

31 January 2025

The General Manager
Ku-ring-gai Council
818 Pacific Highway
GORDON NSW 2072

Attention: Brent Pearce, Executive Development Assessment Officer

Via email: bpearce@krg.nsw.gov.au

CC: Brodee Gregory, Acting Team Leader Development Assessment (bgregory@krg.nsw.gov.au)

Dear Brent,

Response to SNPP deferral of Development Application no. eDA0223/24, 7-9 Merriwa Street, Gordon NSW 2072

I refer to the abovementioned Development Application (DA) eDA0223/24 at 7-9 Merriwa Street, Gordon, and the deferral of this DA by the Sydney North Planning Panel (SNPP) at its determination meeting on 18 December 2024.

The record of deferral (dated 20 December 2024) provides that the SNPP resolved to defer the determination of this DA until February 2025, to allow for the provision and assessment of the following information:

- *Clarification of the Height variation sought and updating of the clause 4.6 Written Request;*
- *Consideration of increased setbacks, deep soil provision and landscaping;*
- *Clarification of solar analysis;*
- *Preparation of a comparison between the impacts of a compliant building versus the proposal.*

In response to the above, the following information has been prepared for assessment by Council and for the consideration of the SNPP:

- a revised written variation request (prepared pursuant to clause 4.6 of the *Ku-ring-gai Local Environmental Plan 2015* (KLEP 2015)) related to the variation of the building height development standard pursuant to clause 4.3(2) of the KLEP 2015
- amended architectural plans:
 - these plans provide information relevant to the matters raised in the SNPP's deferral of the DA, and do not constitute a full set for approval
 - for other plans not included in this latest set, reference is made to information provided to Council in October 2024
 - if it assists Council with its assessment, please contact the applicant to obtain a full list of plans submitted for approval
- a revised set of landscape plans
- solar analyses, comprising of 'sun eye diagrams' that included comparisons between the proposed development and a 'compliant building' (i.e. one that complies with key built form controls based upon both existing ground levels and extrapolated contours).



Note: These plans were provided separately to Council on 21 January 2025. Written correspondence from Brodee Gregory dated 28 January 2025 confirmed that:

- These (and earlier draft plans) were received and provided to Council's Urban Design Consultant
- Council's Urban Design Consultant advised that the submitted information was sufficient for them to provide comments to Council
- additional design comments from the project architect, which are to supplement the content of this letter.

Regarding the above information, reference is made to **Attachment 1** for responses to the matters that were raised within the SNPP's record of deferral.

We believe the amended plans and additional information provided as part of this letter sufficiently address the matters raised within the record of deferral. We therefore request that the assessment of this Development Application be finalised and a recommendation for approval be made to the SNPP for determination at your earliest available opportunity.

Please contact our Associate, Tyson Ek-Moller on 049 1736 887 or via email at tekmoller@mecone.com.au or myself on 0414 194 473 or via email at cshannon@mecone.com.au if you wish to discuss any aspects of this proposal and our response.

Kind regards,

Chris Shannon
Western Sydney Practice Director



Attachment 1

Response to matters raised in the SNPP's record of deferral dated 20 December 2024 to eDA0223/74, at 7-9 Merriwa Street, Gordon

1. BUILDING HEIGHT

Clarification of the height variation sought and updating of the Clause 4.6 written request

Mecone's response:

Please refer to the written variation request (prepared by Mecone pursuant to clause 4.6 of the KLEP 2015), which relates to the variation of the building height development standard pursuant to clause 4.3(2) of the KLEP 2015.

This document has been revised to:

- clarify the size of the proposed variation to the building height development standard
 - address matters raised by Council in its assessment of the proposal and the previously prepared written variation request.
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2. SETBACKS, DEEP SOIL PROVISION AND LANDSCAPING

Consideration of increased setbacks, deep soil provision, and landscaping

Mecone's response:

Response to increased building setbacks

With regard to the SNPP's comments, the project architect reviewed the proposal to identify whether the design could be altered to provide greater setbacks to incorporate additional deep soil area. Advice from the architect (attached as part of this additional information response) indicated that this was not possible for the following reasons:

- the proposed building's setbacks are dictated by those of the proposed basement level, noting that the proposed carpark and basement design was sized to provide both:
 - necessary building services
 - minimum necessary dimensions for both carparking spaces and access arrangements, in accordance with both Council specifications and relevant Australian Standards.
- given the proposed arrangements, to further increase the side setbacks would no longer provide the areas and dimensions necessary to satisfy relevant requirements
- if the setbacks were to be increased, then this would necessitate the excavation of an additional basement level to accommodate necessary parking facilities
- in addition to further altering the already highly modified topography of the site (thereby resulting in a form of development that would not be responsive to the sloped topography of the surrounding area), the cost associated with providing an additional basement level would negatively impact the site's redevelopment feasibility.



Overview of landscape design changes

In response to matters raised within Council's assessment and the deferral by the SNPP, the landscape layout of the site has been revised. While reference is made to the revised architectural and landscape plans, a brief summary of the proposed revisions are as follows:

- deletion of the private 'through-site' pathway and associated stairs within the northwest corner of the site. The remainder of the pathway (which extends from approximately halfway along the building's western elevation to the Merriwa Street frontage) is required in order to provide an egress route to the street from the fire stairs
- modifications to the proposed landscape layout as a result of the above change. Such changes include the following:
 - changes to planting placement and design within the northwest part of the site as result of the aforementioned pathway deletion
 - revisions to the landscape layout to provide eight additional trees, including four large (i.e. 15+ metre high) canopy trees within the eastern, southern, northern and north-western parts of the site.

Council comments regarding other changes to increase deep soil area were noted, and responses are as follows:

- Relocation of the fire hydrant and sprinkler tank from their current locations into the basement would necessitate the relocation the fire services room, hydraulic pump room and bin rooms. Given that the size of the basement level has already been reduced to the smallest possible size, to relocate such facilities would reduce the number of onsite car parking spaces. To provide a sufficient number of spaces as a result of relocating additional utility services in the existing basement would necessitate the excavation of an additional basement level, which as indicated above is not feasible.
- A relocation of the fire hydrant, sprinkler tank and fire services from their current locations to the Fitzsimons Lane frontage was considered. Given however that Part 14D (Gordon Local Centre) of the Ku-ring-gai Development Control Plan (KDCP) requires that:
 - the Fitzsimons Lane frontage acts as the principal active frontage
 - the Merriwa Street frontage acts as the supporting active frontage

the placement of fire service facilities within the Fitzsimons Lane frontage would likely reduce street activation opportunities, which is contrary to the outcomes of the DCP. Further, as the Fitzsimons Lane setback area is the smaller of the site's two road frontages, to place the fire service facilities within the Fitzsimons Lane frontage would significantly reduce landscaping opportunities within that area.

- While modifications to the proposed driveway design were considered, setbacks to the western side of the proposed driveway were unable to be increased based on advice from the project traffic consultant. Such advice indicated that the proposed driveway carriageway widths either side of the island/intercom system were necessary to provide sufficient manoeuvring space in accordance with Council specifications and relevant Australian Standards.

As such, while the proposed site/landscape modification have increased deep soil area (see below), it was not possible to relocate fire services as indicated by Council.



Assessment of deep soil space

Noting that both Council's assessment report and a prior Council RFI made reference to deep soil areas with dimensions of at least six metres, the calculation of deep soil area on the site has been made in accordance with the KDCP's definition of 'deep soil landscaping', which for reference is as follows:

the soft landscaped part of the site area:

- i) that is not occupied by any structure, whether above or below the surface of the ground, except for minor structures such as:

 - paths to 1.2m wide;
 - storm water pipes of 300mm or less in diameter;
 - lightweight fences;
 - bench seats;
 - lighting poles;
 - drainage pits with a surface area less than 1m².*
- ii) that has a minimum width of 2m;*
- iii) that is not used for car parking;*
- iv) may be used for water sensitive urban design, provided it does not compromise the ability to achieve the screen and canopy planting required by this DCP.*

Note: For the purposes of calculating deep soil landscaping and landscaped areas, any access handle on battle axe sites is excluded

Council also confirmed in writing on 7 January 2024 that the calculation of deep soil landscaped areas is to be undertaken in accordance with the above.

As a result of amendments to the site layout and landscape design, the proposed development provides for 1,168.3m² of deep soil space, which equates to 42% of the site's 2,786m² area. Such changes will also increase the tree canopy coverage of the site to 1,540m² (i.e. 55.3%).

While the proposal:

- vastly increases the site's existing 338.3m² (i.e. 12%) of deep soil landscape space
- is well in excess of the minimum 195m² (i.e. 7%) deep soil area requirement prescribed by the NSW Apartment Design Guide (ADG)

it constitutes a 224.7m² (i.e. 16.1%) variation to the minimum 50% (i.e. 1,393m²) requirement prescribed by Part 7A.6 of the KDCP.

Despite the above (and as confirmed by the assessment of Council's landscape officer within Council's assessment report), the proposal complies with all other controls contained within Part 7A.6 of the DCP.

As detailed within the sections above, design alternatives (which focussed on providing greater side setbacks, noting that all ground level setbacks already meet or exceed relevant setback requirements) were considered to both reduce site coverage and increase deep soil area. Such alternatives would however necessitate the excavation of an additional basement level that (in addition to greater site disturbance and lack of responsiveness to topography) would be unfeasible.

With regard to the above, responses to the objectives within Part 7A.6 of the KDCP are as follows:

DCP objective	Mecone response
1. To ensure landscape areas contribute to the garden character and canopy of the Ku-ring-gai locality.	The proposed development will both significantly reduce existing site coverage and increase landscaped/deep soil areas. Onsite canopy cover on the site will also be significantly increased as a result



	Noting that the sizes of both road setback areas exceed minimum requirements, both frontages (and the subsequent areas and/or dimensions of deep soil areas within those frontages) are considerably larger than those on surrounding sites within the subject MU1 zone, in particular: - the exiting commercial development at 1-3 Merriwa Street - the mixed-use development at 11-15 Merriwa Street - other mixed-use developments with frontages to Merriwa Street and/or Fitzsimons Lane. As such and despite the numerical variation to the deep soil area control, the proposed development will positively contribute to the garden character and canopy cover of the site and the locality more broadly.
2 To provide consolidated deep soil zones of adequate area in all residential development sites through quality planning and building design.	All proposed deep soil areas have been consolidated where possible deep within both road frontages and side setback areas. As demonstrated by the submitted landscape plans, the placement, dimensions and areas of such deep soil areas will provide for high quality landscaped areas, with dimensions capable of accommodating a large number of large trees, including: - the retention of 15 large canopy trees - the addition of 14 large (i.e. 15+ metre high) canopy trees.
3 To provide landscaped areas that are appropriate to the scale and context of the development.	Minimum ground-level setbacks on all sides of the building meet or exceed those specified by the KDCP. Most of the space within these areas comprises of deep soil and landscaped spaces. Further, by placing the communal open space area on the roof, the proposed deep soil areas can be largely utilised for the planting of trees, in particular large canopy (i.e. 15+ metre high) trees that are appropriate for the scale and context of mixed-use development, both a proposed on the site and as is provided on surrounding sites.
4 To retain areas that provide habitat for native indigenous plants and animals and contributes to biodiversity in the area.	As demonstrated by the architectural and landscape plans, the proposal seek to retain 15 large canopy trees on and around the site. The proposed landscape layout and associated plant species will comprise predominately of locally endemic plant species. Such landscaping will therefore provide habitats for locally endemic native trees and wildlife.
5. To create high quality landscaped areas through retention and/or planting of tall and medium sized trees particularly at the street frontage.	As demonstrated by the landscape plans, the proposal will provide for: - the retention of 15 existing trees (eight of which provide matures heights of at least 20 metres) - the planting of: 14 large (i.e. 15+ metre high) trees, 16 medium (i.e. 7-15 metre high) trees, and 17 small (i.e. 5-7 metre high) trees. The vast majority of these trees will be planted within both road frontage and both side setback areas, thereby creating large and continuous landscape canopies, as demonstrated by the revised landscape plans.



6 To ensure that deep soil landscaping is within common areas.	All proposed deep soil landscaping will be in common areas.
7 To ensure spaces between buildings provide deep soil landscaping that can sustain large trees that contribute to Ku-ring-gai's garden character.	Noting that a single building is proposed, ground level setbacks will provide for significant amounts of landscaped space, which is suitable for the planting of a large number of trees as detailed above and which positively contributes towards the locality's landscape character.
8 To ensure that deep soil is provided to allow infiltration of rain water to the water table and to reduce stormwater runoff.	The proposal will increase the size and dimensions of existing deep soil areas by approximately 830m ² , which will assist water infiltration. Combined with suitable stormwater arrangements, the proposed development will therefore significantly reduce stormwater runoff.

In summary, the proposed development will significantly increase the site's existing deep soil area and improve the quality of the existing landscape context of the site; this will both significantly improve local landscape outcomes and the site's compatibility with the landscape character of the surrounding area. As also reflected by the detailed assessment by Council's Landscape Officer with the Council's own planning assessment report, the site's well-planned layout and associated landscape design will (except for the numerical deep soil requirement) satisfy all other development controls within Part 7A.6 of the DCP.

Noting that:

- landscape requirements within Part 7A.6 of the DCP except for the numerical deep soil area control will be satisfied
- that the proposal will satisfy the objectives of the deep soil area control
- that alternative designs to further increase deep soil area are not feasible and therefore not possible on this constrained site

full compliance with the landscaped area control in the specific circumstances of this proposal is not considered to be reasonable. We therefore submit that the variation is acceptable and supportable on merit. Further, as the relevant objectives of the development control are satisfied, pursuant to section 4.15(3A)(b) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the consent authority is to therefore be flexible in applying the objectives of the requirements of the control.

3. BUILDING ENVELOPE

Clarification of solar access

Mecone's response:

Please refer to the submitted solar analyses (prepared by Giles Tribe) that were submitted to Council on 21 January 2025.

Such information complements other solar access information that has previously been submitted to Council, and comprises of 'sun eye diagrams' that included comparisons between the proposed



development and a 'compliant building' (i.e. one that complies with key built form controls based upon both existing ground levels and extrapolated contours).

It is understood that such information has already been provided by Council to its Urban Design Consultant, who has since provided information back to Council to facilitate completion of its assessment.

4. COMPARISON OF IMPACTS

Preparation of a comparison between the impacts of a compliant building vs the proposal

Mecone's response:

As indicated above, please refer to the submitted solar analyses (prepared by Giles Tribe) that were submitted to Council on 21 January 2025.

Such information complements other solar access information that has previously been submitted to Council, and comprises of 'sun eye diagrams' that compares solar access impacts in the following scenarios:

- existing development and its impacts on adjoining sites (being 1-3 and 11-15 Merriwa Street)
- the proposed development and its impacts on adjoining sites, both as existing and if those adjoining sites are developed in accordance with current planning requirements
- development on the site that is proposed as a 'compliant building' (i.e. one that complies with key built form controls based upon both existing ground levels and extrapolated contours), and its impacts on adjoining sites both as existing and if those adjoining sites are developed in accordance with current planning requirements.

It is understood that such information has already been provided by Council to its Urban Design Consultant, who has since provided information back to Council to facilitate completion of its assessment.