

Our Ref: M180432/LT2

19 April 2021

The General Manager
Georges River Council
PO Box 205
HURSTVILLE BC 1481

Attn: Mr Mark Raymundo

Dear Mark,

**RESPONSE TO DEFERRAL OF GEORGES RIVER LOCAL PLANNING PANEL (DA/144/2020)
NO. 192-196 PRINCES HIGHWAY, KOGARAH BAY**

We act as town planning consultants to the owner of the above property. Specifically, we have been instructed to provide a brief response to the reasons for deferral from the Georges River Local Planning Panel (GRLPP) meeting on 18 March 2021. We thank the GRLPP and Council for providing us with an opportunity to respond to the remaining issues and working with us to achieve a mutually agreeable outcome on the site.

This submission is to be read in conjunction with the revised architectural Plans (Issue D) prepared by Bureau SRH.

The Minutes of the GRLPP on 18 March 2021 noted the following recommendation:

Deferral

*Development Application No. DA2020/0144 for the demolition works and construction of a residential flat building at 192-196 Princes Highway, Kogarah Bay, be **deferred** and invites the applicant to submit amended plans incorporating the following within 30 days:*

- *Submission of the amended clause 4.6 variation in relation to the height of building control which should include shadow diagrams which depict the impact of the area of breach as compared to the impact of the development as a whole.*
- *Provide evidence of compliance with the FSR standard by way of surveyor certificate and associated GFA calculations plans.*
- *All plans to be amended to include full dimensions and setbacks to each boundary.*
- *Amendments to the architectural roof plan to include fixed seating within the communal open space and is to be consistent with the detail as shown on the landscape plan.*
- *Provide details on the architectural plans of the screening treatment to all elevations including which panels are fixed and which are movable.*

Amended plans/information addressing the Panel's concerns, above must be submitted to the Council within 30 days otherwise the application will be determined on the information currently provided. Should there be disagreement between the applicant and council with respect to FSR calculations the applicant is requested to submit a without prejudice clause 4.6 variation for the FSR. Following receipt of this information, the Panel (as constituted on 18 March 2021) will determine the application electronically, unless the Chair determines that a further public meeting is required.



These deferral items will be addressed in turn below.

- *Submission of the amended clause 4.6 variation in relation to the height of building control which should include shadow diagrams which depict the impact of the area of breach as compared to the impact of the development as a whole.*

A revised Clause 4.6 Variation request is provided with this submission in relation to the variation to Clause 4.3 – Height of Buildings under KLEP 2012. The revised Clause 4.6 Variation makes specific reference to the shadow impacts as requested.

- *Provide evidence of compliance with the FSR standard by way of surveyor certificate and associated GFA calculations plans.*

A surveyed plans detailing compliance with the FSR development standard under Clause 4.4 of KLEP 2012 is provided with this submission. The survey and GFA calculation plans have been prepared by Huy Duc Xuan Thai and dated 11 March 2021. The GFA calculation plan indicates a GFA of 3037sqm which complies with Council's development standard of 2:1 under Clause 4.4 of KLEP 2012.

Numerous attempts have been made to contact Council staff to verify the accuracy of the surveyed GFA plan but as of the date of this letter no response had been received. It is therefore assumed that Council are satisfied with the GFA calculations and no Clause 4.6 Variation is required. In the event that Council is not satisfied, a Without Prejudice Clause 4.6 Variation can be provided prior to determination.

- *All plans to be amended to include full dimensions and setbacks to each boundary.*

All architectural Plans (Issue D) contain dimensions and indicated setbacks from each boundary.

We understand from the previous Planning Assessment Report that Council's main concerns is the setbacks / separation distances under the current DCP and ADG. It is important to note that the subject application was lodged on 23 April 2020 well prior to 10 June 2020 when the updated Part C2 of KDCP came into effect. Despite the fact that no savings provisions apply to KDCP, the proposal was designed based on the applicable planning controls at the time (ADG and KDCP) and it is considered unreasonable to retrospectively insist on full compliance with controls that were not relevant at the time of lodgement. Despite this, a review of the Planning Assessment Report for 18 March 2021 indicates that the proposal is satisfactory with regard to Ground-Level 3 and it is only levels 4-5 (upper two levels) that results in variations to the ADG and new setback requirements.

Before considering the variations to the setbacks/separations distances, it is apparent that the comparison of similar approved buildings on Pages 91-92 of the printed agenda provides incorrect details on the setback/separation requirements which distorts consideration of the subject DA in its context. That is, the table indicates that all buildings comply with the separation requirements with the exception of Nos. 198-200 Princes Highway and the subject site which is manifestly incorrect. The following points are noted:

- No. 198-200 Princess Highway comprises of a front setback of 5m for all 6 levels and side setbacks of 6m for all 6 levels which does not accord with the ADG or new Part C2 of KDCP (side setbacks are demonstrated at Figure 9 on Page 92 of the printed agenda);
- No. 1-3 John Street comprises of side and rear setbacks for the upper two levels that are 7.5m which does not accord with the ADG (as demonstrated at Figure 11 on Page 93 of the printed agenda);

- No. 5-9 John Street comprises of rear setbacks for the upper two levels that are 7.5m which does not accord with the ADG; and
- Nos. 2-6 Lacey Street and 186-190 Princes Highway whilst ultimately refused by LEC on heritage grounds, Council staff supported the 3m setbacks to Lacey Street.

As can be seen from the above Figure and assessment in the printed agenda there are demonstrated variations to the ADG and setback requirements under KDCP for surrounding properties. In terms of the western side setbacks, it is acknowledged that the proposal results in a numerical variation to the 9m separation requirements of the ADG. Importantly, the objective stipulates that separation distances are to be *shared equitably between neighbouring sites*. Nos. 198-200 Princes Highway was approved with a 6m side setback on all levels from the boundary shared with the subject site, which is at the very least matched and then enhanced by the 6-7.6m separation distances of the proposed development. That is, the separation is shared equitably amongst neighbours. It would be unreasonable to insist on compliance with the 9m separation requirements of the proposed development to protect the privacy of No. 198-200 Princes Highway that does not comply with the 9m separation requirements in the first place. Accordingly, the proposal is considered to provide equitable separation between the neighbouring properties, and is therefore consistent with the objective of Part 3F-1 of the ADG.

In terms of the front setback requirements under Part C2 of KDCP, as detailed in the assessment report the proposal complies with the setback requirements for Ground-Level 3 and it is only Levels 4-5 (upper two levels) that do not accord with the setback requirements. The above requirements do not provide a variation for corner buildings to allow additional bulk to define the corner but rather seeks a mandatory setback of 3m (total 8m) regardless of the location or other site specific reasons for variation. In this instance, the proposal provides a 5m setback (Ground-Level 5) for the corner element and is then increased to 6.6m as the built form extends to the south along Princes Highway and 5.6m as built form extends west along Lacey Street.

The proposed development will reinforce the corner element despite the variation to the 8m setback control. Furthermore, the proposed 5m setback will be entirely consistent or greater than the approved 5m setback for all six levels for No. 198-200 Princes Highway. The increased setbacks of the upper levels as the built form extends from the corner will provide additional visual relief despite the variation to the front setback control. It is noted there is no detailed discussion in the Planning Assessment Report on 18 March 2021 regarding the variation to the front setback requirement which makes it difficult to understand the issues raised by Council in the reasons for refusal. However it is noted that Page 117 of the printed agenda the assessment report notes *“the design reinforces the corner”*. As such, we understand it is more an issue of enforcing numerical compliance with a new DCP rather than applying Part 4.15(3A) of the EPA Act which requires flexibility in the assessment of DCP’s, regardless of their age.

Therefore, it is concluded that the proposed setback/separation distances are appropriate in this instance.

- *Amendments to the architectural roof plan to include fixed seating within the communal open space and is to be consistent with the detail as shown on the landscape plan.*

The revised architectural plans (Issue D) provide fixed seating under the pergola (adjacent to the BBQ area) and additional (moveable) tables and chairs for the rooftop communal open space in accordance with the Landscape Plan. The intention of the moveable tables and chairs is that residents can move the tables and chairs within the communal open space to take advantage of the view or the sun and/or shade as required by the season.

If this is not satisfactory to the GRLPP, the client would be willing to accept a condition of consent relating to the provision of more fixed seating (or the like) as required by the Panel.



- *Provide details on the architectural plans of the screening treatment to all elevations including which panels are fixed and which are movable.*

The revised architectural plans (Issue D) provide additional details on the elevations indicating fixed and moveable panels. The plans also indicate the extent of transparency between the panels for clarity.

We consider that the revised architectural plans (Issue D) and associated additional information addresses the concerns raised by GRLPP. The revised proposal is considered to be in the public interest and worthy of Council's support.

Yours faithfully,
Planning Ingenuity Pty Ltd

David Waghorn
ASSOCIATE DIRECTOR

