape setting, and
- The minor variation to the site coverage control will not impact on stormwater flows.

Density Design Objective

The site coverage control is contained in Part 4.2 Density of DCP 55 as follows:

- O-1 Development density that is in keeping with the optimum capacity of the site and the desired future landscape and built character of the area.*

The development proposal is in keeping with the development capacity of the subject site meeting the setback, floor space ratio (FSR) and building height controls with sufficient landscape area surrounding the building and within the front setback contributing the landscape setting.

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 site coverage calculation contained in the Council's officer's report to the JRPP meeting of 23 February 2012 is used the proposal represents a minor variation of 1.1% to the site 35% site coverage control. As addressed in this SEPP 1 objection, the minor variation does not hinder attainment of the objects

of the Act. The built form is suitable for the capacity of the site meeting the building scale controls including height, FSR and setbacks. The minor variation will not result in unreasonable amenity impacts and there is generous landscape area surrounding the built form.

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 site coverage calculation contained in the Council officers report is accepted by the JRPP the minor variation 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 (1.1%) and presents no change to the visual scale or form of the building.
- The building coverage does not generate unreasonable amenity impacts to the adjoining properties with regard to overshadowing, loss of views/outlook or privacy impacts.
- 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 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 is a suitable form and scale of development in the 2(d3) residential zone. The minor variation purported in the Council officers report will not result in unreasonable visual scale, overshadowing, loss of views or privacy impacts to the adjoining residential properties. As addressed in this SEPP 1 objection the building complies with the building envelope controls including height, FSR and setbacks with adequate landscape area 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 visual form and scale of the proposed building.

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 site coverage control interpreted in the Council officer's report should be supported.

Garry Chapman
Chapman Planning Pty Ltd

Annexure 1

Site Coverage Plan

