

JRPP Ref No: 2010SYE042
 Property: 290 Burns Bay Road, Lane Cove
 DA No: D148/10
 Date Lodged: 9 July 2010
 Amended Plans: 8 September 2010
 Cost of Work: \$11,593,494.00
 Owner: Gridcorp Pty Ltd
 Applicant: Gridcorp Pty Ltd
 Author: Rajiv Shankar

DESCRIPTION OF PROPOSAL TO APPEAR ON DETERMINATION	Demolition of existing building and construction of a six storey residential flat building with 36 dwellings and associated basement parking.	
ZONE	R4 High Density Residential	
IS THE PROPOSAL PERMISSIBLE WITHIN THE ZONE?	Yes	
IS THE PROPERTY A HERITAGE ITEM?	No	
IS THE PROPERTY WITHIN A CONSERVATION AREA?	No	
DOES DCP 1- BUSHLAND APPLY TO THE PROPERTY?	No	
BCA CLASSIFICATION	Class 2	
STOP THE CLOCK USED	No	
NOTIFICATION	Neighbours	1, Caroline Chisholm Lane, 289, 288, 291, 292-298, 293, 296, 299, 300, 301, 303, 303A, 305, 307, Burns Bay Road, Clr W Gaffney, Clr I Longbottom, Clr K McIlroy.
	Ward Councillors	
	Association	Riverview Community Association

REASON FOR REFERRAL:

This application has been referred to the Sydney East Joint Regional Planning Panel as per clause 13B of State Environmental Planning Policy (Major Development) 2005 because the proposed development has a capital investment value of greater than \$10 million.

EXECUTIVE SUMMARY:

- The subject site is rectangular in shape, with a frontage of 38.4m and an area of 2005m². The site is located on the eastern side of Burns Bay Road and falls from north to south by approximately 5.5m.
- The proposal is for the demolition of the existing building and construction of a six storey residential flat building containing 36 dwellings and associated basement parking.
- Amended plans were submitted on 8 September 2010 which reviewed the vehicle manoeuvring on the site and the number and mix of adaptable dwellings.
- The proposal does not meet the requirements of Council's Local Environmental Plan 2009 with regard to maximum permissible floor space ratio and maximum permissible height limit.
- The proposal does not meet the requirements of Council's Development Control Plan which includes the requirements for setback and solar access.
- The proposed development does not provide adequate disabled access.
- The proposal does not provide adequate amenity with regard to privacy and solar access to the proposed dwellings.
- The proposal does not adequately address all of the matters for consideration under SEPP 65.
- The proposed reduced setbacks towards the northern boundary would constraint future residential flat building toward the north. The non compliance with boundary setbacks to the southern boundary is also an issue with regard to overshadowing of the open space to the south.
- The amended plans for vehicle manoeuvring are not satisfactory as the width of the internal basement ramp does not comply with S2890.1.

- The proposed garbage collection and loading/ unloading provisions are not considered adequate. A parked garbage collection truck or other vehicle, particularly a truck with rear loading, would obstruct vehicular access to the basement car park which is not acceptable.
- Seven submissions have been received from the neighbours following the notification.
- On 27 August 2010, the JRPP was briefed on the proposal.
- The proposal is not supported and recommended for refusal.

SITE:

The site is located on the eastern side of Burns Bay Road. The site is described as Lot A DP 316439. The site is rectangular in shape, has a frontage of 38.4m and a depth of 52.3m. The site has an area of 2005m². The site falls from north to south by approximately 5.5m.

The site features a part two, part three storey commercial/warehouse building. The site is partly excavated and levelled to accommodate the existing building and a car parking level. Vehicular and pedestrian access to the site is from a driveway towards the west of the site. There is a rock outcrop towards the north-eastern corner of the site.

Neighbouring towards the north is a two storey commercial building. This site, which is towards the north of the subject site, is zoned R4 High Density Residential. Further towards the north is a town house development and a residential flat building, beyond which is Caroline Chisholm aged care and retirement village.

Towards the south is the access road to residential flat buildings and a commercial building located on the eastern side of the site. There are a number of trees located along the edge of the access road. Further towards the south is an open space area which is the public open space (disused bowling green) and additional land zoned R4 High Density Residential.

Adjoining towards the east is a car parking area associated with the residential flat building towards the east.

PROPOSAL:

Proposed Development:

- Demolition of the existing building and removal of a number of trees, and

- Construction of a six storey residential flat building with 2 basement car-parking levels.

One of the parking levels is proposed to be entirely excavated and the other car parking level is above ground.

Dwellings:

The residential flat building contains a total of 36 dwellings:

- 24 X 2 bedroom dwellings.
- 12 X 3 bedroom dwellings.

The amended plans indicate that out of the above a total of seven (7) dwellings would be adaptable dwellings. The number of adaptable dwellings complies with Council's requirement.

Vehicular Access, Parking and Loading:

The parking arrangements have been modified in the amended plans.

- Vehicular access is from the public road using the existing driveway crossing off Burns Bay Road.
- The car parking entrance is at the same grade as the access road.
- A total of 69 car parking spaces over two levels have been provided.
- Of the 69 car spaces, nine (9) car spaces are visitor car parking spaces and seven (7) car spaces are accessible car parking spaces associated with the adaptable dwellings. (The drawings indicate one less car parking space. This is because there is an error in the numbering of the car parking spaces. The required 69 car parking spaces have been provided).

Private Open Space and Landscaping:

- The north eastern corner of the site with the rock outcrop is proposed to be retained as landscaped area.
- A total of 25 trees are proposed for removal.

Waste Management:

- Each level would have a garbage room with a garbage chute terminating in a garbage room in the ground level car park.
- The bins would be transferred from the garbage room to a collection point located within the front setback to the north of the driveway entrance.
- The amended plans indicate that the garbage truck would enter the site in a forward direction and reverse in the turning bay provided within the front setback. After collecting the garbage truck would exist in a forward direction.

PREVIOUS APPROVALS/HISTORY:

As the proposal seeks to demolish the existing building on the site, previous approvals are not relevant.

PROPOSAL DATA/POLICY COMPLIANCE:

Lane Cove Local Environmental Plan 2009

Site area - 2005m².

Clause	LEP	Proposed	Complies/ Comment
Clause 2.2- Zoning	R4 – High Density Residential	Proposed Residential Flat Building.	Yes
Clause 4.3 - Height of Buildings	21.0m	Parapet 21.76m. Mechanical vent duct and lift overrun 21.8m.	NO
Clause 4.4 - Floor Space Ratio	1.7:1	1.74:1, in excess by 84m ² .*	NO

* Note: The applicant in his letter dated 7 September 2010 has stated that errors were made in the initial area calculations for the DA proposal. Recalculation by the applicant indicates that the Floor Space Ratio is 1.74:1. This is 84 m² in excess of the maximum permissible area. In the amended plans the applicant has removed the storage areas adjoining the private terraces along the northern access balcony to exclude these areas within the Gross Floor Area calculations.

Lane Cove Development Control Plan

Part B – General Controls

Clause	DCP	Proposed	Complies/ Comment
B7 – Development near busy Roads and Rail Corridors	L _{Aeq} levels: (i) In any bed room 35dB(A) 10.00pm to 7.00am. (ii) anywhere else 40dB(A)	Acoustic report provided. The report does not indicate how acoustic impacts would be addressed.	Verification would be required to be submitted with the Construction Certificate, if the

Clause	DCP	Proposed	Complies/ Comment
			development approved.
B8 – Safety & security	Required	Crime Prevention Through Environmental Design (CPTED) principles considered and satisfactory.	Yes
B10- Cut & fill	1m maximum. Additional acceptable for parking for Residential Flat Buildings	More than 1m. However the extent of excavation has been minimized and generally within the footprint of the proposed building.	Yes

Part C3 – Residential Flat Buildings

Clause	DCP	Proposed	Complies/ Comment
3.2 Density	Minimum site area 1500m ²	Area of site 2005 m ²	Yes
3.3 Building depth	18m exclusive of balcony	12.6m	Yes
3.4 Building width	40m maximum fronting the street	29.3m	Yes
3.5 Setback <u>Front</u> Building Front terrace	7.5m 6.9m	8.0m 5.6m	Yes NO
<u>Side</u> Northern side	6.0m up to 4 storeys 9.0m for 5-8 storeys	5.79m 5.79m	NO NO
Southern side	6.0m up to 4 storeys 9.0m for 5-8 storeys	3.31m 3.31m	NO NO
Rear	6.0m up to 4 storeys	4.57m	NO

Clause	DCP	Proposed	Complies/ Comment
	9.0m for 5-8 storeys	4.57m	NO
3.5.3 Parking Podium Height			
Height adjoining front boundary	Maximum 1.2m	1.2-3m	NO
Height adjoining northern boundary	Maximum 1.2 m	<1m	Yes
Height adjoining southern boundary	Maximum 1.2 m	3.0m	NO
Height adjoining rear boundary	Maximum 1.2 m	3.0m	NO
3.8 Size of dwellings	Minimum 40m ²	> 40m ²	Yes
3.9 Private open space	Primary balconies - 10m ² with minimum depth 2m	Areas 10, 15 & 31m ² with depths 2.2m & 2.5m	Yes
	Primary terrace- 16m ² with minimum depth 4m	18.36m ² and >4m depth for ground floor dwellings	Yes
3.10 Car parking, motorcycle and bicycle spaces	Car parking – 24x2 bedroom (24x1.5) = 36 spaces 12x 3 bedroom (12 X 2.0)= 24spaces Visitors - 1 per 4 dwellings (36÷4) = 9 spaces Total 69 car	Total 69 car spaces.	Yes

Clause	DCP	Proposed	Complies/ Comment
	spaces. Motor cycle @ 1 per 25 cars - 3spaces Bike Lockers.- 4 Bike rails – 3 (1 per 12 dwellings)	3 4 (bike store room provided) 3	Yes (If approved specific number of bike lockers would be conditioned). Yes Yes
3.11 Ceiling heights	Minimum 2.7m	> 2.7m	Yes
3.12 Storage	2 bed 8m ³ 3 bed 10m ³	8m ³ 10m ³	Yes Yes
3.13 Solar access	Living rooms and private open spaces of 70% of the units to receive 3 hours of direct sunlight. Single aspect dwellings with southerly aspect to 10% (4 dwellings)	83% 13% (6 dwellings)	Yes NO
3.14 Natural ventilation	60% of the dwellings should have cross ventilation. 25% of the kitchen to have access to natural ventilation	All apartments have cross ventilation. All kitchens are within 6m of openable windows	Yes Yes
3.15 Visual privacy	Provide visual privacy between balconies internally and externally	Privacy issues across internal courtyard addressed.	Yes
3.16 Communal open space	Minimum 25%	41%	Yes

Clause	DCP	Proposed	Complies/ Comment
3.17 Landscaped area	25% provided at ground level and up to 15% on structures	25% + 15%	Yes
3.18	Planting on structures	Provided	Yes

Part F - Access and Mobility

Clause	DCP	Proposed	Complies/ Comment
3.3 Public spaces and link to private properties	Development on public and private properties must provide and maintain accessible links and path of travel between class 2 to Class 10 buildings and to adjacent public spaces or pedestrian networks	Accessible links from the proposed open spaces to public spaces not provided	NO
3.5 Parking Provide 1 space for each adaptable housing unit.	DCP requires 7 adaptable dwellings and therefore 7 disabled car spaces.	7 disabled car spaces have been provided.	Yes
3.6 Adaptable and Visitable housing	Adaptable housing to be provided at the rate of 1 dwelling per 5 dwellings which would be 7 dwellings.	7 adaptable dwellings have been provided	Yes
	Adaptable housing to be equitably distributed throughout all types and sizes of dwellings.	Two bed and three bed room dwellings are provided as adaptable.	Yes
	80% of the dwellings are to be visitable	Sufficient detail not provided.	NO
3.7 Access to and within buildings	Access is required to common areas and all dwellings.	Sufficient detail not provided.	NO

REFERRALS:

Manager Community Services and Access Committee

Amended plans were submitted to address deficiencies in the proposal from an access viewpoint. Council's Manager Community Services has reviewed the amended plans and advised:

“Issues

I note that the applicant has complied with the recommendation to provide an Access Report, and accordingly attempted to address the various issues raised. However, there still remain concerns not fully addressed.

Adaptable Housing – *The development needs to provide equitably distributed adaptable housing throughout all types and sizes of dwelling units at the rate of 1 dwelling per 5 dwellings, visitable housing at the rate of 80%, and an accessible car space for each adaptable unit. The developer proposes 36 units on the site, however, my understanding is that the floor space ratios for this size development supports no more than 35 units. As such, it is acknowledged that the amended plans propose seven adaptable units and seven accessible car parking spaces.*

Inconsistency with the Lane Cove DCP, Part F - Access and Mobility and Disability Discrimination Act (DDA) - *Having regard to the amended plans from the developer, though an improvement, there still remains an inconsistency with the Lane Cove DCP, Part F - Access and Mobility from the point of view that adaptable housing requires siting considerations such as access to the site, within the site, building location, landscaping, security, car parking, letterboxes and signage. The current design does not adequately give access to the front entrance (and presumably to the letterboxes) which could be considered equal access for someone with a disability under the terms of the DDA.*

At one point the Access Consultant notes that it is Council's responsibility to provide the access from the street front after the development is built. This clearly shows a lack of understanding of both the spirit and the letter of the law by the developer in relation to access and mobility provisions complying with the DDA requirements.

Due to the above considerations, the resubmitted design does not adequately overcome limitations to the site that obstruct access”.

The proposal is not consistent with the principles of the Disability Discrimination Act 1992.

It is not justified that the proposal need not comply with the requirements of the Disability Discrimination Act 1992 on the grounds that the topography of the surrounding area is such that the public footpath, access to public transport, public open spaces are not readily accessible to people with disability.

Manager Assets

The proposal was referred to Council's Engineer, who has advised:

- An On-Site-Detention system is not required.
- A rainwater reuse system has been proposed.
- Overflow and all other impervious areas would drain to Council's drainage system.
- The proposal vehicular access is to be maintained via the existing access point.
- The amended plans do not raise any additional concerns.

In the event that the application is supported, draft conditions have been provided by the Engineer.

Tree Assessment Officer & Landscape Architect

Following is the response received from Council's Tree Assessment Officer:

- No objection is raised to the removal of the nominated trees from the site, including the removal and replacement of the paper bark trees adjoining the front boundary with locally indigenous trees.
- If approved, two tree protection zones are required, one located on the nature strip outside the property and the other on top of the rock out crop in the north-eastern corner of the site.
- The proposed landscape plan is satisfactory

In the event that the application is supported, draft conditions have been provided by the Tree Assessment Officer.

Building Surveyor

Council's Building Surveyor has reviewed the proposal and has advised that the means of egress, protection of openings and travel distances particularly along the open balcony would need to be fully assessed by a suitably qualified fire safety person prior to the issue of a construction certificate. Such an assessment may require design changes to the building. The amended plans do not raise any additional concerns.

Draft conditions have been provided in the event the proposal is supported.

Manager Environmental Health (Waste Management)

Council's Manager Environmental Health has reviewed the Waste Management aspect of the proposal and advised that:

- The garbage collection truck should be able to enter and exit the premise in a forward direction. In the amended plans, provision of a turning bay has been made so that the garbage truck would be able to turn within the premise and exist in a forward direction. The Truck Swept Path Test, annexed along with the amended traffic report prepared by McLaren Traffic Engineering, indicates that the parked garbage truck, particularly a truck with rear loading, would obstruct vehicular access to the basement car park. This is not considered acceptable.
- The garbage collection point is very close to bed rooms. This may lead to noise nuisance potential.
- No provision has been made for on site communal composting.
- The maximum number of general garbage bins (240L) allowable on site is limited to 12 bins.

Manager Environmental Health (Soil Contamination)

Council's Manager Environmental Health has reviewed the contamination report and advised that the Contamination Assessment (Geotechnique Pty Ltd, June 2010) identifies two separate locations where contaminants exceed the Assessment Criteria. The contamination was with levels of Zinc concentrations and Benzo(a)pyrene. The assessment concludes that removing contamination from the site and/or remediation would render the site suitable for the proposed use. The amended plans do not raise any additional concerns.

If approved, draft conditions have been provided, which include a requirement for the applicant to submit a Validation Statement verifying that the site is suitable for residential purposes. This condition would be included in the draft conditions of consent.

Manager Environmental Health (Acoustic Assessment)

Council's Manager Environmental Health has reviewed the acoustic assessment and advised that the acoustic report submitted covers three main aspects of noise impacts relating to the proposed development (traffic noise impacts on future residents, potential for noise impacts from construction and mechanical plants). It also offers solutions for addressing the potential noise impacts.

In the event that the proposal is supported and approved, a validation report would be required prior to occupation, indicating how the development has addressed and complied with the acoustic report.

Manager Traffic

The amended proposal and the amended traffic report prepared by McLaren Traffic Engineering have been discussed with Council's Executive Manager Traffic who states:

- The Truck Swept Path Test annexed along with the amended traffic report, prepared by McLaren Traffic Engineering, indicates that the truck would go over part of the footpath and steps provided at the south west corner indicated in the amended landscape plan. The path overlaps a small portion of the existing front boundary fence. Therefore, the space provided for the turning of the trucks is not considered to be adequate.
- A dedicated on-site area must be provided for all service/loading activities, particularly to cater for removalist vans and waste collection. While an area has been provided for waste collection, it is assumed that the same space would be used for all service/loading activities. A garbage truck and removalist van/truck with rear loading would require more space towards its rear and would park in a manner to obstruct vehicular access to the basement car park which is not considered acceptable.
- In the amended plans the width of the internal basement ramp has been reduced from the originally proposed 5.5m to 3.6m. This reduced width does not comply with Australian Standard AS2890.1.

In the event that the application is supported, draft conditions have been provided by the Engineer.

State Environmental Planning Policy 65 – Design Quality of Residential Flat Development

Council's consulting architect has confirmed that the proposal does not comply with all of the 10 planning principles of SEPP 65. A copy of the report is contained in **AT1**.

The proposal meets the majority of the Principles, except as follows:

Built form

"The proposal generally meets the objectives of the principle, however the Northern wing is too close to the northern boundary and should be set back at the upper two levels".

Officer's Comment: The 6 storey northern wing, with habitable rooms, is too close to the northern side boundary with a setback of less than 6.0m. It is agreed that the northern side boundary setback should be a minimum of 9m at the upper levels to allow for adequate separation from the neighbouring future residential flat building towards the north.

Density

"The proposal appears to be in accord with Council's stated desired future density.

The proposal meets with the objectives of this principle"

Officer's Comment: The proposed development is in excess of the maximum permissible floor space ratio. The proposal is in excess by 84m² which is more than the area of a two bedroom dwelling. Therefore, the proposal is considered to be in excess of Council's desired future density by at least one dwelling.

Resource, Energy and Water Efficiency

"Access to northern sun is not ideal in the scheme. The east-west part of the L has an external access way along the northern façade which will limit the likelihood of people utilising the terrace or opening up the façade to the northern light....

Apartments on the north-south wing will need to have both the north-facing windows and the openings to the terraces screened with louvers for privacy which will reduce the exposure to the sun. There is perhaps a clever way to design the screens so that they can provide privacy while at the same time protecting the apartments from Summer sun and allow in the winter sun.

Apartments in the south-west corner have no northern sun exposure and only early morning and late afternoon sun in summer. If the terraces on these apartments were located on the corner of the building they would receive more direct sun and protect more of the western facing façade from the Afternoon summer sun.

It is understood that the main view from the building will be to the south. It is unfortunate however that the main outdoor areas are orientated to the south as they are likely to only be used in summer.

I am concerned about the in-situ and pre-cast masonry on the western façade, which will act as heat sink in the summer and will transfer heat to the interior. Perhaps a lighter form of construction could be considered here. Thermal mass is not always an advantage.

The proposal generally meets the objectives of this principle”.

Officer’s Comment: It is agreed that the east-west wing of the L shaped block has an external access-way along the northern façade which would limit the likelihood of people utilising the terraces or opening up the façade to the northern light. Dwellings on the north-south wing, which has small north facing windows, would need to have both the north-facing windows and the openings to the terraces screened with louvers for privacy which would reduce the exposure to the sun. The south-west corner dwellings have no northern sun exposure to the living rooms and their balconies. The design solution in this regard is not considered satisfactory.

Amenity

“The setback issues on the northern Boundary have already been discussed.

As mentioned, there are privacy and noise issues across the internal corner of the building. The distance from the terraces on the eastern apartments of the N/S wing is only 9m from the so-called private terraces of the E/W wing. Screening should be provided to the south side of the terraces on the N/S wing.

The external access ways to the apartments in the E/W wing are unusual and will either foster a friendly street-like atmosphere or result in the small terraces being close off for privacy. The benefits of being able to provide cross ventilation and access to northern light outweigh the potential inconvenience.

It is noted that the S/W corner apartments are adaptable. This is commendable, however it is essential that the entrance to the building be made accessible. It is not acceptable to require mobility-impaired people to enter via the car park.

The general layout of the apartments is good with efficient use of space and adequate storage.

The proposal does not meet the objectives of this principle everywhere. Some re-design is required to make the building and landscape accessible and address the privacy issues across the internal courtyard”.

Officer’s Comment: It is agreed that there would be inadequate amenity with regard to privacy and noise across the internal corner of the building. The distance of the terraces in North/ South wing to the “private” terraces of the East/ West wing is 9m. Screening is provided along the southern edge of the terraces.

The north facing ‘private terraces’ are not “private”. These terraces are part of a public access way. The public nature of the external access way may result in the small terraces being closed off for privacy in the future, further increasing the

building floor space ratio. This would compromise cross ventilation and north light to the dwellings in the East /West wing.

The entrance to the building is not accessible. It is not acceptable to require mobility-impaired people to enter via the car park. In view of the above it is considered that the proposal does not meet the objectives of State Environmental Planning Policy 65 –Design Quality Principal - Amenity.

Roads and Traffic Authority

The original plan was referred to the Roads and Traffic Authority, who whilst not objecting to the proposal, noted that garbage trucks would block the entry driveway when loading and would reverse onto the Access Road which has a steep grade limiting sight distance.

The amended plans have addressed this issue.

Draft conditions have been provided in the event that the application is approved.

ENVIRONMENTAL PLANNING ASSESSMENT.

79 (C) (1) (a) the provisions of any Environmental Planning Instrument

Lane Cove Local Environmental Plan 2009

Clause 2.2 - Zoning

The subject site is zoned R4 – High Density Residential under the provisions of Lane Cove Local Environmental Plan 2009. The proposed development meets the zone objectives and is permitted with development consent.

Clause 4.3 - Height of Buildings

The proposed development is in excess of the maximum permissible height limit. The overall building height is in excess by 0.8m. The area where the building does not comply is located towards the south east and western side including mechanical vent duct and lift overrun.

Clause 4.6 - Exceptions to Development Standards – with respect to Height of Building.

The applicant has indicated various methods how the requirements of the development standard could be met. However, the applicant has chosen not to meet the requirements of this development standard and states that meeting the height requirements is unreasonable and unnecessary on the grounds that the departure is minor and there are no residential buildings on the adjoining site.

The applicant's argument is not considered to be well founded. The argument does not address the objective of the clause which is to achieve better outcomes for and from the development by allowing flexibility in these particular circumstances.

The proposal does not meet the objective of height of building. The excessive height would increase overshadowing of public domain towards the south. The proposed development has a single flat roof which does not relate to the topography of the site which falls north to south. The future development of the site adjoining to the north would be likely to be a residential flat building with potential views towards the south. Excessive height of the proposed development may impact upon the amenity of the future residential flat building with regard to views.

Clause 4.4 - Floor Space Ratio

The proposed development is in excess of the maximum permissible floor space ratio. The permitted floor space ratio is 1.7:1 and the proposed is 1.74. The proposal is in excess by 84m².

Clause 4.6 - Exceptions to Development Standards – with respect to Floor Space Ratio.

The applicant has indicated that the increase in floor space ratio is minor and would not be noticeable in the resultant building form.

The applicant's argument is not considered to be well founded. The argument does not address the objective of the clause which is to achieve better outcomes for and from the development by allowing flexibility in these particular circumstances.

There is no justification why this building should exceed the requirements of the stipulated floor space ratio and have a bulk and scale greater than that envisaged by Council.

Lane Cove Development Control Plan

Variations to Council's Development Control Plan/Policies

As indicated in the preceding policy compliance table, the proposal does not meet the requirements for the following:

Front setback:

The front balconies towards the west do not meet the front setback requirements. The front boundary setback for the front balconies is 5.6m as against a minimum requirement of 6.9m (+1.3m)

The effect of this non compliance would provide a lesser amenity for balcony users given the close proximity to the boundary and a reduced opportunity for landscaping at the front of the building.

Side setbacks:

The proposal does not meet the north and the side setback requirements. The minimum side setback requirement is 6.0m up to 4 storeys and 9.0m for 5-8 storeys. The proposed northern side boundary setback is 5.79m for all the six storeys. The proposed southern side boundary setback is 3.31m for all the six storeys.

The SEPP 65 assessment identifies the non compliances with side boundary setbacks as an issue.

The non compliance to the southern boundary results in increased overshadowing to the Council reserve to the south. This area has recently been rezoned to R4 High Density Residential and this reserve, which is currently under utilised, would provide an essential active open space element in the area. The proposal would also dominate the streetscape to the south, by its close proximity, design and height.

Rear setback:

The proposal does not meet the rear setback requirements. The minimum rear setback requirement is 6.0m up to 4 storeys and 9.0m for 5-8 storeys. The proposed rear setback is 4.57m for all the six storeys.

The non compliance with the rear boundary setback is significant, particularly on the upper levels where the setback requirement is 9m. The non compliance again would place a large structure close to a boundary and this would result in unacceptable visual bulk and scale.

Parking podium height:

The proposal does not meet the requirement for the maximum height of the parking podium. The maximum permissible height of the parking podium is 1.2m. The height of the podium adjoining the front boundary varies between 1.2m to 3m and the height adjoining the southern and rear boundaries is 3.0m which is in excess of the maximum permissible.

The proposal dominates the streetscape to the south, by its close proximity, design and height. It is important to note that in addition to the podium, a balustrade is also provided which further increases the height of this structure to 4.2m within 1.8m from the lot boundary for a length of over 40m.

Single aspect solar access dwellings:

The proposal does not meet the requirement for maximum number of single aspect solar access dwellings. The living rooms and balconies of all six dwelling towards the south west corner of the proposed building would not have any direct solar access. These 6 dwelling constitute 13% of the proposed dwellings which do not have any direct solar access as against a maximum permissible of 10% (4 dwellings).

This is not supported from an amenity viewpoint and is contrary to the SEPP 65 Principle.

Accessible links from the proposed open spaces to public spaces:

Accessible links from the proposed open spaces to public spaces have not been adequately provided. The entrance to the building is not accessible. It is not acceptable to require mobility-impaired people to enter via the car park.

OTHER PLANNING INSTRUMENTS

SEPP 55 – State Environmental Planning policy No.55 – Remediation of Land

In accordance with Clause 7 of this instrument, Council is required to consider whether land is contaminated prior to granting consent to carrying out of development on this land.

The Contamination Assessment (Geotechnique Pty Ltd, June 2010) identifies two separate locations where contaminant exceeds the Assessment Criteria. The assessment concludes that removing contamination from the site and/or remediation would render the site suitable for the proposed use. Details of this issue are contained in the Referral Section of this report under “Manager Environmental Health (Soil contamination)”.

SEPP 65 – Design Quality of Residential Flat Development:

The assessment of the proposed development has been carried out by Timothy Williams & Associates Pty Ltd. The issues raised have been discussed in the report above. A full copy of his report is attached. **(AT1)**

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (the SREP) and Sydney Harbour Foreshores and Waterways Area Development Control Plan for the SREP (the DCP)

Under the SREP, Part 3 Division 2 sets out *Matters for consideration* to be considered in assessing new development. In relation to clauses 20-27 listed for consideration, the location of the proposed works would not raise any significant issues.

Under the DCP the proposed works would not raise any significant issues in relation to the two relevant sub-sections, i.e. 5.3 (*Siting of buildings and structures*) and 5.4 (*Built form*).

State Environmental Planning Policy (Infrastructure) 2007

While an acoustic report has been submitted along with the application, the report does not outline the measure that would be adopted for impacts of road noise and vibration. A validation report would be required prior to issue of any occupation certificate outlining the manner in which the building has been designed to accommodate this matter.

State Environmental Planning Policy (Building Sustainability Index) 2004

A Basix report has been submitted along with the application. The Basix report has been amended subsequent to the amendments to the proposal. No issues are raised with regard to water, thermal comfort and energy targets.

79C(1)(b) - The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

Overshadowing

While the proposed development would not impact upon the adjoining buildings, it would overshadow the public reserve to the south. This reserve would be increasingly important in the locality as the other sites redevelop to high density residential.

Other issues relating to the building's non compliances and impact on the locality have been discussed previously in this report.

Section 79C (1) (c) - The suitability of the site for the development

The site was recently rezoned to high density residential from industrial. Given the location of the site and surrounding development, is considered suitable for a

residential use. As noted, contamination of the site is not a major issue and can be adequately dealt with.

Section 79C (1) (d) - Any submissions made in accordance with this Act or the Regulations.

The original proposal was advertised in accordance with Council's policy of Community Consultation. A total of 7 submissions have been received. The amended proposal, given the nature of the amendments was not required to be renotified.

Streetscape & existing character and environment:

The proposal does not enhance the existing character of Burns Bay Road. The building would be three storeys higher than other buildings and exceeds the maximum height limit.

Officer's comment: The proposed building would be higher than the adjoining buildings, the maximum permissible height is 21m which could accommodate a 6 storey development and would be the emerging character within this area. The proposal does exceed the overall height limit by 800mm.

Essential services and infrastructure:

Inadequate infrastructure available with regard to water, storm water drainage, telecommunications, electrical, and transport facilities.

Officer's comment: The subject site was rezoned R4 High Density Residential by LEP 2009. As part of the rezoning process (section 62 Consultation), public authorities were consulted. The developer would be responsible for any amplification required by the redevelopment.

Visitor parking:

Provision of 9 Visitors parking spaces is inadequate particularly as there is no on-street parking. The development would generate substantial parking requirement.

Officer's comment: The visitor car parking spaces provided are in accordance with the requirements of the Development Control Plan.

Loading and unloading area:

There is no area for loading and unloading of goods by delivery vans and removals during construction and ongoing.

Officer's comment: In the amended plans an area for loading and unloading has been provided. This area was chiefly provided to cater for garbage vehicles. The potential however remains for obstruction to the basement carpark during times when a truck is rear loading.

Parking during construction:

No provision has been made for parking of construction vehicles.

Officer's comment: The applicant has stated that a construction management plan would be provided at the construction certificate stage. If approved, this would form a condition of consent.

Distant views:

The proposed development would impact upon distant views from the residential flat building towards the east and adjoining buildings.

Officer's comment: The residential flat building towards the east is located at a significant distance from the proposed development. The proposed development is not within the line of vision to water view from the existing development towards the east. Therefore it is considered that the proposed development would not adversely impact views from the existing development towards the east.

Access and traffic:

There would be excessive construction and ongoing traffic on the access road from Burns Bay Road. This would compromise safety of pedestrians and passing cars. Hazardous vehicular access from Burns Bay Road.

Officer's comment: The transport infrastructure is considered adequate to cater to the increase in traffic because of the proposed development. An onsite reversing bay has been provided in the amended plans. If approved, a Construction Management Plan would be required to address construction parking and vehicle movements.

Impact on privacy

The proposed development would impact upon the privacy of the residential flat buildings towards the east of the proposed development.

Officer's comment: The residential flat buildings towards the east are a significant distance (approximately 75m) from the proposed development and privacy is not considered an issue.

Impact upon sunlight:

The proposed development would impact upon solar access of the residential flat buildings towards the east of the proposed development.

Officer's comment: The residential flat buildings towards the east are at a considerable distance (approximately 75m) from the proposed development. The shadow diagrams indicate that the proposed development would not overshadow the residential flat buildings towards the east between 9am & 3pm and in this regard it is considered that solar access would be reasonably retained.

Floor Space Ratio:

The proposal does not comply with the maximum permissible floor space ratio of 1.7:1.

Officer's comment: It is agreed that the proposed development would exceed the maximum permissible floor space ratio, and this aspect of the proposal has not been supported.

Set backs:

The proposal does not comply with the front, side and rear setback requirements.

Officer's comment: It is agreed that the proposal does not comply with the front, side and rear setback requirements. As elaborated previously in this report, this aspect has not been supported.

U-turn on Burns Bay Road:

Vehicles travelling south and want to take a u-turn, turn left down the slip road, take a u-turn and then utilize the traffic lights to then travel north. The median strip should be extended further south east to improve the safety of this area.

Officer's comment: While it is accepted that vehicles travelling south and want to take a u-turn utilize the slip road and traffic lights to do so, there are no requirements from RTA or Council's Traffic Manager to extend the median strip.

Section 79C (1) (e) - The public interest.

The proposed development does not meet the requirements of Lane Cove Council's Local Environmental Plan 2009 and the Development Control Plan.

The proposed dwellings would not have adequate amenity with regard to solar access and privacy. Non compliance with the development standards and controls would set an undesirable precedent and is not considered acceptable. In view of the above it is considered that the proposed development is not in the public interest.

CONCLUSION

The application has been assessed having regard to the relevant Planning Instruments and Council controls, as well as public good and suitability of the site.

The proposed development does not meet the requirements of the Lane Cove Council's Local Environmental Plan 2009 with regard to maximum permissible Floor Space Ratio and maximum permissible Height requirement. The proposed development does not meet the requirements of Council's Development Control Plan in particular with regard to front, side and rear setback requirements. The reduced side setbacks would create an additional constraint for the design of the future residential flat building development towards the north and increased overshadowing of land to the south. The proposed development would dominate the southern streetscape.

The proposed dwellings would not have adequate amenity with regard to solar access and privacy. The proposed development would not provide adequate disabled access and is not considered acceptable. A parked garbage collection truck, particularly a truck with rear loading, would obstruct vehicular access to the basement car park. Non compliance with the development standards and controls would set an undesirable precedent and is not considered acceptable.

The matters under Section 79C of the EP&A Act have been considered and the proposed development is considered to be inadequate and unsatisfactory.

RECOMMENDATION

That pursuant to Section 80(1)(b) of the Environmental Planning and Assessment Act, 1979, as amended, the Sydney East Joint Regional Planning Panel refuses development consent to Development Application D148/10 for the demolition of the existing building and construction of a six storey residential flat building with 36 dwellings and associated basement parking on 290 Burns Bay Road, Lane Cove for the following reasons:

1. The proposal is not consistent with the principles of the Disability Discrimination Act 1992. It is not justified that the proposal need not comply with the requirements of the Disability Discrimination Act 1992 on

the grounds that the topography of the surrounding area is such that the public footpath, access to public transport, public open spaces are not readily accessible to people with disability. The entrance to the building is not accessible. It is not acceptable to require mobility-impaired people to enter via the basement car park. The amended proposal does not adequately give access to the front entrance (and presumably to the letterboxes) which could be considered equal access for someone with a disability under the terms of the DDA and does not adequately overcome limitations to the site that obstruct access. Insufficient supporting detail has been provided by the applicant to demonstrate compliance with the DDA requirements.

2. A parked garbage collection truck, particularly a truck with rear loading, would obstruct vehicular access to the basement car park which is not acceptable. The garbage collection point is very close to bed rooms. This would lead to noise nuisance potential.
3. It is assumed that the garbage collection point would be used for all service/loading activities. A removalist van/truck with rear loading would require more space towards its rear and would park in a manner to obstruct vehicular access to the basement car park which is not acceptable. There is inadequate space off site to accommodate a parked truck.
4. The turning bay provided for the turning of the trucks is inadequate. A truck reversing within the premise would go over part of the footpath and steps provided at the south-west corner in the amended landscape plan. The 'Truck Swept Path' overlaps a portion of the existing front boundary fence.
5. In the amended plans the width of the internal basement ramp has been reduced from the originally proposed 5.5m to 3.6m which does not comply with Australian Standard AS2890.1.
6. The proposal does not meet the objectives of State Environmental Planning Policy 65 –Design Quality Principal –Built form. The 6 storey northern wing with habitable rooms is too close to the northern side boundary with a setback of less than 6.0m which would not allow adequate separation from the adjoining future residential flat building towards the north.
7. The proposal does not meet the objectives of State Environmental Planning Policy 65 –Design Quality Principal – Density. The proposed development is in excess of the maximum permissible floor space ratio. The proposal is in excess by 84m² which is more than the area of a two bedroom dwelling. Therefore the proposal is in excess of Council's desired future density by at least one dwelling.

8. The proposal does not meet the objectives of State Environmental Planning Policy 65 –Design Quality Principal -Resource, energy and water efficiency. The east/west wing has an external access way along the northern façade which would limit the likelihood of people utilising the terraces or façade openings to the northern light. Apartments on the north/south wing, which have small north facing windows would need to have both the north-facing windows and the openings to the terraces screened with louvers for privacy which would reduce the exposure to the sun.
9. The number of single southerly aspect dwellings provided is 13% (6 dwellings) which is in excess of a maximum permissible of 10%. Living rooms and the balconies of the south-west corner dwellings have no northern sun exposure, resulting in inadequate amenity to these dwellings.
10. The proposal does not meet the objectives of State Environmental Planning Policy 65 –Design Quality Principal - Amenity. The north facing ‘private terraces’ are not “private”. These terraces are part of a public access way. The external access way may result in these terraces to be closed off for privacy which would compromise cross ventilation and north light to the dwellings in the East /West wing.
11. The proposed development is in excess of the maximum permissible height limit of clause 4.3 of the Lane Cove Local Environmental Plan 2009. The proposal does not meet the objective of height of building. By exceeding the maximum height limit, the proposed development does not achieve a better outcome. The excessive height would increase overshadowing of public domain towards the south. Excessive height of the proposed development may impact upon the amenity with regard to potential views towards the south which would be obtained from the future adjoining residential flat building towards the north. The objection pursuant to Clause 4.6 of the Lane Cove Local Environmental Plan 2009 is not supported.
12. The proposed development is significantly in excess of the maximum permissible Floor Space Ratio of clause 4.4 of the lane Cove Local Environmental Plan 2009. The bulk and scale of the proposed development would be in excess of that envisaged as the desired future character of the area and would not achieve a better outcome. The objection pursuant to Clause 4.6 of the Lane Cove Local Environmental Plan 2009 is not supported.
13. The proposal does not meet the front setback requirements. All balconies along the western elevation encroach more than the maximum permissible. The balconies encroach on the required setback, at all levels, by 1.3m. This results in reduced amenity for balcony users given

the close proximity to the boundary and a reduced opportunity for landscaping at the front of the building.

14. The proposal does not meet the northern side boundary setback requirements. The proposed northern side boundary setback is 5.78m for all the floors as against a minimum requirement of 6.0m up to 4 storeys and 9.0m for 5 and 6 storeys which is less than the minimum permitted. This would adversely impact on future development on the adjoining site and amenity of future residents to the proposed development.
15. The proposal does not meet the southern side boundary setback requirements. The proposed southern side boundary setback is 3.31m for all the floors as against a minimum requirement of 6.0m up to 4 storeys and 9.0m for 5 & 6 storeys which is less than the minimum permitted, resulting in excessive building bulk close to the southern boundary and increased overshadowing of the public open space.
16. The proposal does not meet the eastern (rear) boundary setback requirement. The proposed eastern rear boundary setback is 4.57m for all the floors as against a minimum requirement of 6.0m up to 4 storeys and 9.0m for 5 and 6 storeys which is less than the minimum permitted, resulting in excessive building bulk and scale close to the rear boundary.
17. The proposal does not meet the southern, western and eastern maximum podium height requirements. The basement is 3.0m (plus 1.2m balustrade) above the natural ground level as against a maximum permissible 1.2m. The proposal would appear to be a seven (7) storey scale along part of the western and eastern elevations and along the southern elevation. The high podium wall, towards the south, would unreasonably dominate the streetscape.
18. Non compliance with the development standards and controls would set an undesirable precedent and not considered acceptable. The proposed development would not be in the public interest.