

The General Manager  
Randwick Council  
30 Frances Street  
RANDWICK  
NSW 2031

Randwick City Council

**12 MAR 2014**

**Records Received**

Attn: Scott Williamson

Our Ref: AP/783/L  
Your Ref: DA 320/2013

12 November 2013

Dear Scott,

**82-108 Anzac Parade, Kensington  
DA 320/2013**

This letter raises concerns about a development application at the above address for the following development:

Amended proposal to include Nos. 106 and 108 Anzac Parade as part of the development site and redesign the proposal for a new part 7, part 9 and part 11 storey mixed use development comprising approximately 2,278sqm of ground floor retail space, 126 residential dwellings (40 x 1 bedroom, 79 x 2 bedroom and 7 x 3/4 bedroom dwellings), 3 basement levels of parking for 265 car spaces, communal areas at the rear of the first floor and above the 7th, 9th & 11th floors, associated site and landscaped works (Variation to building height control). Original proposal: Demolition of the existing buildings and construction of a new part 6 and part 7 storey mixed use development comprising approximately 1935 sq. of ground floor retail space, 90 residential dwellings, (24 x 1 bedroom, 54 x 2 bedroom and 12 x 3 bedroom dwellings), 2 basement levels of parking for 166 car spaces, associated site and landscaped works (Integrated Development). Consent is also required from the Department of Water and Energy



This objection has been prepared on behalf of the owner of a neighbouring property, which immediately adjoins the rear of the site at 29 Elsmere Street, Kensington, on the corner of Goodwood and Elsmere Streets.

The following is a list of issues associated with the development proposal:

### **Legality of Application**

The originally submitted DA was for a different site (84-88 Anzac Parade, Kensington) than the current application. Whilst an existing development application can be varied (with the consent of the Council) in accordance with Clause 55 of the Environmental Planning and Assessment Regulation 2000 in so far as “a variation or change to the proposed development”, there is no mechanism to amend an application made for one site to a different site. The fundamental basis of the application has changed and, must therefore, by definition, be a new application. An existing DA cannot be varied in this way.

DA 320/2013 should therefore be withdrawn by the applicant and a new application submitted for the new site and re-notified in accordance with Council’s procedures.

### **Height**

The proposal will exceed the maximum allowable height limit applicable to the site by 6 storeys, 16.25m or 65%, resulting in significant adverse amenity and streetscape impacts. The Randwick LEP 2012 sets a maximum height of 25m whilst a height of 41.25m is proposed at the southern end of the site adjacent to Goodwood Street.

Furthermore Part D1 of the Randwick DCP 2013 provides a site-specific maximum height provision of 5 storeys, with the proposed development surpassing this by 6 storeys (more than double) to propose a height of 11 storeys on the corner with Goodwood Street.

This, combined with a non-compliance with setbacks and envelope controls for this part of the site will dominate the streetscape and severely impact upon properties to the east and south in Goodwood and Elsmere Streets.

The site immediately adjoins properties in a Residential R3 zone where a 12m-height limit applies.

The proposed tower will be 30m higher than immediately adjoining maximum heights, which together with non-complying rear setbacks and envelope controls will over-dominate the adjoining residential buildings

This is contrary to the Land and Environment Court Planning Principal relating to adjoining zones, as described in the case of *Seaside Property Developments Pty Ltd v Wyong Shire Council [2004] NSWLEC 117*

This principal states that

*at a zone interface as exists here, any development proposal in one zone needs to recognise and take into account the form of existing development and/or development likely to occur in an adjoining different zone.*

*Also in considering the likely future character of development on the other side of the interface it may be that the development of sites such as this may not be able to achieve the full potential otherwise indicated by applicable development standards and the like.*

This principal would require that any building constructed to the height limit facing Anzac Parade is stepped down in height and setback an acceptable distance at the rear to relate to the 12m-height limit in the residential zone behind. There is no stepping down or adequate setback of the non-complying corner element in this instance.

The design of proposal will generate adverse amenity impacts to surrounding sites including privacy loss, noise, visual bulk, sense of enclosure and overshadowing. The non-compliant height of the proposal significantly increases the number of dwellings normally permitted on the site. This consequently increases the number of units and associated private open spaces facing 29 Elsmere Street, creating overlooking and noise generation issues, which have been discussed throughout the report.

Bedroom windows to the west of 29 Elsmere Street, and a small back yard and drying court will face an enclosing wall, an open supermarket loading area, a two storey solid wall and a 42m high tower only 3m from the property boundary. This sense of enclosure, loss of morning sunlight, overbearing, loss of acoustic and visual privacy is an unacceptable and an avoidable urban design outcome contrary to Land and Environment Court Planning Principal relating to adjoining zones, as discussed above.

The additional height will appear visually bulky when viewed from units facing the subject site, in addition to decreasing the amount of visible sky. Overshadowing will occur to a number of sites to the east and south of the site including the drying court, bedroom windows and backyard of 29 Elsmere Street in the afternoon.

A Clause 4.6 variation has been submitted by the applicant seeking to justify the 65% variation to the statutory height control. It is stated that the additional height provides for a stepped building form. However there is nothing for this stepped form to relate to; the 11 storey building adjoins a single storey service station to its south, which is completely overshadowed by the proposal.

The report also states that the high element will provide visual interest and is a good urban design outcome. It cites numerous taller building in Anzac Parade and claims that this will act as a 'bookend' and 'corner element'. There is only one taller building some considerable distance to the north. This is an older incongruous residential flat tower that pre dates the current controls. It does not set any context to this site and is too far away to be of relevance.

Bookend or gateway corner buildings can represent a good urban design outcome at the entrance to a high-density zone or in a prominent terminal vista type location. This proposed is in the middle of the business zone and therefore cannot be claimed to be either a gateway or bookend element. The site is not identified as such a site in either the newly gazetted LEP 2012 or site specific Part D1 Kensington Town Centre chapter of the of the newly adopted Randwick DCP 2013.

No plausible explanation has been provided to justify a 16.25m variation to an unambiguous recently adopted statutory control and this variation not only departs significantly from the numeric control but also fails to meet the objectives of that control

As has been demonstrated, the proposal does not meet the objectives of Clause 4.3 Randwick LEP 2012, relating to adverse impacts on surrounding residential development.

The non-compliant height will present an uncharacteristic building design, which departs from the desired future character of the Town Centre as clearly set out in Part D1 of the Randwick DCP 2013. The area is currently characterised by low rise single and two storey buildings and some walk up residential flat buildings. Recently constructed 5 storey buildings to the north comply with DCP and LEP envelope and height controls and represent the desired future character of the town centre.

An older incongruous residential flat tower further north does not set any context to this site and, as it is existing, acts as a gateway to the emerging town centre. Another gateway in the middle of the town centre is not required.

The Town Centre is undergoing a transformation with its density expected to increase in line with Part D1 of the Randwick DCP 2013. This guides development with the provision of site-specific height, envelope and articulation controls. As such, any deviation from these provisions will appear inappropriate in its context causing an inconsistency in the desired future character of the Town Centre as visualized in the DCP. This reinforces the notion that the application in its current form should not be supported.



**Bedroom windows to 29 Elsmere Street to be obscured by 42m tower.**





Existing wide rear setback between properties fronting Anzac Parade (left of photo) and 29 Elsmere Street (right of photo) to be lost by 42m tower less than 3m from rear boundary

### **Building Envelope (FSR) and Setbacks**

The proposed tower element fails to comply with the Building Envelope controls and part 4.3.1 of the Block by block controls (Carlton Street to Goodwood Street).

The proposed development does not take into consideration site-specific building envelope controls failing to respond to its relationship to surrounding buildings. The SEE stated that the part of the building, which complies with the height limit also complies with envelope and rear setback controls and this protects the amenity of dwellings in Elsmere Street. However, the tower element not only fails to comply with the height limit but also makes no attempt to comply with the building envelope or rear setback controls.

As such the 42m high building will only be approximately 3m from the rear property boundary. Bedroom windows to the west of 29 Elsmere Street, and a small back yard and drying court will face an enclosing wall, an open supermarket loading area, a two storey solid wall and the 42m high tower. This sense of enclosure, loss of morning sunlight, overbearing, loss of acoustic and visual privacy is an unacceptable and avoidable urban design outcome contrary to Land and Environment Court Planning Principal relating to adjoining zones, discussed above.

The exceedance of the Building Envelope provision and therefore the density represents a significant overdevelopment of the site by approximately 14 units. This compounds the number of impacts, producing an overbearing impact to the streetscape pattern of Goodwood and Elsmere Streets. Resultant amenity impacts to adjoining residential sites include overshadowing, privacy loss, increased traffic, noise and visual bulk. The disproportionate scale of the development will affect the general character of Town Centre.

### **Proposed Supermarket**

Part D1 of the Randwick DCP 2013 notes that

*Kensington Town Centre would benefit from the development of a neighbourhood supermarket shopping centre, fulfilling local day to day shopping needs with the provision of groceries, fresh food and other convenience items. Subject to suitable site amalgamation, there are three Blocks within the Core Retail Precinct with the potential for redevelopment as a neighbourhood supermarket shopping centre: Blocks 4, 9 and 10.*

The subject site is in Block 1 (Carlton Street to Goodwood Street) and is therefore not in a location identified as being appropriate or suitable for a supermarket.

Furthermore the DCP requires that where a supermarket is permissible, that it is part of a shopping centre. The following applicable Objectives are **NOT MET** by the proposal:

- ii) The minimum lettable and common floor area is 4,500 sq metres over two levels.**

Only one level is proposed and only one single supermarket is proposed whereas a variety of active retail uses are required.

- iii) Provide supermarket and other convenience shopping at ground level. The building depth at ground and first level (Storeys 1 & 2) may extend to within 6 metres of side and rear property boundaries.**

Only one level is proposed and only one single supermarket is proposed whereas a variety of active retail uses are required. The building depth has no setback to its side boundary and is setback less than 3m from its rear boundary.

- vi) Ensure that the entrance to an internally orientated arcade, and the arcade itself, is a minimum of 7 metres wide.**

No arcade is proposed as required. Only a single supermarket is proposed fronting Anzac Parade.

- vii) Provide active retail uses (including shopfronts, café/restaurants, and retail entrances) to the Anzac Parade frontage.**

No active retail uses are proposed. Only a single supermarket is proposed fronting Anzac Parade. This will present as a single shopfront with no active window displays, entrances or uses complementary to a supermarket use as found in an arcade, which is the form of development desired by the DCP for the appropriate Town Centre blocks.

- viii) Provide all loading and parking at basement or semi- basement level.**

Loading is not provided for at basement level. It is instead proposed at ground level at the rear, directly adjacent to the back yard, drying area and bedroom windows of 29 Elsmere Street. This is an unacceptable outcome contrary to the DCP, which will result in significant amenity impacts, including noise, traffic movements, pollution and odours. No assessment or consideration of these impacts have been made in the SEE or addressed by the application.

- ix) Provide evidence of an Agreement to Lease with a recognised supermarket retailer intending to operate a supermarket of at least 1,000 sq metres retail area.**

No evidence is given in any notification material

- x) Submit a design, which is the result of a competitive process formulated to achieve design excellence.**

No evidence of any design competition has been provided.





## Conclusion

The proposal in its entirety is an overdevelopment of the site, which severely breaches the height limit and envelope controls and fails to meet the applicable objectives of Randwick LEP 2012 and DCP 2013. The non-compliant height, setbacks, building envelope and retail development (supermarket) result in numerous amenity impacts on surrounding residential developments. The proposal fails to properly relate to the streetscape and respect the adjoining residential R3 zoning. The application is also improperly made as it relates to a different site to that originally applied for.

The application in its current form, should not be supported.

Should you wish to discuss this further, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lewis Adey'.

Lewis Adey MPIA

Director

aSquare Planning Pty Ltd

**Thuy Tran**

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**From:** Peta Nugent [petanugent@optusnet.com.au]  
**Sent:** Friday, 15 November 2013 8:03 AM  
**To:** General Manager  
**Subject:** Objection to DA320/2013  
**Attachments:** Objection to 320-2013.pdf

Please find attached an objection to DA 320/2013 from the owners and residents of 9 – 19 Elsmere Street, Kensington. A signed copy of the submission will be delivered to the council today. Please direct any mail concerning this objection to 16/9 Elsmere Street, Kensington.

All the best  
Peta Nugent  
Mobile: 0427 308436

Randwick City Council  
30 Frances Street,  
Randwick NSW 2031

**Re: Amendment to DA 320/2013**

**To whom it may concern, the owner/occupiers and residents of 9-19 Elsmere Street, Kensington,  
object to DA 320/2013 and its amendments dated 4 October.**

We object for the following reasons:

**1. Loss of solar access and increased shadowing: the proposed structure will greatly compromise the solar access of our homes and leave them in shadow for most of the day.**

The amended proposal substantially increases the shadowing and reduces solar access to 9-19 Elsmere Street. The loss of solar access during the winter months is particularly severe (see Developer's Shadow Diagram June 21 at 3pm) when all buildings to the east along Elsmere Street will be in shadow from early afternoon.

The amended development application states;

*"The rear gardens and rear elevations should continue to receive solar access for at least 2 hours from approximately 11.30am until the proposed building shadows these properties in the afternoon (approximately 1.30pm)."*  
(Statement of Environmental Effects)

This is a massive loss of the solar access for the owners and residents of 9-19 Elsmere Street who currently enjoy excellent solar access at the rear of the building for most of the day. Particularly affected are the top floor units (units 7, 8, 15 and 16) and the apartments at the back of the block (units 1, 4, 9 and 12). These terraces and apartments currently enjoy solar access from mid-morning until the sundown (see images in Attachment A). Impinging on the solar access for these apartments will detrimentally impact on the lifestyle and quality of life of those residents.

The top floor terraces are effectively the owners' gardens and backyards and are in constant use for dining and recreation, growing plants and landscaping and for drying clothes. The units at the back of the block currently receive natural light for most of the day into loungerooms, kitchens, dining and study areas as well as balconies. Should the development go ahead in its current form these apartments and terraces will cease to be the light filled areas they currently are and the result will be a decrease in the quality of life and an increase in heating and lighting expenses for their owners and residents.

It should also be noted that the importance of solar access to the quality of living for residents has been acknowledged in the Developers own document in the section titled 'External Solar Access';

*"the communal open space will receive abundant solar access which will contribute to the area being an attractive passive recreation area".*

An 'attractive recreation area' supported by adequate solar access is of no less importance to the residents of 9-19 Elsmere Street as it is to the potential residents of the proposed development where solar access is obviously being considered an important factor in marketing the buildings' recreation space to potential buyers.

**2. Privacy: the configuration of the development allows for the majority of apartments to overlook 9-19 Elsmere Street.**

At 7, 9 and 11 storeys and an eastern facing aspect most of the apartments in the proposed development will be much higher than the existing three storeys of 9-19 Elsmere Street and as such they will be overlooking our property. Without proper screening the privacy of the Elsmere Streets resident will be greatly compromised.

Privacy has already been compromised in the recent development of the Academie apartments on the corner of Anzac Pde and Carlton Street. Therefore the residents feel that they have already made a sacrifice for neighbouring developments and that this development combined with the Academie presents an excessive loss of privacy.

The development would likely require (at the advice of the developer) the removal of the trees to the rear of the property which would significantly reduce privacy to our property. The removal of the trees would also act to reduce the aesthetic appeal. We would request that remedial steps be taken to ensure the aesthetic appeal of that area is retained.

We would like the developer to ensure that appropriate screening will be included in the plans to preserve the privacy currently enjoyed by the residents of Elsmere Street.

**3. Noise: such a great increase in population density and traffic will mean increased noise for existing residents.**

At 126 apartments, the majority of which face out towards 9–19 Elsmere Street, it is reasonably expected that area noise will increase. Presently even low level noise can travel up and echo between the two blocks causing discomfort for residents. Of particular concern is the proximity of the development's swimming pool and recreation areas are expected to be used for noisy activities.

We are also concerned that the traffic in Goodwood Street will increase due to the driveway to the carpark being located in this street and that this increase in traffic will include heavy service vehicles needed to supply a supermarket. This will be an increase in the traffic noise for the apartments on the Goodwood Street side (units 3, 4, 6 and 8) that are already exposed to traffic noise from Anzac Pde.

While it is recognised that the developer is planning to meet acoustic regulations within the new apartments we would like to be assured that appropriate measures have been taken to inhibit the noise from the apartments, open areas and increased traffic so that any impact on the existing residents of 9–19 Elsmere Street, Kensington will be minimised.

**4. The Water Table and Potential Damage to Surrounding Buildings: the construction of a three storey underground carpark will adversely impact the underlying water table and potentially compromise the structural integrity of existing buildings.**

We note that the 'Report on Preliminary Geotechnical Investigation' by Douglas Partners only applies to a two storey underground carpark and a 6 to 7 story building. There is no report in the current documentation that properly investigates the impact of a 3 storey underground carpark or a 7, 9 and 11 storey building.

The current DEP rightly recognises that the Kensington Town Centre is built entirely over the Botany Sand Beds and that:

*'the water table is particularly shallow in the Kensington Centre area with groundwater levels commonly found to be less than 2.5 metres below the natural surface level.'*

Any construction must take place without affecting this delicate environment. In our opinion the current development as it stands and the current research that has been carried out by the Developer cannot guarantee that there will be no harm to the water table or the existing surrounding buildings during construction or into the future.

We are very concerned that construction work of the proposed development will damage adjacent buildings, including ours. Of major concern to us is that such a major construction so close to our building and one that goes to a depth that is unprecedented in Kensington will cause the disturbances in the ground and the foundations. We believe that this would result in cracking to our building and our buildings' structural integrity being compromised.

We would like better assurances including a thorough pre-inspection report on our properties (at the Developers expense) that ensures that our building will not be detrimentally affected and should it be, any damage will be satisfactorily corrected and the owners sufficiently compensated.

We also note that the 'Report on Preliminary Geotechnical Investigation' by Douglas Partners states:

*'It will be necessary to obtain permission from neighbouring landowners prior to installing anchors that will extend beyond the perimeter of the site.'* (page 6)

As the amendment stands, we do not give such permission should they be required from our property.

**5. Height and building controls: the amendments drastically contravene current building height controls.**

According to the Randwick Council Development Control Plan height controls for the site are;

*" ... Maximum height of any building along Anzac Pde will be four storeys setting back to 6 storeys".*

The original development application of part 6 and part 7 storeys was already outside of these controls. The current amendment of part 7, part 9 and part 11 stories severely contravenes these controls.

As local residents we are alarmed that should this DA be approved, a DCP that was only adopted in June of this year will be so severely compromised. Should this site be permitted to be developed so far outside of the scale and height controls of Randwick Council a very poor precedent for future development in the Kensington Town Centre will have been set. This is contrary to the LEP height objective;

*"to ensure that the size and scale of development is compatible with the desired future character of the locality."*

We would also dispute the description 'slender' that the developer uses to describe the 11 storey tower proposed for the corner of Anzac Pde and Goodwood Street. It is a large and bulky building that does not meet any of the aesthetic or community objectives of the applicable DCP and LEP.

**6. Poor justification for the contravening of height and building controls.**

The developer justifies the contravening of the height controls for several reasons, most of which are subjective and as such are open to dispute. However for the purposes of this objection we would like to focus on two of their statements.

The amendment document states:

*" the proposed height is also not out of character with the height of another building 100 metres to the north of the subject site, which is 12 storeys in height. Although just outside the town centre, this building nonetheless contributes to the local context". (page 40)*

The building referred to is 'Parklands' and is a building that is greatly outside the scale and height of the surrounding buildings. The result is an eyesore. The 'Parklands' is regarded by residents as a remnant of previous poor planning decisions that it is hoped are a thing of the past. This oversized building makes a very poor justification for contravening existing building controls.

There is also no visual connection between 'Parklands' and the proposed development, which in our opinion makes it irrelevant to the height of the proposed development.

The amendment document also states:

*'The proposed development is consistent with the zone objectives in that it provides for a much needed supermarket which will service the local area...' (page 21)*

In fact, the idea that residents should be happy that building controls will be contravened in return for a supermarket is a common theme throughout the amendment document. However, nowhere in the document is the supermarket **guaranteed**. After reading the document carefully we conclude that local residents are expected to tolerate additional height and scale in a neighbouring building and all the detrimental effects that those features bring for them on the off-chance that a supermarket retailer may take a the lease within the building.

We also note that this block is the first block of the long and narrow Kensington Town Centre. We question that this site is the ideal location for a supermarket. We suggest a location more central to the Kensington Town Centre would be better and more appropriate.



**Finally we would like it noted that while we understand the site needs to be developed and we are not against development per se, we believe that any development should be within existing regulations, should keep to a minimum any impact on the quality of life of existing residents and should guarantee not to detrimentally lower the integrity of surrounding buildings.**

**We are willing to negotiate with the developer on any of the aspects listed above with the ultimate goal of allowing both the needs of the development and the needs of existing residents to be appropriately catered for.**

**Yours Faithfully,  
The Owners/Occupiers and Residents,  
9-19 Elsmere Street, Kensington.**

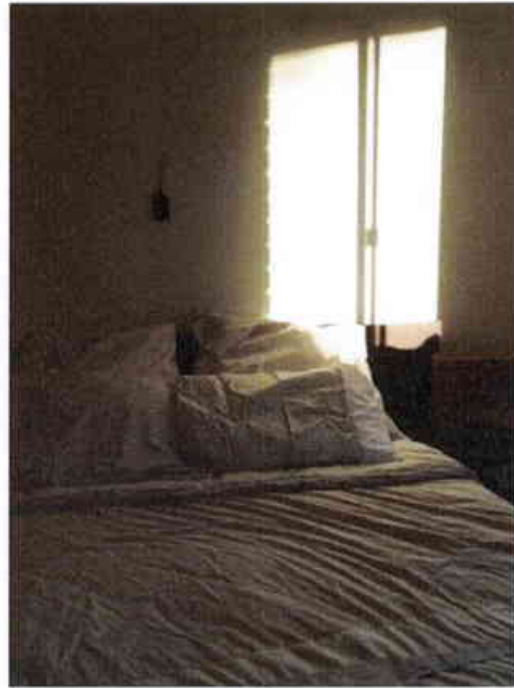
**Contact Details  
Peta Nugent: mobile  
Anne O'Sullivan: mobile**

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**Attachment: Images**



Balcony of unit 7 at 3:30 10/11/2013. The terraces have full solar access all day.



Bedroom of unit 16 at 7:00pm 14/11/2013. Light is still coming through the windows into the evening.



Balcony of unit 1 at 4:00pm 13/11/2013. Light is still coming through the trees late into the afternoon.



Balcony of unit 8 at 4:00pm 8/11/2013. The balcony is in full light late into the afternoon.

These images demonstrate that the shadow diagrams in the application do not truly reflect the solar access of 9–19 Elsmere Street. Resident and owners enjoy full solar access till late in the evening each day. This will be severely inhibited by the development as it stands.

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## Thuy Tran

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**From:** Eather, John [jeather@kpmg.com.au]  
**Sent:** Friday, 15 November 2013 8:47 AM  
**To:** General Manager; Scott Williamson  
**Cc:** Scott Nash; Harry Stavrinou; Michael DAVIES; Richard Pang; Claire Crook; Roger Stapley; John Eather  
**Subject:** Objection to amended development 320/2013  
**Attachments:** Revised Council\_Submission DA320 - 2103 .pdf

Dear Sir,

Please find attached a submission to council objecting to the proposed development 320/2013 for properties 84-108 Anzac Parade Kensington

Regards

Owners of 21, 23, 25, 27 Elsmere st Kensington

John Eather  
Claire Crook  
Michael Davies  
Eliza Wu  
Roger Stapley  
Jane Stapley  
Richard Pang

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## Thuy Tran

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**From:** Sam Kangais [samkangais@aqualunabeachresort.com.au]  
**Sent:** Tuesday, 12 November 2013 9:02 PM  
**To:** General Manager  
**Cc:** Sam Kangais  
**Subject:** 320/2013, 84-108 Anzac Parade, Kensington, Sydney  
**Attachments:** photo (3).JPG; 84-108 amended.pdf

**Importance:** High

### To Whom This May Concern

We are voicing our disappointment and disgust at the proposed development at 84-108 Anzac Parade, Kensington. We completely reject, object and are outraged that a developer can honestly believe that this project can enhance good living standards and benefit the environment and overall setting of the designated address by proposing a 7,9 and 11 story complex in Kensington. Kensington is a suburb which has always been renowned for buildings of approx. 5 floors high on average.

This proposal does not benefit Kensington in any which way or form. Kensington is not Waterloo, if the authorities allow a project of this magnitude and height, look out! - they are setting a precedent for Kensington and all future development will continue down this path. The council and authorities need to stand up now and stop a developer trying his luck with such an eyesore tower of up to 11 story's in Kensington, a suburb which will be destroyed if this project was to be to be approved.

#### Proposed Building - key determining negative impacts points include:

- **Definite shadowing for all surrounding properties and sunlight reduction**
- **Obstruction/complete blackout to recorded identified landmarks including a park and the famous Randwick racecourse**
- **Parking issues - 166 spaces are not enough as explained below in point 2**
- **Population / density issues – Kensington is already overpopulated**
- **Infrastructure/public transport issues, as explained in point 3**
- **Living standards to diminish, including a decrease of natural sunlight and living restraints referring to size of construction and the decreased size of proposed units – these concerns will affect all residents**
- **Depth of building concern and constraints at designated address**

#### Further Clarifications:

- 1/ Anzac Parade and Goodwood street will be completely shaded out at certain times of the day as per the shadow diagrams if this building complex is approved.**
- 2/ We invite the authorities to try and find a parking spot on any weekend. We read of 166 parking spots allocated for the proposed development. Parking in Kensington has got so ridiculous that you may have to walk 15 minutes from your destination to find a car park. Kensington is at full capacity at this stage when it comes to parking spaces. Unit owners park their car/s on the street for convenience sake. The infrastructure cannot withhold additional cars at this proposed location. What happens when families and friends visit ? **Has this been thought through?****
- 3/ Public transport is currently being tested with its current mass population/density. We ask the authorities to stand at the bus stop opposite the complex on Anzac Parade at approx. 8.15 and attempt to flag down a bus, also record what time they reach the CBD and report on how many buses go past without stopping as they are full.**
- 4/There will be a negative impact to property values surrounding this project – I challenge anyone to stand up and tell me that an 11 level building across from **actual vie attached (3) JPG**, taken from 41 Boronia St Kensington on-looking proposed site of the 11 floor proposal development (marked by the purple and orange street flag) will not devalue all of the surrounding properties. **Are you serious?****

**I request that the appropriate council representative meets with me at a time convenient to them at this location to discuss the detrimental impact that such an eyesore building will have on the immediate location and surrounding areas of Kensington.**

In My Opinion

If you consider proceeding with this proposal which is not at all fair and reasonable, the residents of the immediate surrounds should be compensated from all parties involved for the negative impact that this building/complex will have on their property values.

**Please acknowledge receipt of this email correspondence.**

**On Behalf of Peter & Maria Kangais  
41 Boronia St Kensington, 20133. NSW**

Kind regards

**Sam Kangais  
General Manager**

Aqualuna Beach Resort  
**M 0437 699 491**  
[samkangais@aqualunabeachresort.com.au](mailto:samkangais@aqualunabeachresort.com.au))

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## Thuy Tran

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**From:** Roger Quinton  
**Sent:** Friday, 15 November 2013 8:06 AM  
**To:** Kerry Kyriacou  
**Subject:** FW: 82-108 Anzac Parade, Kensington : DA 320/2013  
**Attachments:** masthead6.png; ATT00001..htm; LET 783 OBJ.pdf; ATT00002..htm

Hi Kerry - here's another objection

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**From:** Lewis Adey [<mailto:lewis@asquareplanning.com.au>]  
**Sent:** Friday, 15 November 2013 8:05 AM  
**To:** Scott Williamson; Roger Quinton  
**Cc:** Sol Wilk  
**Subject:** 82-108 Anzac Parade, Kensington : DA 320/2013

Hi Scott and Roger

Please find letter of objection attached for the above.

best regards

Lewis Adey MPIA CPP  
Director

- properties in Elmstone Street would be overlooked by many who occupy units in this building.
- There is no certainty that a supermarket would be achieved at the ground level.  
If a supermarket did not eventuate what alternative uses would Council entertain for that level?

- The matter of the quality of construction is also raised regarding some materials which are proposed for use.

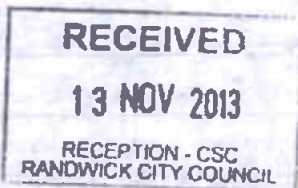
e.g. PVC. doors / windows framed (with double glazing). Door and window frames made of plastic?!

There are serious concerns in the community regarding this proposal, and we ask that Council refuse it.

Yours faithfully,  
Margery Whitehead

8/3.





10 Inglethorpe Ave.,  
Kensington NSW 2033

13<sup>th</sup> November 2013.

The General Manager  
Mr Ray Brownee.  
Randwick City Council  
30 Francis St.,  
Randwick NSW 2031.

Randwick City Council  
14 NOV 2013  
Records Received

Dear Mr Brownee.

RE. DA. 320/2013 Received 4.10.13.

(82-106 Angus Parade, Kensington),

Pursuant to the motion passed at the  
Kensington West Kingsford Precinct meeting on  
11<sup>th</sup> November 2013, I raise the following  
issues in objection to the proposal.

The proposal is in breach of height, number  
of levels and FSR of the Kensington Town Centre  
DCP.

The building features a stepped appearance along  
the Angus Parade frontage. Part of the building  
is 7 levels above ground level at the maximum  
height of 25m in the DCP. To the south the  
building rises to 9 levels and near Goodwood Street  
it is 11 levels at a height of 41.25m which  
is 16.25m above the 25m. maximum permissible.  
This continues along the Goodwood Street frontage  
at this excessive and unacceptable height. Note it  
is much more than a corner -

page 1/3.



- The reports accompanying the development application including the Douglas Partners geotechnical report appear to have been prepared for the earlier application with the same identification number submitted to Council in May 2013 involving "the construction of a 6-7 story residential unit building with two basement car park levels."

Therefore these reports do not address the further difficulties arising from greater depths of <sup>under</sup> ground water in the aquifer for a third basement level.

- The precinct members questioned the possibility of 3 levels of basement parking.

Should the developer decide against the third level the parking would be greatly reduced and would not meet the Council's code.

- The geotechnical report does not cover recharge. Since dewatering removes underground water from neighbouring properties, recharge is essential to prevent subsidence of neighbouring land with possible damage to neighbouring buildings.

Recharge must be done at points on the subject property site. This would not be possible where the building is constructed boundary to boundary.

- No deep-root planting is possible with 100% of the site covered.

- Solar access for some neighbouring properties will be reduced to 2 hours 11.30 am to 1.30 pm.



DEVELOPMENT APPLICATION NO

320/13

ARTIST'S IMPRESSION  
PROPOSED DEVELOPMENT

Randwick City Council

04 OCT 2013

Records Received





Owners of 21,23,25,27 Elsmere St, Kensington

Postal address co J Eather 25 Elsmere St Kensington  
NSW 2033

The General Manager Randwick City Council  
general.manager@randwick.nsw.gov.au

**Submission to Council on the Development at 84 – 104 Anzac Parade Kensington (DA/320/2013)**

We the owners of 21, 23, 25, 27 Elsmere St object to the development at 84 – 108 Anzac Parade Kensington listed as DA/320/2013 and its subsequent amendment. The amendments have not addressed our concerns about the initial development. We understand the need for development in the Kensington Centre, and welcome the benefits a suitable development would bring. However, Luxcon Group's current proposal clearly exceeds the Randwick City Council Development Control Plan -D1 (DCP), is grossly out of proportion with its neighboring buildings and significantly impacts our homes. The aspects of the proposal that we object to are detailed below.

First, the proposed development has a 7-8 metre high structure with zero setback from the rear boundaries of our properties. On top of this structure is a pool and recreational area for the apartment residents. This clearly contravenes the DCP in the following areas:

- Section 4.5.2 (vii) Car parking semi basement – The proposed 7m height is well above the 1.5m above ground level outlined in the DCP.
- Section 4.5.2 (ix) If a semi Basement car park is built to the boundary of an adjoining property outside the centre boundary, there should be advanced planting in a 3m setback and a max 1.5m height. The diagram in this section also states that the wall should be treated as part of landscaping in consultation with adjoining landowners. The proposed plans contravene this.

It is also inconsistent with the recent Academie development at 76 Anzac Pde, which has a setback of at least 5-6 metres across its whole rear boundary.

Having such an imposing structure on our back fence will clearly impact the amenity of us as residential neighbours. It will dwarf our homes, and significantly reduce light, increase noise and reduce privacy. The proposed open communal space containing a pool, BBQ area, play area etc located on top of the car park entrance will further impact the amenity our properties by increasing noise and reducing our privacy. The current design will cause all noise from the raised communal space to be directed straight into our rear yards. This noise impact will considerably reduce the amenity of our back yards. The amended proposals altered boundary and landscape treatment (described as a 'green wall' by the developer) does not overcome the basic size and bulk of this imposing 7 + metre structure. Any proposed recreation area needs to be located at ground level and screened with plantings and appropriate fencing to retain privacy and reduce its noise impacts.

Second, the proposed development with its amended mix of 7, 9 & 11 stories significantly contravenes the DCP, which states that the maximum height of any building along Anzac Parade is 4 storeys setting back to 6 storeys ( Section 4.2.4 of DCP). The developers impact study references "Parkland Towers" a 12 story unit tower as contributing to the local context and justification for this over development. The report then contradicts itself describing "Parkland Towers" as "well out of line with the basic development standard" Our current DCP and planning laws are in place to prevent another "Parkland Towers" type over development.

Our view is that the corner tower just adds additional bulk to the development rather than providing visual appeal, it also causes additional shading for 25 and 27 Elsmere st and the small apartment block at 29 Elsmere st. The proposed development will significantly reduce the amount of natural light received by our properties and each additional story exacerbates this issue. We request the height of the development to be reduced to comply with the existing DCP.

Third, the proposed development's supermarket is inappropriate for the site. While a supermarket would be a worthwhile addition to the Kensington area, as noted in section 4.2.8 of the DCP, this site is not suitable for this purpose. The suitable sites in Kensington are blocks 4, 9 and 10. Squeezing a supermarket into this site increases the required building size and prevents the use of rear colonnades and ground level public space (as per section 4.6.8 of the DCP). It also increases the number of large vehicle movements into Goodwood Street and adds to the existing parking space pressures. These factors impose significant negative externalities on adjoining residents. We request that the supermarket be located at a more suitable site in Kensington.

Fourth, the proposed development significantly reduces the amount of sunlight to our properties. Our rear gardens will receive only 2 hours sunlight per day, which is much less than the 3 hour minimum specified in section 4.6.10 of the DCP. Our houses will also see a significant reduction in the amount of sunlight received. We request that the size of the development be scaled back to ensure that our properties (houses and gardens) receive at least 3 hours sunlight per day. The developer's impact statement again comments on the importance of solar access stating "the communal open space will receive abundant solar access which will contribute to the area being an attractive passive recreation area." This will be achieved by taking away our solar access and impacting on the amenity of our properties.

Fifth, the proposed development's communal space arrangements do not provide a buffer between the apartment complex and our homes as required by section 4.8.1 of the DCP. As noted earlier the pool and recreation area are raised 7 metres above ground level. Our homes will be looking into a very high, solid wall. We request that any structures be set well back from the boundary of our property, and that the communal open space be at ground level if possible. These changes would help make the proposed development more in line with council guidelines and reduce its impact on our properties.

Sixth, the proposed development significantly impacts the visual privacy of our properties both from the actual units and associated balconies and from the proposed pool and entertainment area situated above the basement entrance. This is contrary to section 4.6.12 Visual Privacy. We request that the apartment complex design be amended to reduce this impact on our homes.

Seventh, the developer's overall traffic impact study and the location of the vehicle access in Goodwood Street does not seem to have taken into consideration the location of the already approved development at 2 Goodwood St (DA195/2012) which has its dual carriageway driveway for 88 car spaces located almost directly opposite the intended location of this development's dual carriageway access, which is to cater for 265 car spaces for residents and retail and large trucks servicing the proposed supermarket. The amended proposal makes no mention of the commercial vehicles including heavy trucks required to service the proposed supermarket. These increased movements of both private and commercial vehicles will also make the eastern end of Goodwood st including access to Kokoda Park a significant risk to local residents especially the aged or children. I note that the Goodwood st/Doncaster pde intersection is already operating beyond capacity in evening peak hours. If approved in its current location the traffic movements in and out of these conflicting driveways, both located close to the intersection of Anzac parade will clearly disrupt local traffic. We request that the proposed development be reduced in size and its carpark access be relocated to Carlton Street using the existing access for Acadamie located at 76 Anzac Pde.

Lastly, we are also concerned that the excavation and construction work associated with such a large development could cause damage to our homes and destabilise trees established at our boundary with the proposed development. Due to the sandy soil base and the height of the water table in the area with groundwater levels commonly found to be less than 2.5 meters below the natural surface area it is likely that this work will result in cracking in our walls and ceilings. The amended development now requests 3 levels of car parking requiring extensive excavation and dewatering.

We request that the developer cover the costs of pre development inspection to assess and confirm the current state of our homes so any damage as a result of the development can be clearly demonstrated. We also request that the developer have sufficient insurance or monies in a trust account to ensure that if any damage is caused, there are monies available to cover the cost of repairs.

We will also refuse permission for any ground anchors necessary for the excavation to extend beyond the perimeter of the development onto our properties.

The proposed development will also significantly impact and probably destroy several large trees we have at the rear of our properties, and will not be able to be replaced with similar mature trees. These trees are also clearly protected under the councils existing tree preservation rules.

Overall we understand the need for development in the Kensington Centre, and we welcome the benefits a suitable development will bring, however as explained above the proposal exceeds the DCP and adversely impacts our homes. We request that this proposal be rejected based on its number of proposed storeys, the height and location of the basement driveway and recreation area, and the shading that it causes on our homes. We seek to have the DA amended by the developer to meet the DCP.

Yours sincerely,

Property	Owners	Signatures
21 Elsmere St	Richard Pang	
23 Elsmere St	Michael Davies	
	Eliza Wu	
25 Elsmere St	John Eather	
	Claire Crook	
27 Elsmere St	Roger Stapley	
	Jane Stapley	

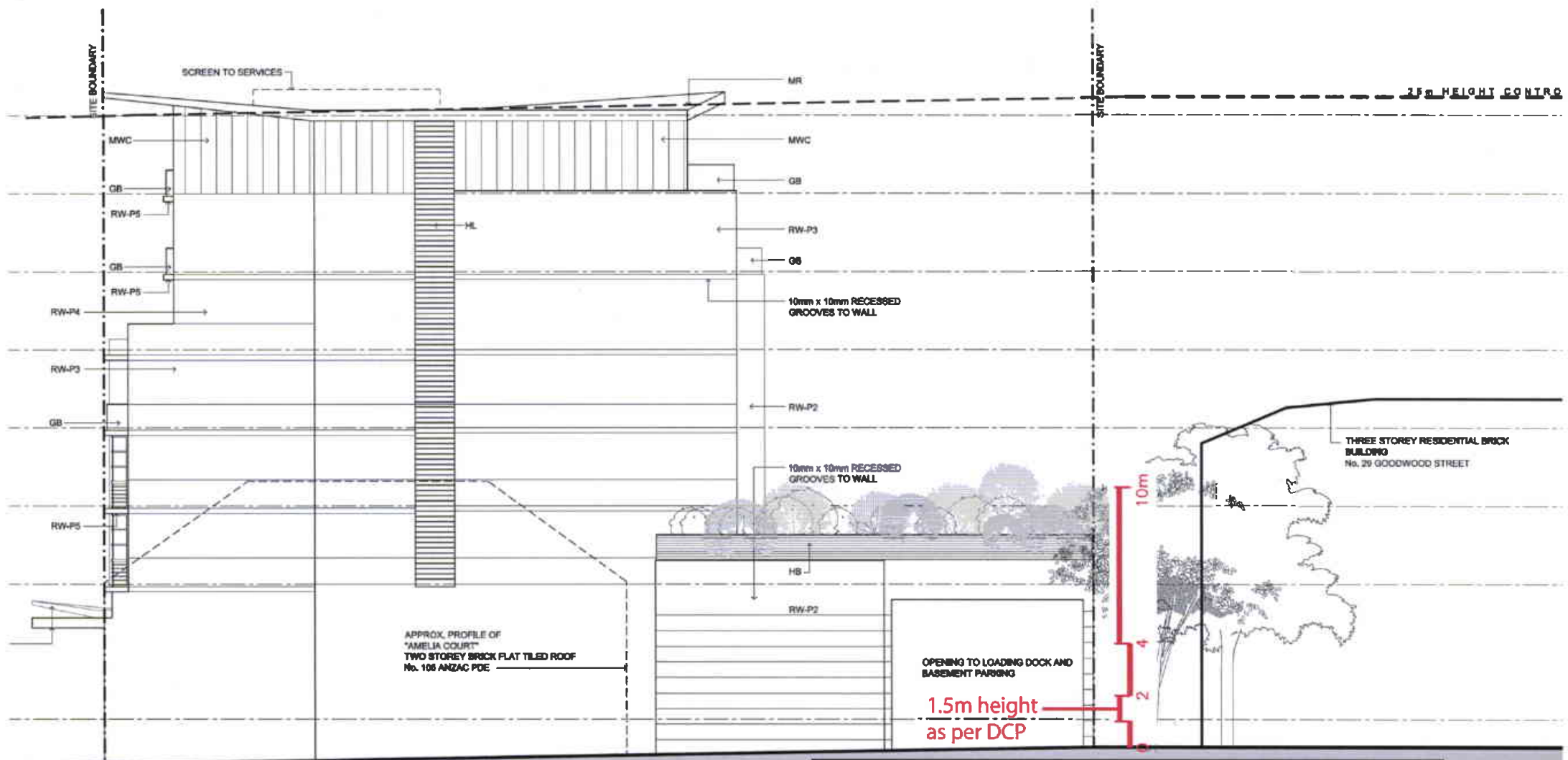


Diagram showing actual height of the loading dock and basement entrance, with proposed rooftop structure in comparison to the 1.5 m height as per the DCP

## Thuy Tran

---

**From:** manmills@ihug.co.nz  
**Sent:** Monday, 11 November 2013 9:58 AM  
**To:** General Manager  
**Subject:** Fwd: DA/320/2013

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

-Good Morning GM

I have had no acknowledgement of this note ,sent a few days ago

Regards

Edward M Mills

Mr Scott Williamson

Randwick City Council

Via email to : [general.manager@randwick.nsw.gov.au](mailto:general.manager@randwick.nsw.gov.au)

Re proposed 11 storied development on Anzac Parade between

# 86 and 108 Application No DA/320/2013

We are owners occupiers of a unit on the east side of Boronia Street, # 45 we will be adversely effected by this development in terms of our privacy ,enjoyment of our facilities ,a very large reduction of the view to the south east and certainly some loss of of early morning sunlight ,and with well over 100 living units plus a stated intention of a super market on the ground floor, factors that will increase the amount of traffic looking for the ever decreasing number of parking spots .

We know from having had discussions with the builders of the block of units, same side Anzac Parade further south next to the 7/11 service station ,that water penetration of the lower floors is a real concern ,it's effect on the environment and the surrounding water table is o fcause something the approving body will have to address.

All of these factors will have a very large impact on the value of our property,which will certainly have an impact on our retirement and change our life style for worse..

We strongly recommend that this building project be limited to the same number of floors as the block opposite Peters of Kensington



ie 7 floors above ground level rather than the proposed eleven floors .

Regards

Edward M and Hannelore H Mills

Note Mrs Selma Keilmanis is recently diseased.

8/45 Boronia Street

Kensington

NSW 2033

04 50636183 until 12<sup>th</sup> November then 00116445684760

Regards

E M & HH Mills

Please reply via email [manmills@ihug.co.nz](mailto:manmills@ihug.co.nz)

**Thuy Tran**

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**From:** Ross Cresdee [rcresdee@hotmail.com]  
**Sent:** Friday, 8 November 2013 7:28 AM  
**To:** General Manager  
**Subject:** Re: Development Application 320/2013  
**Attachments:** 84-108 Anzac Pde (320-2013).doc

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Please find attached my submission for the DA 320/2013 affecting 84 - 108 Anzac Pde Kensington. I call on council to reject this proposal as it fails to meet performance criteria & exceeds numerous DCP & LEP controls.

Regards, Ross Cresdee.

The General Manager  
Randwick City Council  
30 Frances St, Randwick

65 Doncaster Ave  
Kensington 2033  
8/11/2013

Dear Sir,

**Re : DA/320/2013 – 84 to 108 Anzac Pde, Kensington**

I have read the amended application for the above development and have concluded that the proposal represents an over-development of the site.

The Kensington Town Centre DCP 2002 specified building envelope controls for the block and this proposal addresses an area marked as Block 01 with a 4 + 2 storey building envelope. The Randwick LEP of 2012 relaxed the height limit to 25m accommodate the de facto 7<sup>th</sup> storey developments approved during the first 10 years of the DCP's operation. This proposal seeks to grossly exceed the height limits and densities approved for blocks fronting Anzac Parade.

- While the northern part of the development retains roughly the same proportions as the new building on the corner of Carlton & Anzac Pde, the southern component steps up to 11 storeys, far in excess of the controls. The proposal states that this adds interest to the development but the rectangular box like tower proposed for the Goodwood St corner is just an updated version of the ugly residential building on the corner of Abbotsford St & Anzac Pde to the north. In fact, the proposal references this old mistake as justification for its adoption. There is no architectural merit in the proposed tower.
- In the DCP & subsequent developments in Kensington Town Centre the 7<sup>th</sup> storey was accepted to provide partial 'in roof' accommodation and enclose roof elements such as elevator overruns, offering the possibility of a more interesting appearance. In this proposal, the developer seeks to establish a roof garden on top of the 7<sup>th</sup> storey, that is, lift overruns etc will not be contained within the 7<sup>th</sup> storey effectively adding another level to the development. If a roof garden is desirable then it should be on top of the 6<sup>th</sup> storey to be consistent with the DCP and surrounding developments. This is another instance where the proposal exceeds DCP guidelines.
- The DCP building envelope shows a 4m setback from Anzac Pde for the 5<sup>th</sup> storey but as this hasn't been enforced on other recent developments along Anzac Pde there is little likelihood that it will be supported here but it reinforces the notion that this development seeks to exceed all controls.
- I didn't have access to the metrics of the amend plans but guess that the gross floor area exceeds DCP guidelines. The proponent claims that FSR does not apply as the development is within the building envelope provisions of the DCP. With 11 storeys proposed this is blatantly untrue – the building exceeds the envelope in many respects.
- Treatment of the rear of the development is poor with next to no articulation and presenting Elsmere St neighbours with a 7 storey wall.
- Overshadowing of the rear neighbours is inevitable but the proposal does little to lessen the impact. The offer to replace their trees which may be killed during construction is no compensation.
- Elsmere St neighbours will have a high podium as their rear boundary with no setback and common areas above their rear yards. The amended plans seek to reduce the impact with some landscaping but nothing can alter the fact that their amenity will be greatly impacted by the development. The proposal claims that existing trees in these neighbouring yards will ensure privacy but that's just taking advantage of them and giving nothing in return.

- The proposal makes much of its provision of a space suitable for a supermarket however there is no guarantee that a supermarket will eventuate as it may be commercially unviable given the very limited parking provisions and proximity to other large supermarkets at Moore Park & Randwick.
- The DCP suggested that the town centre could benefit from the development of a supermarket within the "Core Retail Precinct" but this development is on the northern edge of the town centre so not well located & unlikely to succeed.
- The DCP also states that a proposed supermarket centre should have a minimal lettable & common floor area of 4500 sq m and evidence of an Agreement to Lease, neither of which are provided for in the proposal so the idea that this space will be used as a supermarket is not supported. Nevertheless the proposal points to the provision of this space as a justification for providing no setback of the podium from the common boundary among other things.
- According to the proposal construction of the proposed light rail down Anzac Pde will commence in 2014 and use this 'fact' to support their excessive development. Whether the light rail project will go ahead or not is still highly debatable and cannot be used to support the proposal. Buses on Anzac Pde represent public transport in Kensington and will do for the foreseeable future.
- Three levels of basement carparking on such a large site will have obvious impacts for the water table and Botany Sands aquifer. This sort of development is expensive and environmentally suspect. Many developments in Kensington with basement carparks have experienced problems leading to costly repairs and continually running pumps and affecting neighbouring properties. The design needs to incorporate onsite re-injection of the aquifer flows and not rely on council to fix problems after construction.

I strongly object to this proposal and, as it fails to meet many of the DCP objectives and exceeds LEP controls, believe it should be rejected.

Yours sincerely,

Ross Cresdee

## Thuy Tran

---

**From:** Patrick Armstrong [patrick\_armstrong@bigpond.com]  
**Sent:** Wednesday, 6 November 2013 8:20 PM  
**To:** General Manager  
**Subject:** Submission re amended DA/320/2013  
**Attachments:** photo.JPG

To the General Manager

On 18 August we wrote to you with our objections (below) to this proposed development at 84-104 Anzac Parade.

On 16 October (presumably after you had considered our objections) Council wrote to us with a notice of amended details to the DA.

Having inspected the plans at the Council office for the amended details it appears that none of our concerns have been taken into account.

Indeed the amended DA is for an even larger development (2,278 sqm vs the previous DA of 1,935 sqm) and now proposes 126 units (as opposed to 90 in the original DA.)

Even more concerning is that the proposal is now for 50% more height on the building in some areas, up to 11 storeys high, whereas the original DA had a height limit of 7 storeys. Clearly this breaches the Council's own height controls and is only in the interest of the developer, to be able to sell more units.

We are also concerned that from the arborist's report it seems that several mature trees on the boundary of the property may need to be cut down.

Council cannot make a mockery of its own procedures by allowing buildings to breach the current height controls. Kensington is not a high rise neighbourhood and the developers should not try to use in their defence that there is already one 11 storey building in the vicinity on Anzac Parade, as clearly that was built in a different era, when Council's did not have the required foresight or vision to put lower height controls in place.

From our perspective, the community consultation is not satisfactory, and it is frankly an insult to the residents of Kensington to claim that an 11 storey high rise residential block will be an 'icon' for the suburb.

We trust that this time you will listen to our concerns and address them accordingly with the developers.

Thank you.

Yours sincerely,  
Patrick Armstrong & Silke Kerwick  
(33 Boronia St, Kensington, NSW 2033, ph: 02 9662 1986)

On 18/08/13 10:40 AM, "Patrick Armstrong" <patrick\_armstrong@bigpond.com> wrote:

>To: The General Manager, Randwick City Council  
>From: Patrick Armstrong & Silke Kerwick, owners, 33 Boronia St,  
>Kensington NSW 2033  
>Date: 18 August 2013  
>  
>Please find below a submission regarding DA/320/2013, the proposed

>development at 84-104 Anzac Parade, Kensington NSW 2033.

>

>We are the co-owners of 33 Boronia St, Kensington, that we purchased  
>and moved into over five years ago. We live in the property with our  
>two school age children.

>

>One of the attributes of the property that first attracted us to this  
>property is the view from the main living area of our house (the  
>kitchen and deck) currently overlooking large, established trees and  
>Randwick Racecourse.

>

>Having inspected the plans for the proposed development at 84-104 Anzac  
>Parade, it is clear that this view will be totally impeded by the new  
>development. Attached is a photo of what we currently look out onto -  
>leafy district views. If this development proceeds we will be staring  
>into a seven story apartment block of 90 dwellings, completely blocking  
>the current view and raising privacy concerns.

>

>In the attached photo at the far left you can see the height of an  
>existing building on Anzac Parade that will be adjoining the proposed  
>new development, so you can visualise how we will be looking directly  
>into these new apartments.

>

>Having closely read the proposed development's 'Statement of  
>Environmental Effects' we therefore take objection to the following  
>statements contained  
>therein:

>

>- "The proposed height is not responsible for any adverse or  
>unreasonable view or shadow impacts"

>- "The extensive separation distances associated with the proposed  
>height also ensures that the height is not responsible for any adverse  
>or unreasonable visual or privacy impacts"

>- "There are no view impacts associated with the proposed height"

>- "The proposed development has no detrimental impacts upon any view  
>corridors or local landmarks"

>- "The height achieves an appropriate level of amenity and will not  
>result in any adverse impacts"

>- "The proposed built form will not be responsible for any adverse  
>environmental impacts in relation to loss of privacy, loss of view,  
>noise or traffic and parking impacts".

>

>Clearly our property will suffer major detrimental impacts on both view  
>and privacy.

>

>We also have concerns about the limited number of parking spaces in the  
>new development allocated for shoppers to the proposed supermarket. It  
>is already extremely hard to park in our street and the surrounding  
>streets of Kensington due to visitors to both Peters of Kensington and  
>the recently reopened E S Marks athletics track, as well as events such  
>as race days, and football matches at the nearby stadium at Moore Park.  
>We note that the traffic survey that was undertaken analysed traffic  
>movements at a similar sized supermarket to the one proposed on a  
>Wednesday evening and a Thursday morning, however the busiest time for  
>supermarkets is on the weekends, which was not studied. We therefore  
>are concerned that the traffic impacts are understated, failing to take  
>into account peak times of demand for the car spaces in the development.

>

>We are also concerned about the level of noise that will occur,  
>particularly out of trading hours, from delivery trucks to the  
>supermarket, that does not appear to have been addressed in this



>development application. There will also be major noise impacts from  
>the proposed construction period, six days a week.  
>  
>Furthermore, there is no landscaping on the street frontage with this  
>development, creating a very stark pedestrian footpath with no greenery  
>in sight.  
>  
>We would appreciate Council and the developers taking into account the  
>issues raised and addressing them.  
>We can be contacted on (02) 9662 1986 or by mail at 33 Boronia St,  
>Kensington NSW 2033.  
>  
>Thank you.  
>Yours sincerely,  
>Patrick Armstrong & Silke Kerwick  
>  
>  
>>

**Thuy Tran**

---

**From:** Kai Budd [buddkai@gmail.com]  
**Sent:** Sunday, 3 November 2013 4:44 PM  
**To:** General Manager  
**Subject:** Submission to Development Application - DA/320

Good afternoon,

There appears to be a technical issue with the search function for DAs and therefore the ability to provide submissions to DAs on Council's website. Please accept this as a submission for the DA listed above - 84-108 Anzac Parade, Kensington.

The proposed amended design calls for an increase from 6 and 7 stories to 7, 9 , and 11 stories. I strongly oppose this increased height as a resident of Anzac Parade and as someone who believes that the development of an urban activation precinct also calls for considerations to view corridors, and provision of sufficient sunlight to public corridors such as Anzac Parade.

Anzac parade is fast becoming a hub for development and transport, and with the imminent addition of the light rail, considerations beyond rates and yield need to be made. A number of residential developments along Anzac Parade already create an imposing corridor along the street and do not provide sufficient set-backs to soften the impact of the built form.

Sydney's Draft Metropolitan Strategy calls for more liveable cities; Council has an obligation to ensure this 'liveability' is carried forward into new developments, particularly in key areas such as the newly defined urban activation precincts.

I request that real consideration be made to rejecting the additional levels and to ensuring the building design allows for adequate set-backs to help maintain a liveable and approachable precinct, by stepping the design away from the street, allowing adequate levels of sunlight to infiltrate into the streetscape throughout the day and through ensuring building levels do not greatly exceed those of surrounding buildings.

Regards,  
Kai  
0438 783 609

## Thuy Tran

---

**From:** Eather, John [jeather@kpmg.com.au]  
**Sent:** Sunday, 3 November 2013 2:04 PM  
**To:** Scott Williamson  
**Cc:** Scott Nash; Harry Stavrinou; General Manager; DAVIES, Michael; Eliwu (eliwu818@gmail.com); Roger Stapley (rogerstpl@gmail.com); Richard Pang; Claire Crook  
**Subject:** Clarification of DCP for DA 320/2013  
**Attachments:** Council\_Submission DA320 - 2103.pdf

Morning Scott,

On behalf of the owners of 21, 23, 25 & 27 Elsmere st, We would like assistance from council confirming what local controls should be referred to in relation to the development DA320/2013 now amended to include 84-108 Anzac Pde Kensington.

We had lodged a previous objection to the development (attached) and refer in particular to the excerpt below

- Section 4.2.10- which requires structures to be set back at least 4 metres from the rear boundary and is inconsistent with the recommended layout for block 1 in the DCP (p29).
- Section 4.5.2 (vii) Car parking semi basement – The proposed 7m height is well above the 1.5m above ground level outlined in the DCP.
- Section 4.5.2 (ix) If a semi Basement car park is built to the boundary of an adjoining property outside the centre boundary, there should be advanced planting in a 3m setback and a max 1.5m height. The diagram in this section also states that the wall should be treated as part of landscaping in consultation with adjoining landowners. The proposed plans contravene this.

We based our objections on council staff advice on Part C of the DCP (Residential), in which the above is clearly outside the DCP

The developer has met with us and indicated that he feels based on discussion and meetings with council that his advice is that as the development is commercial and therefore will be judged on Part D (Commercial and Industrial)

Could you please advise which section of the DCP takes precedence and should be referred to in lodging any objection to the revised DA.

Regards

John Eather

\*\*\*\*\*

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\*\*\*\*\*

Owners of 21,23,25,27 Elsmere St, Kensington

Postal address co  
J Eather  
25 Elsmere St  
Kensington NSW 2033

The General Manager  
Randwick City Council  
general.manager@randwick.nsw.gov.au

**Submission to Council on the Development at 84 – 104 Anzac Parade Kensington (DA/320/2013)**

We the owners of 21, 23, 25, 27 Elsmere St object to the development at 84 – 104 Anzac Parade Kensington listed as DA/320/2013. We understand the need for development in the Kensington Centre, and welcome the benefits a suitable development would bring. However, Luxcon Group's current proposal clearly exceeds the Randwick City Council Development Control Plan - D1 (DCP) and significantly impacts our homes. The aspects of the proposal that we object to are detailed below.

First, the proposed development has a 7-8 metre high structure with zero setback from the rear boundaries of our properties. On top of this structure is a pool and recreational area for the apartment residents. This clearly contravenes the DCP in the following areas:

- Section 4.2.10- which requires structures to be set back at least 4 metres from the rear boundary and is inconsistent with the recommended layout for block 1 in the DCP (p29).
- Section 4.5.2 (vii) Car parking semi basement – The proposed 7m height is well above the 1.5m above ground level outlined in the DCP.
- Section 4.5.2 (ix) If a semi Basement car park is built to the boundary of an adjoining property outside the centre boundary, there should be advanced planting in a 3m setback and a max 1.5m height. The diagram in this section also states that the wall should be treated as part of landscaping in consultation with adjoining landowners. The proposed plans contravene this.

It is also inconsistent with the recent development at 76 Anzac Pde, which has a setback of at least 5 metres across its whole rear boundary.

Having such an imposing structure on our back fence will clearly impact the amenity of us as residential neighbours. It will dwarf our homes, and significantly reduce light, increase noise and reduce privacy. Luxcon Group has not had any direct consultation with us as required under section 4.5.2 of the DCP, and their suggestion on page 3 of their Statement of Environmental Effects that our back-yards provide a sufficient buffer between the apartment complex and our houses is ridiculous. The property at 23 Elsmere St Kensington also has an approved DA (approved in early 2013) for an extension to the rear of the existing dwelling, reducing the space between this house and the apartment complex. We request there be a building setback of at least 4 metres and a boundary fence height of 1.5 metres, as per the DCP.

Second, the proposed development has a mix of 6 and 7 storeys. This contravenes the DCP, which states that the maximum height of any building along Anzac Parade is 4 storeys setting back to 6 storeys ( Section 4.2.4 of DCP). The proposed development will significantly reduce the amount of natural light received by our properties and each additional story exacerbates this issue. We request the height of the development to be reduced to a maximum of 6 storeys.

Third, the proposed development's supermarket is inappropriate for the site. While a supermarket would be a worthwhile addition to the Kensington area, as noted in section 4.2.8 of the DCP, this site is not suitable for this purpose. The suitable sites in Kensington are blocks 4, 9 and 10. Squeezing a supermarket into this site increases the required building size and prevents the use of rear colonnades (as per section 4.6.8 of the DCP). It also increases the number of large vehicle movements into Goodwood Street and adds to the existing parking space pressures. These factors impose significant negative externalities on adjoining residents. We request that the supermarket be located at a more suitable site in Kensington.

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Fifth, the proposed development's communal space arrangements do not provide a buffer between the apartment complex and our homes as required by section 4.8.1 of the DCP. As noted earlier the pool and recreation area are raised 7 metres above ground level. We dispute Luxcon Group's claim on page 48 of their submission that our houses will have "an outlook to the communal landscaped area". We will be looking into a very high concrete wall. We request that any structures be set well back from the boundary of our property, and that the communal open space be at ground level if possible.

Sixth, the proposed development significantly impacts the visual privacy of our properties both from the actual units and associated balconies and from the proposed pool and entertainment area situated above the basement entrance. This is contrary to section 4.6.12 Visual Privacy. We request that the apartment complex design be amended to reduce this impact on our homes.


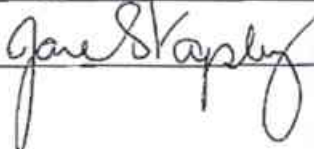
Seventh, the location of the vehicle access in Goodwood Street does not seem to have taken into consideration the location of the already approved development at 2 Goodwood St (DA195/2012) which has its dual carriageway driveway for 88 car spaces located almost directly opposite the intended location of this development's dual carriageway access, which is to cater for 166 car spaces and large trucks servicing the proposed supermarket. If approved in its current location the traffic movements in and out of these conflicting driveways, both located close to the intersection of Anzac parade will clearly disrupt local traffic. We request that the carpark access for this development be relocated to Carlton Street using the existing access for Academie located at 76 Anzac Pde.

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Overall we understand the need for development in the Kensington Centre, and we welcome the benefits a suitable development will bring, however as explained above the proposal exceeds the DCP and adversely impacts our homes. We request that this proposal be rejected based on its number of proposed storeys, the height and location of the basement driveway and recreation area, and the shading that it causes on our homes. We seek to have the DA amended by the developer to meet the DCP.



Yours sincerely,

Property	Owners	Signatures
21 Elsmere St	Richard Pang	
23 Elsmere St	Michael Davies	
	Eliza Wu	
25 Elsmere St	John Eather	
	Claire Crook	
27 Elsmere St	Roger Stapley	
	Jane Stapley	

**Thuy Tran**

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**From:** Ann Kurts [ann2@bigpond.com]  
**Sent:** Wednesday, 30 October 2013 11:34 AM  
**To:** General Manager  
**Subject:** DA/320/2013

Dear Sir

I am a Kensington resident and I write to object to the proposed development covered by this DA and in particular the recent amendments thereto. While I am not an adjoining neighbour I am concerned about the potential impact of this proposed development on the wider environment.

The reasons for my objection are as follows.

The height and bulk of the development exceeds and overshadows surrounding structures to a significant extent and is therefore undesirable.

Importantly allowance of this DA would set a precedent of alarming impact on Anzac Parade. The potential for Anzac Parade to become a wind tunnel saturated with high rise of increasing height is of great concern. This type of development has the potential to become a ghetto of the future akin to large apartment towers now in poor condition in Redfern and Eastlakes.

Allowing Anzac Parade to become a wall of high rise would significantly diminish the environmental quality of the neighbourhood. While the DA includes green space this is positioned to benefit residents of the development while the overall development will provide the wider community with a barren heat generating glass and concrete edifice. Much of the proposed green space is provided as roof top garden space which will not be visible to those overshadowed by this structure.

Finally in current sales pitches for this development the developer cites proximity to a proposed light rail stop as a benefit to purchasers. The proposed light rail was intended to address existing transport deficits in this area not to provide for substantial further development. This represents an appalling exploitation of a facility desperately needed by the existing community by this developer.

Yours sincerely

Ann Cahill  
9 Cottenham Ave  
Kensington

## Thuy Tran

---

**From:** manmills@ihug.co.nz  
**Sent:** Monday, 28 October 2013 5:53 PM  
**To:** General Manager  
**Subject:** DA/320/2013

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Mr Scott Williamson

Randwick City Council

Via email to : [general.manager@randwick.nsw.gov.au](mailto:general.manager@randwick.nsw.gov.au)

Re proposed 11 storied development on Anzac Parade between

# 86 and 108 Application No DA/320/2013

We are owners occupiers of a unit on the east side of Boronia Street, # 45 we will be adversely effected by this development in terms of our privacy ,enjoyment of our facilities ,a very large reduction of the view to the south east and certainly some loss of of early morning sunlight ,and with well over 100 living units plus a stated intention of a super market on the ground floor, factors that will increase the amount of traffic looking for the ever decreasing number of parking spots .

We know from having had discussions with the builders of the block of units, same side Anzac Parade further south next to the 7/11 service station ,that water penetration of the lower floors is a real concern ,it's effect on the environment and the surrounding water table is o fcause something the approving body will have to address.

All of these factors will have a very large impact on the value of our property,which will certainly have an impact on our retirement and change our life style for worse..

We strongly recommend that this building project be limited to the same number of floors as the block opposite Peters of Kensington

ie 7 floors above ground level rather than the proposed eleven floors .

Regards

Edward M and Hannelore H Mills

Note Mrs Selma Keilmanis is recently diseased.

8/45 Boronia Street

Kensington

NSW 2033

04 50636183 until 12<sup>th</sup> November then 00116445684760

Regards

E M & HH Mills

Please reply via email [manmills@ihug.co.nz](mailto:manmills@ihug.co.nz)



Thuy Tran

---

**From:** Cheryl\_Scholfield@agd.nsw.gov.au on behalf of acting\_justice\_tobias@courts.nsw.gov.au  
**Sent:** Wednesday, 21 August 2013 12:28 PM  
**To:** General Manager  
**Cc:** Tobias, Robert  
**Subject:** DA/320/2013

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

The General Manager  
Randwick City Council  
30 Frances Street  
Randwick NSW 2031

Attention Mr Scott Williamson

re: DA/320/2013

I refer to our email of 5 August last containing a submission with respect to the above application.

Yesterday, by agreement, the existing contract for the sale of 106-108 Anzac Parade was rescinded and simultaneously we entered into a contract to sell that property to a company in the Luxon Group. In accordance with the terms of that contract we signed a consent to include our property in the current development application.

In the foregoing circumstances we withdraw our submission of 5 August 2013 objecting to that application.

Yours faithfully

Murray and Robert Tobias

Department of Attorney General and Justice - Promoting a Just and Safe Society.

Visit us at [www.lawlink.nsw.gov.au](http://www.lawlink.nsw.gov.au).

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**Thuy Tran**

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**From:** Eather, John [jeather@kpmg.com.au]  
**Sent:** Monday, 19 August 2013 1:01 PM  
**To:** General Manager  
**Cc:** Greg Moore; Scott Nash; Harry Stavrinou; Office of the Mayor; DAVIES, Michael; John Eather; Eliza Wu@uts.edu.au; rogerstpl@gmail.com; Claire Crook; Richard Pang  
**Subject:** Submission to Randwick Council Objecting to DA320/2013  
**Attachments:** Council\_Submission DA320 - 2103.pdf  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Sir,

Please find attached a submission to council objecting to the proposed development 320/2013 for properties 84-104 Anzac Parade Kensington

Regards

Owners of 21, 23, 25, 27 Elsmere st Kensington

John Eather  
Claire Crook  
Micheal Davies  
Eliza Wu  
Roger Stapley  
Jane Stapley  
Richard Pang

\*\*\*\*\*

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\*\*\*\*\*

Owners of 21,23,25,27 Elsmere St, Kensington

Postal address co  
J Eather  
25 Elsmere St  
Kensington NSW 2033

The General Manager  
Randwick City Council  
general.manager@randwick.nsw.gov.au

### **Submission to Council on the Development at 84 – 104 Anzac Parade Kensington (DA/320/2013)**

We the owners of 21, 23, 25, 27 Elsmere St object to the development at 84 – 104 Anzac Parade Kensington listed as DA/320/2013. We understand the need for development in the Kensington Centre, and welcome the benefits a suitable development would bring. However, Luxcon Group's current proposal clearly exceeds the Randwick City Council Development Control Plan - D1 (DCP) and significantly impacts our homes. The aspects of the proposal that we object to are detailed below.

First, the proposed development has a 7-8 metre high structure with zero setback from the rear boundaries of our properties. On top of this structure is a pool and recreational area for the apartment residents. This clearly contravenes the DCP in the following areas:

- Section 4.2.10- which requires structures to be set back at least 4 metres from the rear boundary and is inconsistent with the recommended layout for block 1 in the DCP (p29).
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23 Elsmere St	Michael Davies	
	Eliza Wu	
25 Elsmere St	John Eather	
	Claire Crook	
27 Elsmere St	Roger Stapley	
	Jane Stapley	

Thuy Tran

---

**From:** Eather, John [jeather@kpmg.com.au]  
**Sent:** Monday, 19 August 2013 1:01 PM  
**To:** General Manager  
**Cc:** Greg Moore; Scott Nash; Harry Stavrinou; Office of the Mayor; DAVIES, Michael; John Eather; Eliza.Wu@uts.edu.au; rogerstpl@gmail.com; Claire Crook; Richard Pang  
**Subject:** Submission to Randwick Council Objecting to DA320/2013  
**Attachments:** Council\_Submission DA320 - 2103.pdf  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Sir,

Please find attached a submission to council objecting to the proposed development 320/2013 for properties 84-104 Anzac Parade Kensington

Regards

Owners of 21, 23, 25, 27 Elsmere st Kensington

John Eather  
Claire Crook  
Micheal Davies  
Eliza Wu  
Roger Stapley  
Jane Stapley  
Richard Pang

\*\*\*\*\*

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Postal address co  
J Eather  
25 Elsmere St  
Kensington NSW 2033

The General Manager  
Randwick City Council  
general.manager@randwick.nsw.gov.au

**Submission to Council on the Development at 84 – 104 Anzac Parade Kensington (DA/320/2013)**

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Yours sincerely,

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23 Elsmere St	Michael Davies	
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25 Elsmere St	John Eather	
	Claire Crook	
27 Elsmere St	Roger Stapley	
	Jane Stapley	



## Thuy Tran

---

**From:** Patrick Armstrong [patrick\_armstrong@bigpond.com]  
**Sent:** Sunday, 18 August 2013 10:40 AM  
**To:** General Manager  
**Subject:** Submission re DA/320/2013  
**Attachments:** photo.JPG

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

To: The General Manager, Randwick City Council  
From: Patrick Armstrong & Silke Kerwick, owners, 33 Boronia St, Kensington NSW 2033  
Date: 18 August 2013

Please find below a submission regarding DA/320/2013, the proposed development at 84-104 Anzac Parade, Kensington NSW 2033.

We are the co-owners of 33 Boronia St, Kensington, that we purchased and moved into over five years ago. We live in the property with our two school age children.

One of the attributes of the property that first attracted us to this property is the view from the main living area of our house (the kitchen and deck) currently overlooking large, established trees and Randwick Racecourse.

Having inspected the plans for the proposed development at 84-104 Anzac Parade, it is clear that this view will be totally impeded by the new development. Attached is a photo of what we currently look out onto - leafy district views. If this development proceeds we will be staring into a seven story apartment block of 90 dwellings, completely blocking the current view and raising privacy concerns.

In the attached photo at the far left you can see the height of an existing building on Anzac Parade that will be adjoining the proposed new development, so you can visualise how we will be looking directly into these new apartments.

Having closely read the proposed development's 'Statement of Environmental Effects' we therefore take objection to the following statements contained therein:

- "The proposed height is not responsible for any adverse or unreasonable view or shadow impacts"
- "The extensive separation distances associated with the proposed height also ensures that the height is not responsible for any adverse or unreasonable visual or privacy impacts"
- "There are no view impacts associated with the proposed height"
- "The proposed development has no detrimental impacts upon any view corridors or local landmarks"
- "The height achieves an appropriate level of amenity and will not result in any adverse impacts"
- "The proposed built form will not be responsible for any adverse environmental impacts in relation to loss of privacy, loss of view, noise or traffic and parking impacts".

Clearly our property will suffer major detrimental impacts on both view and privacy.

We also have concerns about the limited number of parking spaces in the new development allocated for shoppers to the proposed supermarket. It is already extremely hard to park in our street and the surrounding streets of Kensington due to visitors to both Peters of Kensington and the recently reopened E S Marks athletics track, as well as events such as race days, and football matches at the nearby stadium at Moore Park. We note that the traffic survey that was undertaken analysed traffic movements at a similar sized

supermarket to the one proposed on a Wednesday evening and a Thursday morning, however the busiest time for supermarkets is on the weekends, which was not studied. We therefore are concerned that the traffic impacts are understated, failing to take into account peak times of demand for the car spaces in the development.

We are also concerned about the level of noise that will occur, particularly out of trading hours, from delivery trucks to the supermarket, that does not appear to have been addressed in this development application. There will also be major noise impacts from the proposed construction period, six days a week.

Furthermore, there is no landscaping on the street frontage with this development, creating a very stark pedestrian footpath with no greenery in sight.

We would appreciate Council and the developers taking into account the issues raised and addressing them.

We can be contacted on (02) 9662 1986 or by mail at 33 Boronia St, Kensington NSW 2033.

Thank you.

Yours sincerely,

Patrick Armstrong & Silke Kerwick

Randwick City Council

C/o Mr. Kerry Kyriacou

Manager Development Assessment,

Randwick City Council

12 AUG 2013

Dear sir,

Records Received

In reply to your letter, DA/320/2013, of July 10, 2013,  
I like to register our opinion concerning the  
development mentioned in the letter.

We have lived in 45 Anzac Rd. Kensington, since  
1985/1986. I am now 93 years of age and my  
husband's is 74. The property is my own, hence  
I am taking the freedom to respond to your letter.  
My property, and the house on it is facing East  
Nard, hence

a/ if the development planned by Luxcon Group  
will be executed, with 6 or 7 storeys buildings,  
we will be totally blocked for the morning sunshine,  
which we regard as very important, health wise.

b/ another consideration would be the wind flow  
from the east will also be blocked. This wind flow  
however will be needed to mitigate the extreme  
coldness in winter and extreme heat in the summer,  
which the elderly people very much needed.

c/ There is still another consideration which we would  
like you to contemplate, that is the car parking problem.  
Even now parking has been a problem, but with the rise  
of 6 or 7 storeys building, in spite of their 16 car spaces  
for parking but, we have to count also their cars of  
their visitors and others.

Yours sincerely,

*Kyriacou*  
A. Kyriacou 6/8-2013

## Thuy Tran

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**From:** Peta Nugent [petanugent@optusnet.com.au]  
**Sent:** Thursday, 8 August 2013 8:03 PM  
**To:** General Manager  
**Subject:** Objection to DA 320/2013  
**Attachments:** Objection to DA 3202013.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

### **Objection to DA 320/2013 84 - 104 ANZAC Pde Kensington, NSW 2033**

To whom it may concern, we are the owners/residents of 16/9 Elsmere Street, Kensington. This is the top floor apartment directly behind the proposed development on the northern side. We have object to development of the site, because the scale and height of the development is not appropriate or fair to current residents and the locale.

We object to the development for the following reasons.

#### **1. The two storey basement carpark:**

The building works include construction of a two storey basement carpark. We object to this carpark for the following reasons.

- a) Construction work will damage to adjacent buildings. We have seen this happen in recent new development on Goodwood Street & Anzac Parade, Kensington (Chelsea apartments). Cracking and damage has occurred in surrounding buildings incurring expense to apartment owners.
- b) Kensington is built on a water table and construction of basement carparks require dewatering of the water table. This results in destabilisation of the table, which results in damage to adjacent existing structures.

Existing apartment blocks built from the 60s to 80s do not include basement carparks. The garages are above ground and make up the ground storey of the structures. As such they do not impact on the fragile water table. It is very dangerous practice in new developments to drill down two storeys so close to the water table and to dewater that water table during construction.

This practice is very unfair and damaging to existing buildings. Again the results of this practice have been experienced by buildings adjacent to new developments on Goodwood Street & Anzac Parade, Kensington (Chelsea apartments). Cracking and damage has occurred in surrounding buildings incurring expense to apartment owners.

#### **2. Overshadowing:**

The new structure will overshadow our building in particular our terrace which currently enjoys good sunshine most of the day.

We have examined the shadow diagrams submitted by the developers and do not find them accurate. We find them deceptive. The diagrams show our terrace is currently in shadow from 3pm. This is not the case. The terrace becomes shadowed around 5pm each day, because the sun is on the decline. There are currently no buildings blocking the sun. Should this DA go ahead our building will be detrimentally affected by increased and early overshadowing.

#### **3. Overheight:**

Parts of this structure are 7 storey. Current planning controls state that buildings on ANZAC Pde should be no more than 5 storeys. There is no valid reason for this building to be allowed to contravene existing planning controls.

**4. Privacy and noise:**

The new structure will overlook our apartment. This will detrimentally affect the privacy of our apartment.

Such a large development so close to existing residential apartments will increase noise for adjacent residents.

Yours Faithfully  
Peta Nugent and Chris Harris



**OBJECTION TO DA 320/2013  
84 – 104 ANZAC PDE KENSINGTON, NSW 2033**

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**Thuy Tran**

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**From:** Scott Williamson  
**Sent:** Thursday, 8 August 2013 9:11 AM  
**To:** 'Eather, John'  
**Subject:** RE: Development Application Enquiry: DA - 320 / 2013 - Development Application

Mr Eather,

The notification period for this application originally finished on 9 August 2013, however an extension has been provided to a number of residents up to 19 August 2013.

If you could submit any concerns you may have by 19 August it would be appreciated.

Kind regards,

**Scott Williamson**  
**Senior Environmental Planner**  
**Major Development**  
**Randwick City Council**  
02 9399 0979  
[scott.williamson@randwick.nsw.gov.au](mailto:scott.williamson@randwick.nsw.gov.au)  
[www.randwick.nsw.gov.au](http://www.randwick.nsw.gov.au)



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**From:** Eather, John [<mailto:jeather@kpmg.com.au>]  
**Sent:** Wednesday, 7 August 2013 2:59 PM  
**To:** General Manager  
**Subject:** Development Application Enquiry: DA - 320 / 2013 - Development Application

Afternoon,

Could you please confirm when the final date for submissions objecting to this DA is.

Regards

**John Eather**  
Team Leader, Internal Services  
Corporate Services

KPMG  
10 Shelley Street  
Sydney NSW 2000 Australia

Tel +61 2 9335 7721  
Fax +61 2 9335 7001  
[jeather@kpmg.com.au](mailto:jeather@kpmg.com.au)

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## Thuy Tran

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**From:** Eather, John [jeather@kpmg.com.au]  
**Sent:** Wednesday, 7 August 2013 2:59 PM  
**To:** General Manager  
**Subject:** Development Application Enquiry: DA - 320 / 2013 - Development Application

**Categories:** Frans

Afternoon,

Could you please confirm when the final date for submissions objecting to this DA is.

Regards

**John Eather**  
Team Leader, Internal Services  
Corporate Services

KPMG  
10 Shelley Street  
Sydney NSW 2000 Australia

Tel +61 2 9335 7721  
Fax +61 2 9335 7001  
jeather@kpmg.com.au

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**Thuy Tran**

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**From:** Sheraz Thomas [sherazthomas@hotmail.com]  
**Sent:** Tuesday, 6 August 2013 3:57 PM  
**To:** General Manager  
**Subject:** DA/320/2013  
**Attachments:** Gillespie & Thomas.docx

**Categories:** Chris

The General Manager,

Please find attached letter in regards to the development proposal of DA/320/2013.

Kind regards  
Sheraz Thomas

Mr D P Gillespie & Ms S T Thomas

5/6 Carlton Street,

KENSINGTON NSW 2033

Randwick City Council

30 Frances Street,

RANDWICK NSW 2031

Attention: The General Manager

Reference number: DA/320/2013

To The General Manager,

We are writing in regards to the development application at 84-104 Anzac Parade, Kensington.

We do not oppose the development, but our concern is regarding the parking situation in the area.

As it is the parking is very limited, due to people parking their car early in the morning to catch the bus into the city and not returning till late in the afternoon.

I am presuming there will be a lot of workers if this application gets approved, and parking will be even worse.

There is a small strip at the front of our units in Carlton Street, and across from us that is unlimited parking all day. The majority of parking in this area is restricted from 30 minutes to 2 hour parking. Would it be possible for the whole area to be restricted parking?

Please do not hesitate to call either of us if you need to discuss this matter further.

David on 0421 532 689, davidgillespie64@gmail.com & Sheraz on 0415 407 474  
sherazthomas@hotmail.com

Kind regards

David Gillespie & Sheraz Thomas

**Thuy Tran**

---

**From:** Tobias, Robert [Robert.Tobias@dlapiper.com]  
**Sent:** Monday, 5 August 2013 4:50 PM  
**To:** General Manager  
**Cc:** Murray Tobias (murrayht@gmail.com)  
**Subject:** DA/320/2013 Attention Mr Scott Williamson  
**Attachments:** 20130805164319343.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Sir

Attached is Notice of Objection by the owners of 106 - 108 Anzac Parade, Kensington to DA/320/2013.

Regards

Robert Tobias

Postal address

4/62 Wunulla Road  
Point Piper 2027

The General Manager  
Randwick City Council  
30 Frances Street  
Randwick NSW 2031

5 August 2013

Attention Mr Scott Williamson

Dear Sir,

**re: DA/320/2013**

We refer to the notification to us of the above development application (the application) in your letter of 10 July 2013. As the owners of No. 106 Anzac Parade (No. 106), located on the corner of Anzac Parade and Goodwood Street, we wish to make the following submissions with respect to the application.

1. The plans accompanying the application clearly includes No. 106 in the application as the proposed easement over that property is an integral part of the proposed development. As such, No. 106 is land to which the application relates within the meaning of clause 49(1) of the *Environmental Planning and Assessment Regulation 2000*. As access from the proposed carpark to Goodwood Street is a necessity for the development to be viable, it follows, understandably, that the applicant intentionally included No. 106 in its application. This being so, it follows that Council cannot grant consent to the application unless and until the consent in writing of the owners of No. 106 has been provided. Such consent has been neither sought nor given. Further, No. 106 has

since January 2013 been the subject of a contract for sale due for completion in January 2014. Accordingly, the relevant owners whose written consent is required for the making of the application before Council is able to grant consent thereto, assuming it is otherwise minded to do so, includes not only ourselves but also the purchaser of No. 106.

2. That the gaining of an easement over the rear of No. 106 is an essential aspect of the proposed development is made clear on page 4 of the Statement of Environmental Effects (the SEE) where it is stated that "as the applicant is unable to purchase or gain an option over No. 106, the proposal now relies upon an easement for access being created to provide access from Goodwood Street". Even if the applicant was to delete No. 106 from its plans in order to avoid the necessity to obtain the written consent of the owners of No. 106 to the making of the application, nevertheless Council would need to consider pursuant to s 79C(1)(c) of the *Environmental Planning and Assessment Act* 1979 (the Act) the suitability of the site (shorn of No. 106) for the proposed development before it granted consent thereto. It is respectfully submitted that the site is unsuitable for the development unless and until access to Goodwood Street is provided across No. 106.
3. We have indicated that the applicant has neither sought nor been granted consent by the owners of No. 106 to the making of the application. Accordingly the statement in paragraph 6.1 of the Parking and Traffic Report which is part of the application to the effect that the developer has a right of way connection to Goodwood Street is factually incorrect.
4. (a) The applicant, as we understand it, seeks to avoid the necessity to obtain the written consent of the owners of No. 106 to the making of the application by asserting that Council can grant a deferred commencement consent pursuant to s 80(3) of the Act.



It is no doubt contemplated that the Council would impose a condition requiring the applicant to obtain and have registered an easement over No. 106 before the consent becomes operative. Had there been some agreement between the applicant and the owners of No. 106 that such an easement be granted, then a condition deferring the commencement of the consent until that agreement is implemented by way of the registered right of way may be appropriate.

- (b) But in the absence of any such agreement it is respectfully submitted that it is not open to Council to grant a deferred commencement consent in respect of a critical aspect of the development that remains unresolved unless and until agreement is reached with respect to the grant of an easement or otherwise No. 106 is acquired by the applicant and included as part of the overall development. There is authority in the Land and Environment Court that supports that submission: see *Cameron v Nambucca Shire Council* (1997) 95 LGERA 268. In that case it was pointed out that a deferred commencement consent is a final consent even though the date from which it operates cannot be endorsed on the statutory notice until the applicant satisfies the council of the matters specified in relevant conditions.
- (c) Thus it is submitted that in the present case Council cannot grant such a final consent until the issue of access has been resolved subject only to any formalities being completed. It is only those formalities which can be the subject of a condition deferring the operation of the consent pursuant to s 80(3). In the meantime, Council must be satisfied that the issue of access is resolved at least in the form of an enforceable agreement between the relevant parties before it grants a final consent to a development which is entirely dependent for vehicular access over No. 106 or part thereof to and from Goodwood Street.

5. Unless it be thought that, as owners of No. 106, we are seeking to frustrate the applicant's development, we wish to place on record the following:
- (a) The applicant negotiated with us for the purpose of acquiring No. 106 by way of a Put and Call Option. Ultimately, by 23 January last an agreement was reached on price, a Put and Call Option agreement was prepared and its terms were generally agreed after some negotiation on the basis of a 12 month deferred settlement. Whilst those negotiations were proceeding, we received a significantly better offer from a third party which did not involve entering into a Put and Call Option but a standard contract for sale with a ten per cent deposit as distinct from a five per cent deposit proposed by the applicant and a 12 month deferred settlement.
  - (b) As at 23 January we were being pressed by the third party to exchange contracts and were advised that unless we did so the following day then the third party would not proceed. As we did not wish to frustrate the applicant's development we indicated to its managing director at about 2.00 pm on 23 January that we would exchange agreements with him provided that occurred by 5.30 pm as we had been informed that the third party would withdraw if contracts were not exchanged with her by 10.00 am the following day.
  - (c) During the course of the afternoon of the 23<sup>rd</sup> a number of inquiries were made of the applicant's solicitor and of the applicant's agent as to its intentions with respect to whether exchange would take place by 5.30 pm and we were informed that the solicitor was discussing the terms of the Put and Call Option with her client. No further communication was received from the applicant or its solicitor until approximately 6.42 pm

when a new set of amendments to the documentation was emailed by the applicant's solicitor to our solicitor: these amendments were not acceptable to us. Although our solicitor had some discussions with the applicant's solicitor during the course of the 24<sup>th</sup>, they came to nothing. In the meantime we exchanged with the third party as we were not prepared to lose the opportunity to do so given what we regarded as procrastination on the part of the applicant.

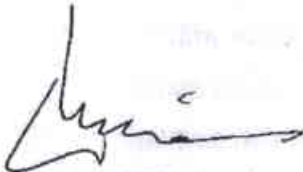
(d) It is our understanding, and we may be wrong, that the failure of the applicant to take the opportunity to exchange on 23 January was due to the fact that he had yet to exchange with the owner of No. 104 and that it did not wish to be bound to acquire No. 106 until the intervening property had been acquired. In the foregoing circumstances we believed we had no choice but to exchange with the third party as we did not wish to fall between two stools.

(e) We should add that the purchase price which we agreed to accept from the applicant was less than that offered by the third party but this notwithstanding, we were prepared to treat with the applicant if it did so in a timely way and in circumstances which did not prejudice us from exchanging with the third party in the event that the applicant did not meet the timetable referred to above.

6. Finally, we would submit first, that the development unacceptably overshadows the northern windows of the building existing on No. 106 and therefore should be scaled back to ensure that those northern windows are not affected; secondly, and alternatively to the first point, the development should not proceed unless and until No. 106 is included within it as Council's Development Control Plan clearly contemplates; thirdly, if the development proceeds as proposed then No. 106 can never be redeveloped as its area is too small and this

would be exacerbated by the provision of an easement of the width proposed; fourthly, if a deferred commencement consent is to be granted (assuming it to be valid), then a relevant condition to be satisfied before the consent becomes operative is one which requires the applicant to acquire the whole of No. 106 and to include it as part of the overall development.

Yours faithfully,



M. H. TOBIAS

9230 8744



R. W. TOBIAS

9286 8255