

Memorandum



TO: Joint Regional Planning Panel

FROM: Acting Director of City Planning

DATE: 9 December 2013 **FILE:** DA/320/2013 (D01957405)

SUBJECT: 84 -108 Anzac Parade, KENSINGTON

I refer to the additional information provided by the applicant in support of the above development application and respond as follows:

Clause 4.6

The applicant asserts that Council has erroneously stated that an updated Clause 4.6 variation had not been submitted from the current scheme.

The reference to Clause 4.6 in the covering letter submitted with the amended scheme dated 17 November 2013 makes the following comments:

"In terms of Clause 4.6 we consider that flexibility in the application of the height standard is appropriate to achieve better outcomes for and from the development in this case, because strict compliance would:

- Reduce the functionality of the retail space through undersized ceiling heights;*
- Reduce the residential amenity of units for the same reason;*
- Not be necessary to achieve compliance with Council's maximum DCP storey control which is already met;*
- Limit or eliminate the use of the roof space for roof gardens utilising the proposed soil depths;*
- Be of negligible benefit in terms of the very limited additional overshadowing caused by the variation to the eastern and western aspects, or necessary to achieve the required solar access guidelines for the more sensitively located buildings to the south;*
- Reduce the architectural design benefits derived from expressing the corner with a marginally higher element.*

We consider that the relevant objectives of the standard to ensure that the size and scale of development is compatible with the desired future character of the locality and that neighbouring land is not adversely impacted upon, are met notwithstanding the variation, as demonstrated by the analysis undertaken for the original application and augmented by our assessment of the amended proposal.

We conclude that the proposed additional height is appropriate in all of the circumstances and that:

- a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

- b) There are sufficient environmental planning grounds to justify contravening the development standard."*

Pursuant to clause 4.6(3) of RLEP 2012 development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Further, the consent authority must be satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

In relation to the matters required to be demonstrated by subclause (3) there are various ways that may be invoked to establish that compliance with a development standard is unreasonable or unnecessary as discussed by Chief Justice Preston of the NSW Land and Environment Court in the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827. Although the *Wehbe* case was decided in relation to State Environmental Planning Policy No 1—Development Standards ("SEPP 1") and not clause 4.6 of RLEP 2012 it remains of some assistance in relation to identifying the ways in which an applicant may demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case.

It is Council's opinion that the statements made by the applicant in the covering letter submitted with the amended plans do not adequately address the matters raised in Clause 4.6, nor are they in a form that follows the method of analysis required by the relevant authorities in the Land and Environment Court. The statements made in the covering letter do not examine in sufficient detail the proposal's compliance with the stated purpose of the standard and the objectives for development within the zone in which the development is proposed to be carried out. It also does not address the questions of whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and the public benefit of maintaining the development standard.

Building Height

The assertion by the applicant that the height breach of 4.87m is appropriate as it expresses the corner is not accepted by Council. Whilst the DCP allows the corner to be expressed by a vertical extension of the street wall height, it should be in a manner that is consistent with the height controls. The increase in the street wall height to 6 storeys would provide a suitable corner emphasis, without it having to be overstated with a 7th storey. Council's DCP clearly anticipates a predominant building height of 4 to 6 storeys and only allows an additional storey within an articulated roof space that occupies only 40% of the level below. The proposed

building at the corner of Anzac Pde and Goodwood St would have an appearance of 7 storeys at the street edge and above that a "decorative" extension of the perforated screening to the building. The design of the corner element with its long elevation being expressed in Goodwood St, results in the concentration of the massing on the secondary frontage of the site. This emphasises its dominance due to it being juxtaposed against the lower scale of development in Goodwood St and does not provide for an appropriate transition in height.

In relation to the other parts of the building that breach the height control, Council is concerned that any permitted variation to the extent being sought would compromise the integrity of the new LEP, given that the numerical standards contained therein are the result of considerable community consultation and detailed analysis of the existing and emerging development patterns in the Randwick LGA.

The LEP development standards are key determinants in achieving a certain urban character and density. Whilst there may be very good strategic planning reasons for increasing density and height within a highly accessible precinct in terms of the integration of land use and transport and the efficient use of urban resources, ultimately the desired future character for a locality is based on community preferences. In this respect, considerable weight must be given to the development standards as they presently stand in the new LEP, which envisage a particular height and density outcome, rather than allowing *ad hoc* increases in the density and scale of development on a project by project basis.

Council has adopted a clear planning policy position in relation to the Kensington Town Centre which has been subsequently endorsed under the new RLEP 2012. On this basis, it is considered that the upholding of the height standard is necessary in this particular case and is within the public interest. It should also be noted that the 25m height limit has been designed so that buildings within the Kensington Town Centre can comfortably fit within the height standard and has taken into consideration flood levels and the provision of a habitable roof space.

Building Envelope

The applicant asserts that the maximum GFA as a % of the envelope control is only 3% above requirement if the supermarket level is excluded. Whilst it's acknowledged that the breach in the envelope control is less at the residential levels up to the 6th floor, it should be noted that there is a significant breach at the 7th floor which is 34% greater than that allowed in the DCP. The excessive size of the 7th floor when combined with the breach in height compounds the overbearing size and scale of the proposed building.

In relation to the breach of the required setback control above the 4th storey, it would appear that the montage (see below) submitted with the amended application does not accurately reflect the relationship with the building to the north. The top of the 4th storey of the proposed building would have a RL of 43.45 which is 350mm higher than top of the 4th storey of the building to the north which has an RL of 43.10. For the applicant to argue that the 6th storey of the proposed building will appear as only one storey higher in terms of its street wall height to that of the building to the north is difficult to reconcile when the top of the 6th storey has an RL 49.65 being some 6.55m higher than the top of the 4th storey of the building to the north. The 7th storey of the proposed development will also appear as a clear storey higher than the adjoining building to the north contrary to the montage below.



Figure 1: Montage of the proposal

The suggestion by the applicant that the removal of the "ephemeral materials at the street boundary at 6th storey to reveal the actual setback of the building behind" would achieve parity with the street wall is erroneous. As indicated above the proposed building will have a street wall height that is effectively 2 storeys above that of the building to the north. The removal of the so called "ephemeral materials" would only reveal the building façade of the 6th storey which is setback at 3.5m, less than the required 4m. At the 5th storey, the glass line is only 1m from the front boundary so that there will not be a perceptible stepping of the building form as required by the DCP.

Internal Amenity

Council reiterates its concerns that the proposal does not provide an adequate level of amenity through the apartment design. The proposal has 63% of its apartments with a single aspect that rely on the narrow slots for cross ventilation. In terms of the cross through apartments (15% of the total), they are reliant on light wells to compensate for their excessive depth. As such, the proposal provides 78% of its apartments in a form that does not meet the design quality principles of SEPP 65 and has not addressed the concerns raised by Council's Design Review Panel.

Impact on Trees

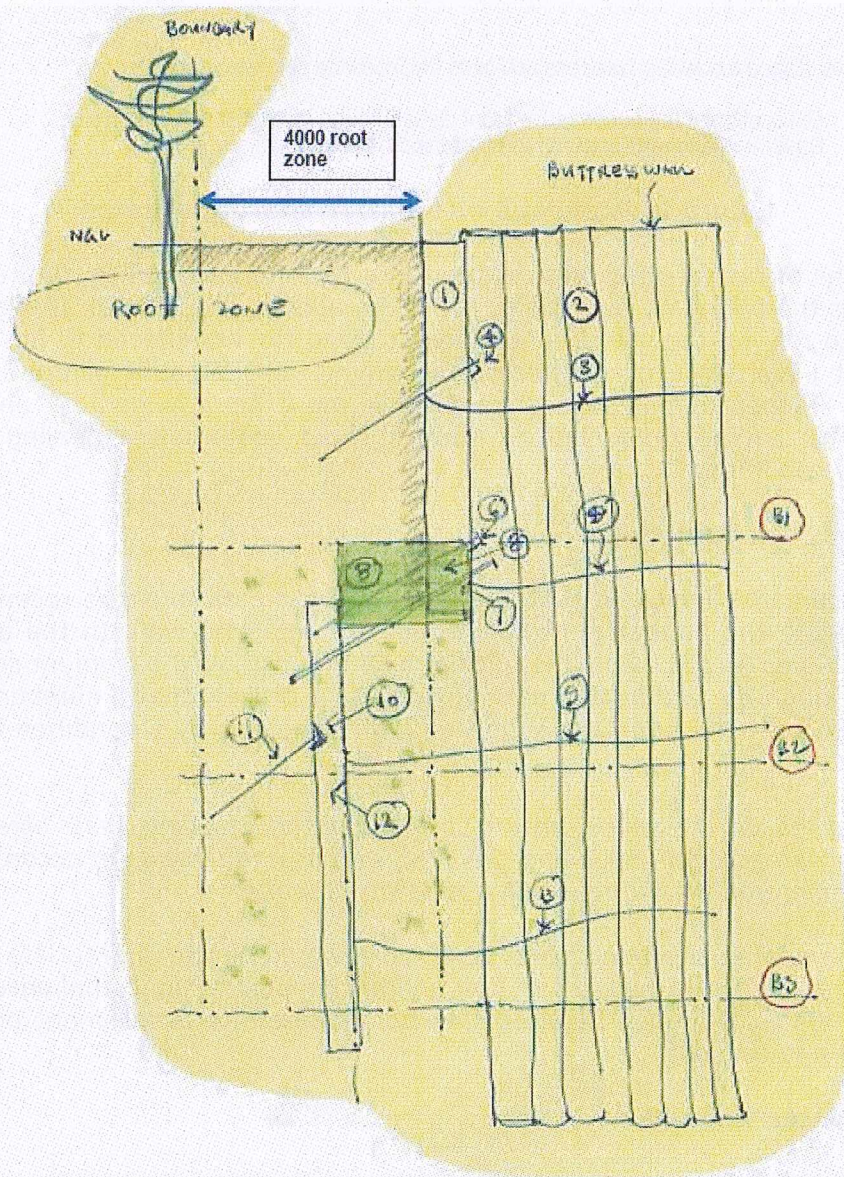
Council has reviewed the Arboricultural Impact Assessment by Urban Forestry dated December 2013 and the Supplementary Report by City Plan Services dated 5 December 2013.

The previous 1.5m setback for the eastern wall of the basement has been amended to now be offset a distance of 3.3m across the southern half of the site, expanding out to 4.3m over the northern half, and while a strip of deep soil 1.2m in depth is shown, Section's AA & BB by Site Image Landscape Architects also show that a lower portion of the basement will actually 'step out' again about 1m or so further to the east, which would appear to require the construction of

another wall at a closer distance than what has been described. The volume of soil to be provided at ground level should be sufficient to sustain species that would attain a mature height of 5-8m.

Compared to the original scheme, layers/tiers of planting have now also been added to the eastern side of the building, which avoids the previous large blank wall, and will also improve the level of screening/separation that is provided for neighbours to the east via the ground level screening trees, mid-level raised planters and podium level planting, in soil depths of 600mm-1m.

The Arborist's Report states that the amended basement design will not impact on the Structural Root Zones (SRZ's) of any of the 10 neighbouring trees, and will only encroach into 4 of their Tree Protection Zones (TPZ's), two with a low impact rating (2-5%, Trees 5 & 1 respectively) and two with a moderate rating (16-19%, Trees 2-3), with all others to remain unaffected, mainly due to the existing structures and surfacing. However, as indicated in the diagram below that was prepared by Aurecon on behalf of the applicant, it is unclear how the basement could be constructed without still needing to penetrate the ground within the structural root zone and also still address the groundwater issues.



1. Install secant pile walls to the underside of the B1
2. Install Piles to form Buttress walls
3. Excavate first lift approximately 2 metres in depth
4. Install first row of temporary anchors into the secant pile wall
5. Excavate the 2nd level approximately 1.5 metres in depth
6. Install the second row of anchors into the secant pile wall
7. From the base of the second excavation depth of the B1 slab location, inject a grout/soil mix for the entire width of zone A to the depth of the BEL
8. Excavate locally in segments to create a reinforced header beam to provide vertical support to the piles and the area immediately behind the piles
9. Excavate 2 metre down to expose the soil grout mix
10. Excavate the grouted area to a line 300 mm beyond the proposed excavation line
11. Install temporary anchors
12. Construct a 400 mm thick reinforced shotcrete wall and connect the shotcrete wall by a return to join the buttress wall created from the secant piles
13. Repeat the steps 9-12 until the base of the excavation has been reached.

This staged excavation process achieves the following desired outcomes.

- Excavation of the basement without disturbing the roots of the adjacent site.
- Basement excavation to suit the proposed basement dimensions.

Figure 2: Proposed alternative shoring scheme.

The crowns of the affected trees extend into the site between 6-10m, and where they cross the boundary alignment, are 5-8m above ground level. If the applicant is going to rely on the use of a 'low height piling rig' as referred to for the Upper Basement Level (B1) in an attempt to minimise the amount of pruning that is required, further details/particulars of this must be provided so an accurate assessment can be made before Council could contemplate dealing with this matter by condition.

Basement Amendments

The applicant has indicated that the basement car park must be reconfigured to accommodate the amendments to the eastern retaining wall. In the absence of any detailed amended plans it is unclear how the increased basement setback will affect parking aisle widths and parking spaces. It is likely that a number of spaces will be affected. The applicant suggests addressing this by a condition to read as follows:

"Amended basement plans are to be submitted showing car, bike parking, servicing (garbage deliveries and the like), access and storage in accordance with Council requirements and relevant Australian Standard"

Due to the degree of amendments required it would not be appropriate to include a condition and it is necessary that plans demonstrating compliance with AS 2890.1:2004 and Council requirements be submitted for assessment prior to the issuing of any consent.

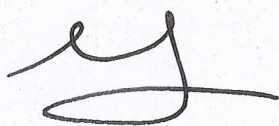
Groundwater Impacts

As indicated in the assessment report, the application failed to demonstrate to the satisfaction of Council that the proposed works could be feasibly constructed

without unreasonable impacts to neighbouring properties, groundwater conditions, or the structural integrity of the development.

In response the applicant has submitted a Geotechnical report by Aurecon which goes into some detail on various construction techniques. However, it is unclear how the basement will be waterproofed given that the secant piling will be compromised in the areas of the site where the alternative shoring system is employed to deal with the impact on the structural root zones of the affected trees on the neighbouring properties.

In conclusion, the applicant has been given ample opportunity to address the substantive issues raised during the assessment process. Council therefore objects to the consideration of the further amendments sought by the applicant.

A handwritten signature in black ink, appearing to be 'Kerry Kyriacou', with a stylized, cursive script.

Kerry Kyriacou
Acting Director, City Planning

