

Dear Errin,

Please find **attached** a properly made submission in relation to Development Application A007013156.

Regards,

16 July 2026

The Assessment Manager
Brisbane City Council
By Email

Submission – Change Application for 99 Thorn Street, Kangaroo Point
Council Reference: A007013156

This submission is made on

EXECUTIVE SUMMARY

objects to the proposed change application because it would materially intensify the approved development through a significant increase in building height together with inadequate setbacks and building separation. Collectively, those changes would result in a development of materially greater bulk, scale and intensity than that previously approved, giving rise to unacceptable impacts

In summary submits that the change application should be refused because the proposed development materially exceeds the planning framework established for the site and would cause unacceptable amenity and planning impacts for adjoining residential properties.

Council's Role

- The assessment manager must assess the change application against the relevant City Plan benchmarks and exercise its discretion lawfully.
- Planning discretion is not unlimited and should give substantial weight to conflicts that undermine the City Plan and cause real amenity impacts against the Neighbourhood plan intent.
- The proposal involves significant, repeated departures from applicable Code performance outcomes, not merely minor or technical non-compliances.
- Increasing housing supply does not, by itself, justify setting aside the planning framework adopted for Kangaroo Point and the Mowbray Park Precinct which is currently compliant in respect of building heights and setbacks.

Building Height

- The proposal increases the approved building height beyond the 12-storey height expectation for the Mowbray Park Precinct.

- The Kangaroo Point Peninsula Neighbourhood Plan requires an “overwhelming community need” before development exceeds the nominated height, and no such need has been demonstrated, nor is likely to be achieved.
- The proposed additional storeys would materially increase the bulk, scale and visual dominance of the development.
- The increased height would worsen overlooking, overshadowing, loss of privacy and impacts on light penetration and residential amenity.

Setbacks

- The proposed boundary setbacks are substantially less than those contemplated by the Multiple Dwelling Code for a building of this height and scale.
- The reduced setbacks would increase perceived building bulk and visual dominance when viewed from adjoining properties, particularly the Carlisle.
- The application material does not clearly identify setbacks for the proposed additional residential levels, creating uncertainty about the full extent of non-compliance.
- The site’s modest area and narrow frontage indicate that the proposed intensity represents an overdevelopment of the site.

Building Separation

- The proposal does not provide the building separation required for taller buildings containing habitable rooms and balconies.
- The applicant appears to rely on the generous setbacks provided rather than independently achieving acceptable separation on its own site. This is directly contrary to the requirements of the Multiple Dwelling code.
- Insufficient separation would compromise privacy, outlook, daylight, ventilation and the sense of openness between buildings.
- The proposal risks constraining the future redevelopment potential of adjoining land and transferring the burden of compliance onto neighbouring owners .

Conclusion

- The change application would materially increase the development’s height, bulk, scale and intensity beyond the approved scheme.
- The conflicts with the City Plan have direct planning consequences, and the exercise of discretion to so many non-compliances have significant consequences for the intent of City Plan.
- Further, the proposal has not identified compelling planning grounds capable of justifying the extent of departure from the City Plan.
- submits that Council should refuse the change application.

SUBMISSION OF

Council’s Role

In determining the change application, the assessment manager is required to undertake the assessment prescribed by the *Planning Act 2016* (Qld) by assessing the application against the relevant assessment benchmarks and any other relevant matters and make a decision exercising planning judgment. acknowledges that not every departure from the *Brisbane City Plan 2014* (Version 35) (**City Plan**) will necessarily justify refusal. City Plan contains outcomes which allow flexibility in appropriate cases.

However, planning discretion is not unconstrained. The assessment manager must determine whether identified conflicts with the City Plan give rise to planning consequences which warrant refusal. Where departures undermine the strategic planning intent of the City Plan and produce tangible impacts upon adjoining land and residential amenity, those conflicts properly attract substantial weight in the exercise of that discretion.

There are numerous respects in which the proposed changes depart from City Plan. This submission does not seek to address every inconsistency; however, it is important to note that the current development approval and the variation application has sought to provide a performance solution on almost every Acceptable Outcome to the codes. Further, the alternative proposed are not marginal non-compliances, but significant departures from planning expectations under the Performance Outcomes of the applicable Codes. The code reporting is misleading as it states that the proposal "Complies" when the reality is that it does not comply. The cumulative impact of these provides a troubling precedent for efficacy of planning controls in Kangaroo Point and indeed more broadly across Brisbane.

Notwithstanding, the broader compliance issues of this submission focuses upon those conflicts which give rise to genuine planning harm and have the most direct consequences for adjoining residential development. In this submission, these are not merely technical departures from assessment benchmarks. They are significant conflicts which materially affect the planning outcomes intended by the City Plan and warrant refusal of the application. The principal planning scheme conflicts are summarised in Attachment A.

The submission also acknowledges the importance of increasing housing supply within Brisbane. However, that objective cannot, of itself, justify significant departures from the planning framework established by the City Plan. If it did, the carefully considered planning framework adopted by Council would effectively cease to perform its intended function.

Building Height

The proposed increase in building height represents one of the most significant departures from City Plan.

Table 7.2.11.1.3.B of the Kangaroo Point Peninsula Neighbourhood Plan provides that buildings on sites exceeding 800m² within the Mowbray Park Precinct are not to exceed 12 storeys. The subject site has an area of approximately 1,415m² and falls within that designation.

The significance of this planning outcome is reinforced by Overall Outcome 7.2.11.1.2(3)(c), which provides that development is not to exceed the nominated building height unless there is an "overwhelming community need" for development at the greater height. It also requires that important views to and from the Story Bridge are preserved.

The requirement for an "overwhelming community need" establishes an intentionally high threshold. Importantly, this is not a planning policy found generally throughout the City Plan. Rather, it is a unique requirement imposed by the Kangaroo Point Peninsula Neighbourhood Plan. Council has therefore deliberately adopted a more stringent planning framework for this locality, requiring that development exceeding the nominated height only occur in truly exceptional circumstances where an overwhelming community need has been demonstrated. The requirement

is substantially more demanding than demonstrating that a proposal provides some public benefit or contributes to increased housing supply. If the ordinary need for additional residential accommodation were sufficient to satisfy that requirement, the height designation within the Neighbourhood Plan would have little practical operation.

Instead, City Plan reserves departures of this magnitude for exceptional circumstances where compelling community considerations justify overriding the adopted planning framework. Significantly, the applicant has not undertaken any meaningful assessment of community need, let alone demonstrated an overwhelming community need capable of satisfying this deliberately high threshold. The material accompanying the application identifies no pressing community demand, strategic infrastructure requirement or other exceptional planning circumstance capable of justifying the proposed increase in height. In the absence of such evidence, the mandatory planning requirement remains unsatisfied.

Council previously approved a development comprising a 13-storey building, being 12 residential storeys together with a rooftop communal level. As recognised in the Council Officer's Report, that approval was accepted because the building presented as a 12-storey form and did not result in unacceptable amenity impacts.

It is also significant that the Council Officer's Report which supported the original approval did not undertake any assessment of whether an "overwhelming community need" existed. There appears to have been no consideration of how the approved development, which already exceeded the nominated building height, satisfied this unique and demanding planning requirement. Whether that omission was correct or otherwise, it cannot provide a justification for permitting an even greater departure under the present change application. The current application must be assessed on its own merits against the requirements of the City Plan.

The current proposal is fundamentally different. Rather than refining the approved development, it introduces three additional residential storeys, resulting in a 16-storey building. This represents a substantial increase in the overall height, bulk and scale of the development, well beyond that previously approved and well beyond what is contemplated by the City Plan. It also seeks to justify the additional height by assessment of buildings in other precincts of the Kangaroo Point Neighbourhood Plan without equally highlighting they are subject to different height controls.

The additional height necessarily increases overlooking, visual dominance, overshadowing and loss of privacy for adjoining residential properties. The shadow diagrams submitted by the applicant demonstrate increased overshadowing beyond that associated with the approved development. The proposal therefore also conflicts with Overall Outcome 7.2.11.1.2(8)(b), which seeks to ensure adequate light penetration, privacy and separation between buildings.

The applicant has not demonstrated any overwhelming community need or identified planning grounds capable of justifying such a significant departure from the adopted height framework. In those circumstances, the conflict with the Neighbourhood Plan should attract substantial weight.

Finally, the planning outcomes sought by the Neighbourhood Plan are reflected in the existing built form within the Mowbray Park Precinct. Currently, there is a high degree of compliance with both the nominated building heights and the broader built form controls throughout the precinct. The proposed development represents a marked departure from that established planning pattern. Rather than reinforcing the carefully planned character of the precinct, the proposed increase in

height would undermine the consistency and certainty which the Neighbourhood Plan seeks to achieve.

Setbacks

The proposed setbacks also represent a significant departure from the outcomes intended by the Multiple Dwelling Code. Table 9.3.14.3.C prescribes progressively increasing boundary setbacks according to building height. For a development of this scale, setbacks ranging between 1.5 metres and 6 metres are required.

The proposed development provides setbacks to the boundary of as little as 2.6 metres to balconies and approximately 3 metres to external walls for Levels 2 to 11.

Importantly, the plans accompanying the application do not clearly identify the setbacks associated with the proposed additional residential levels. This omission prevents a complete assessment of the impacts arising from the increased building height and creates uncertainty regarding the extent of non-compliance.

Boundary setbacks perform an important function by reducing perceived building bulk, maintaining visual openness, preserving access to daylight, sunlight and breezes, and protecting the amenity enjoyed by adjoining residential properties. Those planning outcomes are expressly reflected in Overall Outcomes 9.3.14.2(2)(i) and 9.3.14.2(2)(l)(ii), which require setbacks that protect adjoining residential amenity and maintain appropriate access to natural light, sunlight and ventilation.

The reduced setbacks proposed by the applicant undermine each of those objectives and increase the visual dominance of the development when viewed from adjoining properties, particularly the

The reason these non-compliances arise is readily apparent from the physical characteristics of the subject site. The land has a relatively modest area of approximately 1,415m² and a frontage of only 17.59 metres, substantially less than the 20-metre frontage anticipated by the Multiple Dwelling Code for development of this nature. Those inherent site constraints mean that a development of the height, bulk and intensity now proposed can never realistically achieve many of the assessment benchmarks relating to setbacks, building separation, site planning and residential amenity. The repeated departures from the City Plan are therefore not the product of isolated design choices capable of refinement. Rather, they demonstrate that the proposed development represents an overdevelopment of the site, with the consequence that the planning outcomes sought by the City Plan cannot be achieved.

Building Separation

The proposed development also fails to provide the building separation required by the Multiple Dwelling Code.

Table 9.3.14.3.F prescribes progressively increasing separation distances according to building height, requiring up to 24 metres where buildings exceed nine storeys and contain habitable rooms or balconies. The figure below is an extract from the Multiple dwelling code which depicts the building separation requirements.

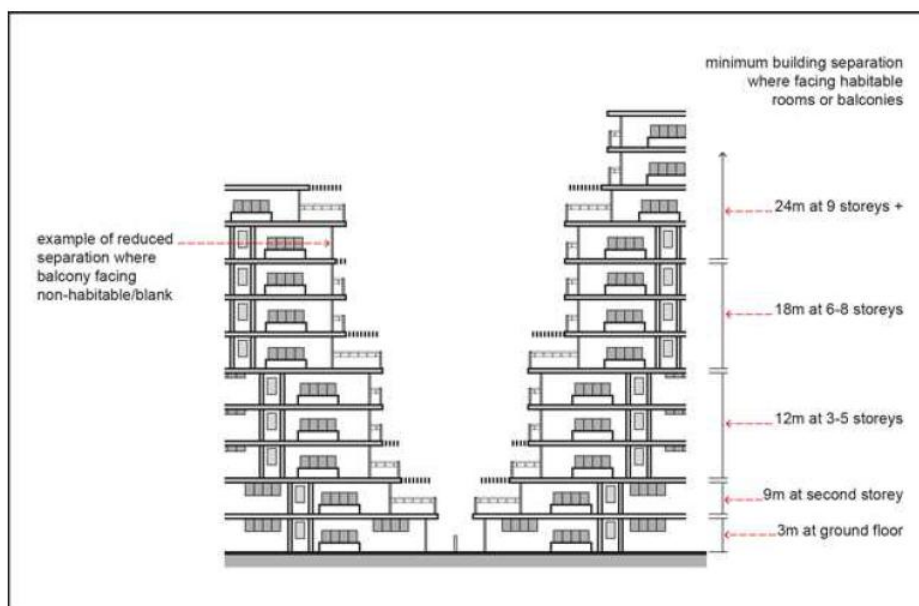


Figure g—Building separation requirements

View the high resolution of Figure g—Building separation requirements

Figure 1 - BCC City Plan Setback and separation requirements

The below figure is an extract from the architectural plans submitted by the applicant which depict the building separation



Figure 2 - Thorn Street Elevation demonstrating building setbacks.

Instead, it appears the applicant seeks to rely upon the generous setbacks already provided by in order to justify reduced separation on its own site. That approach is fundamentally inconsistent with the intent of the City Plan.

The purpose of the building separation provisions is to ensure that each development independently contributes to achieving acceptable separation outcomes. Those provisions are directed towards maintaining privacy, outlook, daylight, ventilation and an appropriate sense of openness between buildings.

Overall Outcome 9.3.14.2(2)(q) reinforces that objective by requiring development to appropriately manage its interface with adjoining residential uses through sufficient building separation to protect visual privacy and residential amenity. Those considerations are particularly important in this instance because the proposed development contains numerous balconies directly facing adjoining residential properties.

City Plan anticipates that adjoining sites may themselves redevelop over time. Compliance with the prescribed building separation standards ensures that future redevelopment opportunities remain available while maintaining acceptable amenity outcomes for both developments. Any compromise on building setback on the subject site has a direct and consequential impact on the neighbouring sites development right.

By effectively appropriating the generous separation currently provided by the proposal transfers the burden of compliance onto adjoining landowners. Should be redeveloped in the future, the proposed development would constrain the form of that redevelopment or alternatively compel future buildings to be positioned substantially closer to the common boundary than contemplated by the City Plan. This loss of development right as a result of the development approval at 99 Thorn would ordinarily give rise for compensation, reserves its rights in that regard. That is precisely the outcome which the building separation provisions seek to avoid. Such outcomes are to be clearly avoided under the Multi-dwelling Code Performance Outcomes PO3, PO6 and PO14 which cannot be met by the current proposal or the former approval.

The proposal also conflicts with Overall Outcome 7.2.11.1.2(8)(b) of the Neighbourhood Plan, which envisages well-spaced towers that maintain adequate separation to preserve privacy, air circulation and light penetration. Those outcomes cannot reasonably be achieved by the development proposed under the change application.

Conclusion

The proposed changes materially increase the height, bulk, scale and intensity of the development in a manner that significantly departs from the framework established by the City Plan.

The conflicts identified in this submission are not merely technical departures from assessment benchmarks. They give rise to planning consequences, including increased overshadowing, diminished privacy, inadequate building separation, reduced residential amenity and constraints upon the future redevelopment potential of adjoining land.

While the applicant may rely upon the broader objective of increasing housing supply, that consideration cannot satisfy the uniquely demanding "overwhelming community need" test deliberately adopted by Council for the Kangaroo Point Peninsula Neighbourhood Plan. Nor can it justify setting aside the carefully calibrated height framework which has been consistently implemented throughout the Mowbray Park Precinct.

Having regard to the nature and significance of these conflicts, submits that they should attract substantial weight in the exercise of the Council's planning discretion. In the absence of any compelling planning grounds capable of justifying those departures, the change application ought to be refused.

Details of the Submitter

Yours faithfully

Attachment A – City Plan Non-Compliances

The Planning Report submitted by applicant claims substantial compliance with the Codes Performance Outcome (PO) and Acceptable Outcomes (AO). The reality is that fundamental aspects of Code Compliance have not been met or justified. The following indicates where both the PO and AO have not been met and where insufficient planning grounds exist to accept that the proposal otherwise complies.

Such outcomes provide grounds for refusal of the current application and calls into question the discretion exercised by Council in the assessment and justification of the current approval.

Provision	Requirement	Compliance
Kangaroo Point Peninsula Neighbourhood Plan		
Overall Outcome 7.2.11.1.2(3)(c)	Development is not to exceed the nominated building height unless there is an overwhelming community need	Does not comply
Overall Outcome 7.2.11.1.2(3)(d)	Development delivers high-quality architectural and landscape design that enhances amenity within the neighbourhood plan area	Does not comply
Overall Outcome 7.2.11.1.2(8)(b)	Development provides well-spaced towers that maintain privacy, light penetration and building separation	Does not comply
PO1	Building height is consistent with the intended neighbourhood planning outcomes, community expectations and adjoining amenity	Does not comply
PO3	Development is of a scale and form that protects adjoining amenity, provides appropriate setbacks and building separation, and contributes to the intended built form character	Does not comply
Table 7.2.11.1.3.B	Maximum building height – 12 storeys	Does not comply
AO3.1 / Table 7.2.11.1.3.D	Boundary setbacks	Does not comply
AO3.2 / Table 7.2.11.1.3.F	Minimum building separation	Does not comply
AO3.3 / Table 7.2.11.1.3.G	Maximum site cover	Does not comply
Multiple Dwelling Code		
Overall Outcome 9.3.14.2(2)(i)	Development provides setbacks that protect adjoining residential amenity	Does not comply
Overall Outcome 9.3.14.2(2)(l)(ii)	Development maintains adequate access to natural light, sunlight and ventilation	Does not comply
Overall Outcome 9.3.14.2(2)(q)	Development provides sufficient building separation to protect visual privacy and residential amenity	Does not comply
PO1	Sufficient area and frontage	Does not comply
PO2	Neighbouring development potential is not impacted	Does not comply

Provision	Requirement	Compliance
P03	Building Height, Bulk, Separation and Setbacks	Does not comply on all measures
P04	Building Height	Does not comply
P06	Building Setback	Does not comply
P07	Building Setback considering neighbouring development opportunities	Does not comply
P08	Development Intensity	Does not comply
P09	Development bulk and intensity	Does not comply
P013	Building height transition as set out in Neighbourhood Plan	Does not comply
P014	Building Separation considering future development of neighbouring sites	Does not comply