

# Memorandum



TO: The Chair  
Sydney Eastern City Planning Panel

FROM: Frank Ko  
Acting Manager Development Assessment

DATE: 14 March 2018

FILE: DA/506/2017  
(2017DCL054)

SUBJECT: 2 Kensington Road, KENSINGTON NSW 2033
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Council has received a letter dated 12 March 2018 from the applicant's planning consultant seeking clarification, refinement or deletion of a number of the proposed conditions of development consent. The following comments are provided in response to the applicant's request for reconsideration of the relevant conditions:

## **Condition 4 – Colours and materials**

The proposed colours, materials and finishes provided by the applicant are insufficient to allow Council to determine whether the proposed development would be compatible with the adjoining development including the nearby heritage items. Council's preference for this type of development is to have a detailed schedule accompanied by sample board or brochures.

## **Condition 7 – Section 94A Development Contributions**

Council's Section 94A Development Contribution Plan 2015 (S94A Plan) applies a 1 per cent levy for developments with a cost of development greater than \$200,000. The S94A Plan outlines a number of limited circumstances for which Council may consider granting an exemption to the payment of s94A levies.

Clause 13.2.2 of the S94A Plan makes it clear, that in relation to works undertaken for charitable purposes by a not-for-profit provider, an exemption may only be granted if Council is satisfied that the development in question is 'small in scale' and will not create increased demand for public works/infrastructure. The S94A Plan uses an example of a retail outlet fit out operated by the Salvation Army to illustrate what may be considered small scale development.

The proposal is not considered to be a small-scale development. As noted above, a shop fit out provides a clear indication of the scale of development envisaged to be 'small-scale' under the exemption criteria of the S94A Plan. An aged care facility housing 51 beds plus staff facilities is not comparable to, and cannot be considered in the same manner as a shop fit-out by way of scale, capacity, amenity and public domain impacts. In addition, the proposal also includes new residential accommodation for visiting church members, which would have the potential to increase demand for public works/infrastructures.

For these reasons, it is recommended that the S94A levy exemption request for 2 Kensington Street, Kensington not be supported.

### **Condition 13 – Street Tree Protection Measures**

Council Landscape Officer was aware of the applicant's request to remove Trees (T28 and T30), however, the plan shows Tree (T28) is approximately 5m from the southern edge of the new driveway and Tree (T30) is approximately 7m from the northern edge of the new driveway. Both trees are offset sufficiently from the new driveway, which does not trigger the need for removal. Further, these trees also form part of a street tree strategy along Tunstall Avenue, and despite their small size, are still covered by the provisions of Council's DCP, and in time, will create a highly desirable avenue effect by linking up with the canopies of the established Figs on the western side of the road, on the Golf Course, as well as the new feature trees that will be planted within the site.

### **Condition 15 – Traffic Conditions**

Condition 15 is a standard condition provided for driveways to basement car parks. However, Council's Development Engineer does not believe the inclusions of splays would result in any potential conflict with the ambulance bay, rather the ambulance bay would form part of the clear splay. Notwithstanding the plans generally comply with sightlines already due to the large width of the vehicle entrance and therefore Council's Development Engineer would not object to the deletion of this condition.

### **Condition 21(0)**

This condition relates to the retention of Tree (T30). Given T30 is required to be retained as per Condition 13 above and therefore, the deletion of this condition should not be supported.

### **Condition 24 – Garbage Room**

The applicant did not provide an Operational Waste management Plan (WMP) or indicate where the waste bins will be stored in the DA submission (only a construction WMP was submitted). In such cases, the condition is reasonable to ensure adequate waste storage is provided for the development. Note also that Condition 23 requires formal submission of a WMP. The applicant has now indicated that the existing waste collection facilities located to the "south of the new building" will be used instead. This is not indicated on the plans or SEE and it is uncertain as to whether the existing facilities is large enough to cater for the additional waste demand. The removal of Condition 24 is therefore not supported until this information is presented and assessed.

### **Condition 25 – Waste Storage Areas**

The condition only applies to waste storage areas located within the basement. If there are no waste storage areas located within the basement then the condition is not applicable.

### **Condition 31 – Home Building Act 1989**

Agreed. This condition can be deleted.

### **Condition 38 – Street Tree Management**

The applicant's request changes cannot be supported as Trees (T28 and T30) are required to be retained.

### **Condition 61 – Tree Removal**

The Coral Tree (T12) is included in Condition 61. a. as one of the tree to be removed on site. No further changes to this condition is required.

**Condition 66 – Occupation Certification Requirements**

This is a matter for the applicant to discuss with their Principal Certifying Authority as it relates to the occupation of the development. In addition, it should be noted that the distinction between interim and final Occupation Certificates has been removed as part of the amendments to the EP & A Act and will be implemented from September this year.

**Condition 49 and 50 (on Page 81)**

Conditions 49 and 50 shall be renumbered accordingly.

If you require any further clarification, please do not hesitate to contact me on 9093 6965.

Frank Ko  
**Acting Manager Development Assessment**