REVISED OBJECTION UNDER STATE ENVIRONMENTAL PLANNING POLICY NO. 1 - DEVELOPMENT STANDARDS

28-30 AND PART OF 32 DUMARESQ STREET, GORDON

DEMOLITION OF THE EXISTING DEVELOPMENT AND ERECTION OF A NEW RESIDENTIAL FLAT BUILDING

1. STANDARD TO WHICH OBJECTION IS MADE

The minimum parking requirements for residential flat building developments are set out in Clause 25J of Ku-ring-gai Planning Scheme Ordinance (the KPSO) which require:

(a) at least one car space per dwelling and, if the site is not within 400m of a pedestrian entry to a railway station, one additional car space is provided for each dwelling with 3 or more bedrooms.

(b) at least one additional visitors car space for every 4 dwellings, or part thereof, that will be on the site.

2. EXTENT OF VARIATION SOUGHT AND CONTEXT OF OBJECTION

The subject site is not within 400m of a pedestrian entry to Gordon Railway Station. Accordingly, under Clause 25J of the KPSO, the proposed development, comprising 34 units, including three 3 bedroom units, generates a parking requirement of 37 residential spaces and 9 visitor spaces, ie. a total of 46 spaces (see also the submitted Traffic Report).

The proposed development provides a total of 44 parking spaces, comprising 37 residential spaces and 7 visitor spaces, a shortfall of 2 visitor spaces. The proposal meets the requirements for parking for residents.

State Environmental Planning Policy No. 1 - Development Standards, provides, at Clauses 6 and 7, respectively, that:

6. Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out the development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

7. Where the consent authority is satisfied that the objection is well-founded and is also of the opinion that granting of consent to that development application is consistent with the aims of this Policy, as set out in clause 3, it may, with the concurrence of the Director[1], grant consent to that development application notwithstanding the development standard the subject of the objection referred to in clause 6.

[1] It is understood that the Council may assume the concurrence of the Director - see Clause 12 of Circular B1 from the former Department of Planning.

The aims and objectives of the State Policy are as follows:

> *This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Act.*

The relevant objectives of the Act are as follows:

> *5(a)(i) [to encourage] the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
>
> *5(a)(ii) [to encourage] the promotion and co-ordination of the orderly and economic use and development of land.*

This objection sets out the reasons why the variation from the relevant development standard that is sought by the proposed development is justified in the circumstances of this case.

It addresses the questions in *Winten Property Group Ltd v North Sydney Council [2001] NSWLEC 46 (6 April 2001)* in that:

- it identifies that the planning control in question is a development standard;
- it identifies the object or purpose of the standard;
- it considers the aims of the Policy and the objects of the Act; and
- it concludes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that the objection is well-founded.

It also takes into consideration the ways to establish whether compliance with a development standard is unreasonable or unnecessary set out in *Wehbe v Pittwater Council [2007] NSWLEC 827*.

3. THE OBJECTIVES OF THE STANDARD

The KPSO does not contain objectives for the car parking development standards however, they would be expected to relate to such matters as ensuring a minimum level of provision of car parking for residential flat development, while taking into account the availability of public transport, and to minimise external parking impacts.

In addition, Clause 25J contains the following matters for consideration for proposed developments:

> *(a) the proximity of multi-unit housing zones to rail station centres and major bus routes along Mona Vale Road serving the St Ives Centre,*
>
> *(b) the desirability of encouraging use of public transport,*

(c) *that the impact of car parking on the natural ground area of multi-unit housing lots should be minimised and the need to provide sufficient deep soil landscaping for trees and their long-term sustainability,*

(d) *that the visual impact of car parking both from the street and from other land (private or public) should be minimised.*

The KPSO contains the following objectives for the residential zones:

(a) *to provide rear setbacks that ensure rear gardens are adjacent to rear gardens of other properties and that sufficient ground area is available for tall tree planting, consistent with the objectives of this Part,*

(b) *to encourage the protection of existing trees within setback areas and to encourage the provision of sufficient viable deep soil landscaping and tall trees in rear and front gardens where new development is carried out,*

(c) *to provide side setbacks that enable effective landscaping, tree planting between buildings, separation of buildings for privacy and views from the street to rear landscaping,*

(d) *to minimise adverse impacts of car parking on landscape character,*

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

(f) *to encourage the planting of tree species that are endemic to Ku-ring-gai,*

(g) *to require on-site detention for stormwater for all new development and refurbishment of existing housing so as to avoid excessive run-off and adverse impacts on natural watercourses, and to preserve the long-term health of tall trees and promote natural absorption,*

(h) *to encourage water sensitive urban design,*

(i) *to encourage the protection and enhancement of open watercourses,*

(j) *to have regard for bushfire hazard,*

(k) *to ensure sunlight access to neighbours and to provide sunlight access to occupants of the new buildings,*

(l) *to encourage safety and security of the public domain by facing windows and building entries to the street, where appropriate, and windows to open spaces in order to maximise casual surveillance opportunities,*

(m) *to encourage safety and security of private development by requiring a high standard of building design and landscape design,*

(n) to encourage the provision of housing for seniors and people with disabilities by prescribing appropriate standards for new development,

(o) to encourage the protection of the environmental qualities of the area by limiting the range of permissible residential uses and to allow a limited range of compatible non-residential uses in certain zones,

(p) to allow attached dual occupancies only on compliance with defined criteria and only where they are consistent with or enhance the character of the streetscape and its setting,

(q) to provide for waste management (including provision for garbage storage and collection) consistent with the objectives of this Part,

(r) to ensure that adequate provision of storage is made for residential development,

(s) to encourage the retention and expansion of bicycle infrastructure.

4. JUSTIFICATION FOR VARIATION AND GROUNDS FOR OBJECTION

The NSW Land and Environment Court Judgement of *Wehbe v Pittwater Council [2007]* NSWLEC 827 lists five *ways of establishing that compliance is unreasonable and unnecessary.*

The first way expressed by Preston CJ in the above matter "*is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard*".

The basis for the justification of the proposed breach of the development standard is that the proposal would meet the underlying objectives of the standard, notwithstanding the non-compliance with its numerical requirements. The reasons for this are set out in the following paragraphs.

The breach of the parking development standard affects the provision of visitor parking for the proposed development. The proposal provides 7 visitor parking spaces (equating to a rate of approximately 1 space per 4.9 units) with a shortfall of 2 spaces from the requirement.

As noted above, the proposal achieves the minimum levels of parking for the residential component of the development with 37 spaces (which includes the requirement for additional parking for three bedroom units on sites more than 400m from a railway station).

In addition to the above provision for car parking within the proposed development, it is also proposed to provide parking for motor bikes and bicycles, part of which is provided for the use of visitors. It is proposed to provide:

- 2 motor bike spaces (in excess of the required 1 space under DCP 43); and
- 12 bicycle spaces (in excess of the required 11 spaces under DCP 55).

It is noted that the bicycle spaces are provided for both residents (7 spaces required) and visitors (4 spaces required).

The proposed development therefore fully caters for residential parking demand arising from the proposal for all forms of transport – cars, motor bikes and bicycles.

Visitor parking for bicycles is also consistent with the requirements. Indeed, taking into account the additional spaces provided for bicycle and motor bike parking (a total of 2 spaces), the level of parking available for visitors in the development overall could be seen to satisfy Council's requirements, with a total of 13 spaces available for visitors using a variety of modes.

The level of visitor car parking provision (at 1 space per 4.9 units) is slightly greater than the range set out in the former RTA's *Guide to Traffic Generating Developments* for high density housing (defined as comprising 20 or more dwellings) being 1 space per 5-7 dwellings.

As stated in the submitted Traffic Report, the RTA Guide also provides that *"Councils may wish to reduce this requirement for buildings located in close proximity to public transport"*.

In this regard, the former DIPNR's *Planning Guidelines for Walking and Cycling* (2004) refers to the use of an 800m walking catchment for centres containing a rail station/public transport stop. The submitted Traffic Report noted that the walking distance to Gordon Railway Station is 620m which is well within such a catchment indicating that a reduction in such a parking requirement would be justified. It is also noted that the above *Planning Guidelines* do not make any adjustment to its guidelines on the basis of topographic characteristics. To the extent that topography is a relevant consideration, it would have been taken into account in the rezoning process. In this regard, it is considered that the subject location would be appropriately described as having convenient access, as evidenced by Council's decision to permit higher density forms of housing in this location.

The proposed 44 parking spaces complies with the KPSO requirements if the "three-bedroom rate" is reduced to one parking space per unit. The KPSO allows for this reduced parking supply rate if the property is within 400m of a railway station. Using an industry accepted walking design speed of 1.2m/s, a 400m distance would take 5.5 minutes. At the same speed, a 620m distance would take 8.6 minutes. The additional distance is considered "walkable" and would only incur an additional 3.1 minutes.

Furthermore, the walking distance to the Gordon retail area on the Pacific Highway is in the order of 300m. This retail centre offers a wide range of retail and banking outlets, supermarkets, bus stops and civic services. Mixed use trips involving both visits to these facilities and public transport would involve individual walk trips in the order of 200-300m. For example, a railway commuter that visits the retail/food outlet on the way home will incur two walk trips – one to the retail/food outlet, and a subsequent walk trip back home.

The walk path from the proposed development to Gordon Railway Station and public transport interchange would also have benefits of promoting business through passing trade and encouraging residents to make use of their local retail and civic facilities. By contrast, a

car trip taking the traveller from door to door would forego these benefits to the community and deny the traveller the same experience.

In this context, the application of the lower parking generation rates allowed for by Clause 25J is considered reasonable. In these circumstances, the proposal would comply with the required level of provision with 35 resident spaces and 9 visitor spaces.

This objection is formulated on the basis that the proposed development will not give rise to a need to utilise on-street parking for visitor purposes for the reasons set out above. Nevertheless, the following matters are noted in relation to the on-street parking supply in proximity to the subject site.

Firstly, the proposal will result in an increase in on-street parking in Dumaresq Street adjacent the site. The subject site currently contains two driveway crossings from Dumaresq Street to Nos 28 and 30 Dumaresq Street, both of which will be removed as a result of the proposal. This will result in an increase in on-street parking of at least one space on the street frontage of the subject site.

In addition, the assessment of the western precincts undertaken in the formulation of Council's long term parking strategy for Gordon as part of its *Town Centres Parking Management Plan 2010* indicated that *"long stay on-street parking was excluded from the analysis as these are likely to be used by commuters*" (p. 39). This statement includes the unrestricted on-street parking in Dumaresq Street.

The peak demand for parking by visitors to the proposed development is likely to be in the evenings and on weekends. Therefore, on the basis that the existing unrestricted on-street parking is used by commuters, there is likely to be on-street parking available for visitors to the proposed development when it is most likely to be needed, ie. at night or on weekends. It is considered that this proposition regarding the availability of on-street parking at the times in question is reinforced by reference to the analysis undertaken in Appendix 6 of the *Town Centres Parking Management Plan 2010* in respect of the Gordon Western Precincts.

Accordingly, the proposed development, despite the shortfall of 2 visitor parking spaces, is considered to meet the underlying objectives of the standard in that:

- it provides for an appropriate level of provision of car parking for the proposed residential flat development, taking into account the proximity and availability of public transport, and meets or exceeds the car and motorcycle parking requirements for residents. It also exceeds the parking requirements for bicycles;

- taking into account all modes, the proposal provides 13 spaces for visitors, consistent with Council's overall requirement;

- the minor shortfall is not expected to give rise to significant adverse external parking impacts as the level of provision of visitor parking (7 spaces at rate of 1 space per 4.9 units) is slightly greater than the range anticipated for high density residential flat buildings under the former RTA's Guidelines. At the same time, the proposal will result in an increase in on-street parking through the removal of existing driveways to Dumaresq Street; and

- to the extent that visitors to the proposed development may seek to use on-street parking, such parking is likely to be available at peak visiting times (ie. nights, weekends) on the basis of the analysis undertaken in Council's *Town Centres Parking Management Plan 2010*.

In addition, the proposal is satisfactory with regard to the matters for consideration in Clause 25J of the KPSO, in that:

- Public transport is readily available in walking distance from the site. In addition, the proposal encourages the use of alternative forms of transport through provision of bicycle parking for both residents and visitors in excess of Council's requirements.

- Car parking will be provided in a basement parking area located predominantly below the proposed structure. This maximises the amount of natural ground area within the development and helps provide for sufficient deep soil planting.

- Basement car parking is proposed and visual impact is therefore minimal.

Furthermore, the proposal meets the relevant objectives of the residential zones, in that:

- The proposed development incorporates a rear setback which is in excess of Council's minimum requirements and will thus provide a generous landscaped area at the rear of the site that retains existing trees and which adjoins the rear gardens of neighbouring properties;

- A number of mature existing trees within the rear garden area of the site are to be retained. Sufficient area for deep soil planting and tall trees is also proposed within the front setback. The provision of deep soil landscaped area complies with the requirements;

- The proposed side setbacks are considered sufficient to provide for effective landscaping, tree planting and separation between buildings as demonstrated on the Landscape Plan and Site Plan;

- Basement car parking is proposed within the footprint of the building. No adverse landscape character impacts will therefore arise;

- The proposal complies with the site coverage controls and the deep soil landscaping requirements. As shown on the Landscape Plan, the proposal provides for the maintenance of the tree canopy through the retention of existing trees and proposed plantings;

- As described in the Landscape Design Statement and shown on the Landscape Plan, proposed new trees will include species that are endemic to Ku-ring-gai;

- A stormwater plan has been submitted as part of this application. The plan details on-site detention provisions;

- The proposed development incorporates water sensitive urban design, particularly through measures recommended in the Flood Study and Stormwater Management Report and through the proposed landscaping as shown on the Landscape Plan;

- There is no watercourse on or near the site. The existing overland flow path at the rear of the site has been taken into account in the design of the proposal;

- As demonstrated by the submitted shadow diagrams and analysis of solar access to the proposed development, adequate sunlight access will be provided to neighbours and future residents of the proposed development;

- The proposed development provides for safety and security within the proposed development and casual surveillance of the public domain;

- The proposal complies with the requirement of the KPSO for the provision of manageable (adaptable) housing units;

- The proposal provides appropriately for waste management;

- Adequate storage is proposed within each unit, with additional storage provided within the basement; and

- Parking for 12 bicycles is provided within the basement parking levels.

It is therefore considered that there are more than adequate grounds to justify the objection on the basis that strict compliance with the standard would be unreasonable and unnecessary in the circumstances of this particular case. As demonstrated above, the non-compliance with the parking standard would not be prejudicial or contrary to the intentions of the development standard. The Council may, therefore, uphold the objection.

In the context of other specific requirements of the State Policy, it is also considered that granting of consent would be consistent with its aims, as well as the relevant objectives of the Environmental Planning and Assessment Act, 1979, in that it would lead to the orderly and economic development of the subject land and would promote a better environment. In addition, no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

5. CONCLUSIONS

For the reasons set out above, it is considered that there are adequate grounds to justify the variation from the minimum parking provision requirements for development on the subject site, as set out in Clause 25J of Ku-ring-gai Planning Scheme Ordinance.

The objection is considered to be well-founded and strict compliance with this development standard would be unreasonable and unnecessary in the circumstances of this case.