

Item

728-730 PACIFIC HIGHWAY, GORDON – SUPPLEMENTARY REPORT

EXECUTIVE SUMMARY

PURPOSE OF REPORT:

To consider the amended plans lodged with the Joint Regional Planning Panel (JRPP) in respect of Development Application No.0022/10 for demolition of two existing dwellings and ancillary buildings and construction of a residential flat building comprising 45 units with basement car parking and landscaping.

BACKGROUND:

An assessment report was prepared and presented to the JRPP for its determination of Development Application No.0022/10 of the meeting of 29 April 2010. The applicant submitted amended plans to the JRPP prior to the meeting. The JRPP resolved to defer consideration of this matter pending assessment of the amendments by council officers.

COMMENTS:

The amended plans have been assessed and the matter is reported back to the JRPP for determination.

RECOMMENDATION:

Refusal.

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PURPOSE OF REPORT

To consider amended plans submitted in respect of DA0022/10 for the demolition of two existing dwellings and ancillary buildings and construction of a residential flat building comprising 45 units, basement car parking and landscaping works.

BACKGROUND

An assessment report for the subject development application with a recommendation of refusal was provided to the Joint Regional Planning Panel (JRPP) meeting of 29 April 2010. The JRPP deferred consideration of this matter pending an assessment of the amended plans by council officers. The amended plans have been assessed and the matter is now referred back to the JRPP for determination based on the amended plans.

It is also important to note that since this matter was deferred the Ku-ring-gai Local Environmental Plan (Town Centres) 2010 was gazetted on 25 May 2010. There is a savings provision within this policy under Clause 1.8A that states:

"If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced."

In summary, the amendments consist of the following:

Car-park/ Basement Level 3

- The storage area between the front building line and street boundary has been deleted.

Car-park/ Basement Level 2

- Plant room area between the front building line and street boundary has been deleted.
- Five (5) bicycle spaces have been added to this level.

Lower ground floor

- Unit 3 has been reconfigured.
- The garbage storage area has been relocated and the former garbage area between the building line and street front has been deleted. The bicycle storage has been relocated and visitor parking spaces have been reduced by one space from 13 to 12.

Upper ground floor

- Unit 6 has been re-configured with the relocation of a bedroom from the external north western wall to create a studio style layout. The former bedroom is replaced with dining room.
- Units 7 – 9 have been reconfigured with the bedroom area being relocated to the dining room area. Other internal changes have been made to accommodate reconfiguration including a new study nook and the bathroom has been relocated to previous bedroom area;

First floor

- Unit 16, a wardrobe has been provided to the bedroom and the previous robe floor area has been re-allocated to the adjoining unit (17).

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- Units 17 and 18 have been internally re-configured in a similar manner including a new laundry location due to increased floor area gained from units 16 and 19 respectively, as noted in the above and below points. Operable highlight windows have been provided to the bedroom and bathroom and light-well of each of these units.
- Unit 19, a wardrobe has been provided to the bedroom and the previous robe floor area has been re-allocated to the adjoining unit (18).
- The terrace to the master bedroom of Unit 22 has been fitted with a privacy screen.
- Bedroom (2) to Unit 22 has been deleted, which results in the unit containing only a single bedroom.

Second floor

- Unit 25 has been re-configured by relocation of the bedroom to the dining room area. Other internal changes have been made to accommodate reconfiguration including a study nook. The bathroom has also been relocated to the previous bedroom area.
- Unit 26, a wardrobe has been provided to the bedroom and the previous robe floor area has been re-allocated to Unit 27.
- Units 27 and 28 have been internally re-configured in a similar manner, including new laundry location within the increased floor area gained from Units 26 and 29 respectively, as noted in the above and below points. Operable highlight windows to the bedroom and bathroom have been provided to the light-well of Units 27 and 28.
- Unit 29, a wardrobe has been provided to the bedroom and the previous robe floor area has been re-allocated to Unit 28.
- Bedroom (2) to Unit 33 has been deleted, which results in the unit containing only a single bedroom.

Third floor

- Unit 35 has been re-configured with the bedroom being located in the current location of the terrace. The terrace has been relocated adjacent to the bedroom. The bedroom has now been provided with a wardrobe and the previous robe floor area has been re-allocated to the adjoining Unit 36 as a store area.
- Units 36 and 37 have been internally re-configured in a similar manner including new laundry location. Operable highlight windows provided to the light-well.
- The bedroom to Unit 38 has been provided with a wardrobe and the previous robe floor area has been re-allocated to the adjoining Unit 37 as a store area.

Penthouse floor

- The terrace area has been reduced in size from 15.34m² to 9.93m².
- A skylight window has been provided to the roof of Unit 41 above the living room.

Site/ roof plan

- A skylight window has been provided to Unit 44 above the bedroom and bathroom.
- A privacy screen has been provided to the terraces of Unit 22 and 45.

General and elevation

- Aluminium fixed fins to the light-well have been angled to approximately 45°.
- One of the two louvred awning shades outside Unit 34 has been deleted and left as a void.
- Glazed roof to light-well deleted.
- Changes to elevations to reflect those noted above under the floor plan changes.
- The secondary powder coated entry gate to southern end of front (Pacific Highway) fence reduced in height to 1.2m.
- The unit mix has changed to 9 x 1 studio, 31 x 1 bedroom, 1 x 2 bedroom and 4 x 3 bedroom. Previously the unit mix was 14 x studio, 26 x 1 bedroom, 1 x 2 bedroom and 4 x 3 bedroom.

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CONSULTATION – COMMUNITY

In accordance with Council's Notification DCP 56, owners of surrounding properties were given notice of the amended plans for a period of two weeks from 5 May 2010 to 19 May 2010. In response, submissions from the following were received:

- Delmia MacKenzie – 2 Bushlands Avenue, Gordon
- PC & L Holdsworth – 21 Yarabah Avenue, Gordon
- D & TF Bao – 32 Lennox Street, Gordon
- Tony & Nicki Packer – 9 Yarabah Avenue, Gordon
- Edwards Planning on behalf of David Hyndman & Sonya Langelaar – 724 Pacific Highway, Gordon
- Robert Graham Anderson & Karen Anderson – 2A Bushlands Avenue, Gordon

The submissions raised the following issues:

Fire access and risk factors in exiting the site to the Pacific Highway

If the application were to be supported a condition of consent would require the development to comply with the Building Code of Australia, which provides appropriate design outcomes in relation to fire egress.

Overshadowing of surrounding properties

The additional information has provided details of the extent of overshadowing, particularly to the adjoining property to the south at 724-726 Pacific Highway. The information demonstrates that the dwelling's northern orientated windows and principle open space will receive a minimum 3 hours of solar access during mid winter, which is compliant with DCP 55 requirement.

Excessive number of apartments when so many are unoccupied

No concerns are raised in relation to the number of units within the development. However, there is significant concern with the amenity afforded to a number of units contained within the development. Further, concern is also raised in regard to the pronounced imbalance in the mix of units with 89% being studio or single bedroom units. A reduction in the number of units may assist in addressing the amenity concerns discussed in the original application.

Poor design

It is agreed that there are significant detrimental impacts as a consequence of the proposed design. Particular concerns have been raised by Council's Urban Design Consultant and Heritage Advisor in this regard. These concerns are included as reasons for refusal of the application.

Construction noise

This issue can be managed through appropriate conditions of consent should the JRPP resolve to approve the application.

Impacts on adjoining properties

This issue can be managed through conditions of consent should the JRPP resolve to approve the application.

Design amendments are likely to lower CIV below \$10,000,000 so JRPP would not be the consent authority

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There is no evidence to support the claim that the amendments would reduce the CIV below \$10,000,000. Nevertheless, the development application as originally lodged exceeded the \$10,000,000 CIV. As a consequence, the JRPP is the consent authority.

***Detrimental landscaping impacts with loss of mature vegetation and replacements do not achieve a similar mature size.
Impacts on trees to be retained***

Council's Landscaping Assessment Officer has raised a number of issues in regard to the proposed landscaping. In particular, there is a lack of sufficient information to determine the impacts of the development on the vegetation to be retained. This issue has not been adequately addressed by the additional information submitted with the amended plans. As a consequence this issue remains outstanding and is included within the reasons for refusal.

Lack of 12m separation to adjoining dwellings to 2 Bushlands Avenue

The proposal is compliant with the 12m separation requirement to 2 Bushlands Avenue. However, the proposal still fails to meet the separation requirement to 734 Pacific Highway.

Detrimental visual impacts on 2 & 2A Bushlands Avenue

The amended plans do not effect any change to the bulk and scale of the development.

Cumulative impacts of this development and those proposed along 2, 2A and 1,3,5 Yarabah Avenue

The proposal remains unsatisfactory for a number of reasons as listed below. The detrimental impacts are unacceptable and form the basis of the recommendation to refuse the application.

COMMENTS

It is understood that amended plans have been lodged to address the recommended reasons for refusal. The following is an assessment of the amended plans and information against each of the reasons for refusal. Recommended to the JRPP meeting of 29 April 2010 to determine whether and to what degree they have been addressed by the amendments

"1. DEEP SOIL LANDSCAPING

The development does not comply with the minimum deep soil landscape area requirement of Clause 25(2) of the KPSO.

Particulars

- (a) By operation of clause 25(2)(c) of the KPSO the proposal must achieve 50% deep soil landscape area. The proposal has a deep soil landscape area of approximately 48%.*
- (b) A SEPP 1 Objection has not been submitted. The development therefore cannot be approved."*

Planning Comment:

To address the non compliance with the deep soil landscape area standard, the submission from Conzept Landscape Architects suggests that the landscape plan is to be amended so that gravel pathways and courtyard areas within private open spaces do not exceed 1 metre in width. These changes may assist in reducing the non compliance however this cannot be accurately determined without an amended landscape plan. At the time of writing this supplementary report no amended plans were submitted and the application must be considered using the available information which indicates a deep soil landscape area of approximately 48%.

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As the deep soil landscape (DSL) area control is a development standard, without the amendments demonstrating compliance with the control and in the absence of a SEPP 1 Objection, the application cannot be supported.

"2. SEPP 65 DESIGN VERIFICATION STATEMENT"

The proposal does not include a valid design verification statement as required by Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000.

Particulars

The submitted design verification statement relates to the previous DA (638/09) and predates the current design."

Planning Comment:

The applicant has now submitted a design verification statement in accordance with the provisions of SEPP 65 and Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000. As a consequence, this matter has now been adequately addressed.

"3. SEPP 65/RESIDENTIAL FLAT DESIGN CODE"

The proposal is inconsistent with a number of the requirements and rules of thumb contained in the RFDC referenced in SEPP 65.

Particulars***Site Analysis-***

The submitted site analysis is unsatisfactory and a number of relevant matters have not been adequately considered, including the following:

- (a) *the form and character of adjacent and opposite buildings in the streetscape, including both sides of any street that the development fronts*
- (b) *location and important characteristics of adjacent private open spaces*
- (c) *location, use, overall height (storeys, metres) and important parapet/datum lines of adjacent buildings*
- (d) *location and height of existing windows and balconies on adjacent properties facing the site*
- (e) *location, height and characteristics of adjacent walls and fences*
- (f) *location of major trees on adjacent properties and street trees, identified by size and botanical or common names*
- (g) *topography, showing spot levels and contours 0.5 metre intervals for land adjoining the site*
- (h) *views to and from the site*
- (i) *orientation and overshadowing of adjoining properties by neighbouring structures and trees*
- (j) *location of utility services, including electricity poles, stormwater drainage lines, natural drainage, kerb crossings and easements*
- (k) *significant noise sources on and in the vicinity of the site, particularly vehicular traffic, train, aircraft and industrial operations noise*
- (l) *written statement explaining how the design of the proposed development has responded to the site analysis must accompany the development application.*

Crime risk assessment

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- (a) *The provisions of the Residential Flat Design Code require a formal crime risk assessment for all residential development of more than 20 dwellings. This provision applies to the proposed development and a crime risk assessment has not been submitted.*
- (b) *A lighting plan for all communal open spaces and pedestrian entry points should be provided.*

Visual privacy

- (a) *The proposal does not achieve the 12m building separation to the adjoining dwellings at Nos. 724 and 726 Pacific Highway, Gordon, and the proposal would have an adverse privacy impact on these properties, due to the proximity of balconies and living rooms to the adjoining rear yard and dwelling.*

Apartment layout

- (a) *A total of 24 units (53%) have a depth greater than 8m resulting in poor internal amenity for occupants.*
- (b) *The back of the kitchens to units 3 and 13 are greater than 8m from a window.*

Internal circulation

- (a) *The ground floor of the proposed development has 10 units accessed from a single corridor, being in excess of the maximum of 8 units.*

Natural ventilation

- (a) *The building depth of 19m-25m is greater than the typical range of building depths which support natural ventilation, being 10m-18m.*
- (b) *Only 46% of units are naturally cross ventilated (excluding the units relying on the vertical light-well, which does not provide adequate cross ventilation)"*

Planning Comment:

The following comments relate to the individual points noted above:

Site analysis:

An amended site analysis plan (SK3DA) and site analysis statement have been submitted as part of the amendments and associated documentation submitted to the JRPP. The plan includes a sketch of the streetscape (Pacific Highway) view, including the existing buildings located at the subject and adjoining sites. Additional notations and the supplementary statement have addressed those points noted in the reason for refusal. It would have been useful to provide a sketch or at least an outline of the front elevation of the proposed development in this context to allow for a better understanding of the development's relationship to these contextual elements. The amended site analysis plan has removed the plan view of the proposed development, which is less than ideal. Nevertheless, using the originally submitted and additional information there is sufficient detail to assess the impacts of the development in this regard. As a consequence, this element of the reason for refusal has been adequately addressed.

Crime risk assessment:

The amended information lodged includes a crime risk assessment report prepared by Chapman Planning. The report applies the four Crime Prevention Through Environmental Design (CPTED) principles against the development and thereby addresses reason for refusal (a).

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However, a lighting plan has not been provided. This is an important element of the information necessary to determine impacts in terms of crime risk assessment. This information is necessary to ensure there is an appropriate lighting plan in place to minimise the risk of crime incidents in this regard. As the applicant has failed to address this matter reason for refusal part (b) remains.

Visual privacy:

The applicant has put forward the following comments to address the visual privacy issue raised in the assessment report:

"We have provided a diagram (SK34 & SK35), which shows the separation distances between the habitable windows/ balconies of the proposed development in relation to the habitable windows on the adjoining property. In relation to the adjoining property at No. 726, we achieve visual privacy as we have maintained a minimum separation distance of 12m from the adjoining property. Where we have not met the minimum requirement of 12m (i.e. on the first floor), we have treated the windows of Unit 22 so that they are opaque and fixed from the sill up to a height of 2.1m. Above the height of 2.1m, these windows have an operable hopper section. Furthermore, a 2.1m high privacy screen has been added to the terrace of Unit 22.

In relation to the adjoining property at No. 732, this site is zoned 2(d3) which means they can do a similar type of development on their site as the one proposed on No. 728-730. The minimum side setbacks for a residential flat building in a 2(d3) zoning is 6m. The minimum side setback for the proposed development on the subject site is 6m. If the future development complies with the minimum 6m setback control, then there would be a 12m separation between both buildings, thus complying with SEPP 65's separation controls. Therefore, the current separation distances between the proposed building and the building on the adjoining property (No. 732) is irrelevant."

The proposal has been amended including a privacy screen and fixed opaque glazing (with openable top hopper) to Unit 22 located on the southern elevation of the development. These changes have addressed the privacy impacts to 726 Pacific Highway. However, it raises new concerns in relation to poor internal amenity to the bedrooms of Unit 22. The unit already has a southerly aspect and fixed opaque glazing to these bedroom windows will further reduce the already poor solar/ light access particularly during the winter months. This further supports the officer's position that the units have been poorly designed.

It is noted that the separation distances between the subject site and the adjoining development to the north at 732 Pacific Highway in Plans SK34 and SK35 fail to meet the separation requirements prescribed in DCP 55 and in the Residential Flat Design Code (RFDC). In relation to the impacts of the development on 732 Pacific Highway, the applicant's submission relies on the 'potential' future development of the site and the requirement to provide a 6m side boundary setback under Council's DCP and RFDC. This in turn results in the applicant dismissing the current circumstances as irrelevant. This is a poor planning approach and inconsistent with the planning controls. These controls do not suggest that future development of an adjoining development should take precedence over existing circumstances, particularly given hypothetical nature of this type of assessment. The applicant acknowledges the development fails to meet the separation requirement.

The issues raised in relation to the impacts to 732 Pacific Highway have not been adequately addressed, consequently they remain as a reason for refusal. The impact on 724-726 Pacific Highway, has been adequately addressed by the amendments.

Apartment layout:

To address this issue, the applicant has noted that the architectural drawings have been amended so that the distance between a window and the back or a living / bedroom area is no more than 8m. Nevertheless, the depths of the units remain unchanged. It is acknowledged that the changes also provide for louvered windows to the 'light-well'. The improvements have also been acknowledged by Council's Urban Design Consultant. Despite some of the units having access to the light-well and the nominal design changes, the depths of units remain unchanged. As a consequence the objective of the control has not been met and this remains as a reason for refusal.

It is acknowledged that the design changes have resulted in the applicant addressing issue (b). The back of the kitchens to Units 3 and 13 are no longer more than 8m from a window. This issue no longer remains a reason for refusal.

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Internal circulation:

The applicant has put forward the following response to this reason for refusal:

"the proposed ground level corridor has 2 lift cores thus meaning we are allowed to have 8 units per lift core. Therefore development complies with the control..

It should be noted that this is the only corridor in the development where 10 units access it and its for increased security and better circulation. The proposed void, internal garden and light-well also provide relief from the length."

The rule of thumb under the internal circulation provision of the RFDC notes in general where units are arranged off a double loaded corridor, the number of units accessible from a single core/ corridor should be limited to eight. The applicant has interpreted that 'core' refers to a 'lift' core. This is a restricted interpretation of the control and does not fully reflect the requirement as discussed and shown in plan view under the RFDC. Effectively, the development remains as a double loaded corridor with two lift access points. The 'Better Design Practices' provision under Part D3 of the RFDC notes, inter alia, to minimise corridor lengths to give short, clear sight lines. The provisions go on to note that shorter lengths are to support better apartment building layouts by designing buildings with multiple cores and limiting the number of units off a circulation core on a single level. Given that the main concern with this proposal is poor internal amenity, this remaining highlights the inappropriate design of the development.

It is not agreed that the development complies with the provision contained in the RFDC or DCP 55 in this regard. Further, it is not agreed that the higher number of units along the corridor would improve security or improve circulation. To the contrary, in terms of the CPTED principles, there should be a minimal number of persons able to access such secure areas so there is a controlled access environment. The more persons able to access a secure area will allow more 'unfamiliar' people within the area, which is to be avoided.

In addition to the above, the applicant in responding to the concern has not adequately identified how the non compliance has been offset by a high level of amenity in the common lobby, as noted in the assessment report. The additional information has not adequately addressed this reason for refusal, consequently the issue remains.

Natural ventilation:

The RFDC Rule of Thumb requires that 60% of residential units should be naturally cross ventilated. The applicant's submission states the proposal complies with 64.44% of the units being cross-ventilated making reference to Plan SK36 to support this claim. In part, the applicant relies on the light-well and an operable skylight for this calculation. In the original assessment those units relying on the light-well (17, 18, 22, 27, 28, 32, 36, 37 and 41) were excluded from this calculation and, as a consequence, only 46% of the units were deemed to be cross ventilated.

Having reviewed Plan SK 36 it is noted that units 22, 32 and 41 do not solely rely on the light-well for cross ventilation and therefore it is considered reasonable to include these units as being cross ventilated. As a result of these units being cross ventilated the non compliance is reduced. However, Unit 44 is excluded as it relies entirely upon an operable skylight for cross ventilation. This is a poor design response in an attempt to achieve compliance. The development therefore provides 22 out of the 45 units or 48.8% with cross-ventilation. The application remains non compliant with this control.

The building depth has not been altered and a further detrimental acoustic amenity impact has arisen from the design changes as noted by Council's Urban Design Consultant. Concern is raised with the use of the light-well to the bedrooms of units 17, 18, 27, 28, 31, 32, 36, 37, 40 and 41 for ventilation. Noise reverberating within the light-well will have a significant detrimental amenity impact to occupants of the units and is therefore unacceptable.

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The applicant has not addressed point (a) or (b), the development remains non compliant with the cross-ventilation requirement and an additional acoustic amenity impact has resulted from the design changes. Given that these issues have not been addressed by the additional information and there are now new concerns, the proposal is unacceptable in this regard.

"4. DCP 55 - MULTI-UNIT HOUSING"

The proposal does not comply with a number of the requirements contained in DCP 55.

Particulars

- (a) *The proposal will potentially adversely affect Nos. 724-726 Pacific Highway with regard to overshadowing at midwinter. Basic shadow diagrams (in plan view) for 9am, 12 noon and 3pm have been provided, however, the application does not identify whether at least 3hrs of sunlight would be retained to the habitable rooms and principal portion of private open space of these dwellings, particularly No. 726, being the immediately adjoining dwelling to the south, as required by s.4.5.1 of DCP 55.*
- (b) *Section 4.7 of DCP 55 requires that a range of unit types, sizes and layouts are provided in order to provide housing choice. The proposed development includes 40 studio and one bedroom units out of a total of 45 units. This is unsatisfactory with regard to housing mix, given the excessive number of studio and one bedroom apartments.*
- (c) *Four single aspect units have a southern orientation and this is non-compliant with s.4.5.1 of DCP 55 and unsatisfactory with regard to internal amenity for occupants and is indicative of the poor design of the building with regard to amenity.*
- (d) *The development is contrary to the aim of Part IIIA set out in Clause 25C(2)(g) of the KPSD which requires development to achieve a high level of residential amenity in building design for the occupants of the building through sun access, acoustic control, privacy protection, natural ventilation, passive security design, outdoor living, landscape design and indoor amenity."*

Planning Comment:

The applicant has put forward the following in relation to point (a) overshadowing:

"We have provided Ku ring gai Council with shadow diagrams from 9am, 12 noon and 3pm for summer, winter and for the equinox. Please refer to architectural drawings SDDIA-SDD9A.

The winter shadow diagrams demonstrated that the adjoining property at No. 726 receives a minimum of 3 hours sunlight, not only to its private open space, but as well the windows on its northern wall to where it adjoins the side boundary.

Furthermore, the shadow diagrams done for summer and for the equinox demonstrate that the pool on the adjoining property (No. 726) will receive a minimum of 3 hours. The shadow diagrams for winter in relation to this pool are irrelevant as the pool will not be used at the time of the year."

The additional shadow diagrams demonstrate that the northern windows to the adjoining property at 724-726 Pacific Highway and its principle private open space area receive a minimum 3 hours solar access. This is compliant with DCP 55 as a consequence the issue is now resolved.

The development has not been amended to address the issue raised in Point (b). The applicant has submitted a letter from a real estate agent supporting the limited apartment mix. The submission does not address the issue or provide sound planning grounds to support the significantly limited unit mix. As a consequence this issue remains.

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In response to Point (c) the applicant disagrees with the officer's calculation and claims that the proposed development has only one single south facing unit (12) and refers to Plan SK37 in support of this opinion. It would appear from the plan that the applicant is relying on the ability to face a direction other than south through windows from rooms or balconies to Units 22, 32 and 41 to demonstrate compliance. It is also noted that the applicant states that the development complies with the maximum requirement of 10% under the RFDC. It is not agreed that Unit 12 is the only southerly orientated unit. Nevertheless, it is agreed that four units (12, 22, 32 and 41) or 8.9% have a single southerly orientation, which meets the SEPP 65 requirement. Given that the development meets the provisions of the SEPP it is considered that this issue no longer remains as an issue.

The applicant has not specifically addressed Point (d). For the reasons given above, the application remains contrary to the aim of Part IIIA in clause 25C(2)(g) of the KPSD.

"5. LANDSCAPING

The proposed landscaping is unsatisfactory with regard to the provisions of the KPSD and DCP 55.

Particulars

- (a) *The proposed setbacks to retaining walls and private courtyards to the entire length of the northern and approximately half of the southern side boundaries are inconsistent with objectives that require adequate area for screen planting and viable tree planting to side setbacks. Substantial screen planting is required to side setbacks, consisting of layered screen planting in the form of small shrubs, large shrubs, small trees and tall trees. Screen planting is required for upper levels as well as for ground level. Proposed 1-1.5 metres width planting bed is considered insufficient space for the viable establishment of effective landscape treatment appropriate to the scale of the development (LEP194 25D(2)(a)(c), 25I(1)(d), DCP55 Section 4.1 C-8 (ii)).*
- (b) *The paved area or terrace provided to several of the ground floor units is too narrow for reasonable outdoor use (4m² (Unit 13) 4.5m² (Unit 14)). This is insufficient for ground floor units and would increase the likelihood of the future owners increasing the paved area to their units (decrease in deep soil).*
- (c) *The BASIX certificate has nominated 226.2m² of indigenous low water use species to common areas. A BASIX Plan has been submitted. There are no areas of indigenous low water use species nominated for individual units. The low water use plan is unsatisfactory for the following reasons:*

Areas of low water use species at the front of planting areas of moderate to high water use, west of Unit 3, are not supported. Garden beds are not clearly defined as areas of high or low water use.
- (d) *The proposed above ground detention area is located within the front setback and is 6.7m from the front boundary. This is not supported due to its impact on landscaping objectives of the zoning including the 'provision of sufficient viable deep soil landscaping and tall trees in rear and front gardens' (C-3, 4.3 DCP55, 25D(2)(b))."*

Planning Comment:

The additional information was referred to the Landscape Assessment Officer, whose comments are contained below. The amended plans and information have partly addressed the above reasons for refusal however, as noted within the Landscape Assessment Officer's comments a number of issues remain outstanding. In short, reasons (a), (b) and (d) have been addressed and no longer remain as reasons for refusal. Reason (c) relating to BASIX was not addressed within the submitted information consequently it remains an outstanding issue.

"6. HEIGHT

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The building height (storeys) exceeds the 5 storey limit

Particulars

- (a) *The Carpark / Basement Level 1 and Lower Ground Floor (at RL 118.00) contains both car parking and three residential units and therefore the entire storey is included for the purposes of calculating the maximum number of storeys under subclause (8). On this basis, the proposal is partly 6 storeys in height.*
- (b) *No SEPP 1 objection has been submitted in relation to this technical non-compliance with the storeys height control. The development therefore cannot be approved."*

Planning Comment:

To address this issue, Chapman Planning Pty Ltd has lodged an Objection under State Environmental Planning Policy No.1. To address the adequacy of the SEPP 1 Objection, the following assessment has adopted the criteria established in the Land and Environment Court in *Winten Property Group Ltd V North Sydney Council*, [2001] NSWLEC 46 and more recently in *Wehbe v Pittwater Council* [2007] NSW LEC 827:

Whether the planning control to be varied is a development standard

It is agreed that the requirement contained in Clause 25(5) is a development standard.

The underlying objective or purpose of the standard

The KPSO control does not specifically provide objectives for the number of storeys standard. The underlying objectives of the standard can be found within residential zone objectives contained within Clause 25D(2) of the KPSO and are listed from (a) to (s). The planning consultant has also drawn from the RFDC objectives:

- *"To ensure future development responds to the desired scale and character of the street and local area;*
- *To allow reasonable daylight access to all developments and the public domain."*

The applicant has provided the following to demonstrate the development meets the site's zone objectives contained in the KPSO:

- *The development proposal meets the built upon area control of 35% of the site area and as addressed the site provides viable deep soil landscape area.*
- *The residential flat building has been designed to maximise solar access to the main living areas and private open space with 80% of dwellings receiving a minimum of 3 hours of solar access. Further, the building will not unreasonably overshadow the surrounding properties meeting the design controls contained in section 3.5 and 4.5 of DCP 55.*
- *The development proposal has been designed to promote causal surveillance of the private and public domain and has defined/ controlled access for safety and security.*
- *The proposed dwellings have adequate storage."*

In addition to the above, the applicant has provided the following submission regarding the development's performance against those objectives under the RFDC:

"The development proposal meets the building height objectives contained in the RFDC. The building presents as a 4-5 storey building and meets the other development standards applied to residential flat buildings responding to the desired scale and

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character of the locality. Further, the proposal meets the building height control of 17.5m contained in the Draft Ku ring gai town Centres LEP 2008.

The overall height of the building is consistent with the intent of the controls being 4-5 storeys and the overshadowing impacts to the adjoining properties is not considered unreasonable for this scale of development."

Generally, it is agreed that the development meets the bulk and scale provisions contained within the relevant planning standards and controls, particularly in relation to height, FSR and setbacks. It is not agreed that the development will not result in a significant overshadowing impact given the lack of information to determine the impacts in this regard. Further, it is not agreed that the development meets the minimum landscaped area requirement. Nevertheless, the technical breach is a result of the partial use of the lower ground level/ basement level 1 for residential purposes and is not attributable to the overshadowing impact or shortfall of deep soil landscaped area. If the area of residential was to be used for the purposes of a car-park, storage or plant then the development would be in compliance with the control. The technical breach with the development standard does not undermine the objectives of the standard or the residential zone. It is therefore agreed that the development in this regard is consistent with the objectives of the control.

Whether compliance with the development standard is consistent with the aims of the policy and whether compliance hinders the attainment of the objectives specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act

The applicant has put forward the following discussion in relation to the Objects of the Act:

"the variation to the maximum number of storeys development standard will not hinder attainment of the relevant objectives contained in section 5 of the Act including...

The development proposal presents a 4-5 storey building and complies with the built form and scale development controls including deep soil landscape area, site coverage and FSR creating an acceptable building envelope on the subject site. Additionally, the building does not result in any unacceptable impacts upon natural or built environments.

The development proposal demonstrates that a properly considered, orderly and economic outcome has been achieved with the building designed to natural ground level meeting the underlying objectives specified in section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979."

It is agreed that the technical non compliance is not inconsistent with the aims of the policy. It is also agreed that the variation will not hinder the attainment of the relevant objectives prescribed in Section 5 of the Act.

Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The applicant's contention that compliance with the standard is unreasonable and unnecessary in the circumstance is summarised as follows:

- The non compliance is a technical breach given that partial use of the lower ground floor/ basement level 1 is used for a purpose other than car-parking, storage or the like. It is also noted that this floor level does not protrude greater than 1.2m above natural ground level;
- The area of non compliance does not result in the development failing to meet the objectives of the control, Objects of the Act or the aims of the policy; and
- The development is consistent with the bulk and scale provisions contained within relevant planning policies and maintains the zones expectations of a 4-5 storey residential flat building.

It is agreed that requiring compliance with the standard is unreasonable and unnecessary in the circumstances of the case for the reasons given within this discussion.

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Whether the objection is well founded

On the basis of the above assessment, it is considered that the objection is well founded.

As a consequence of the SEPP No.1 objection being deemed to be well founded, this reason to refuse the application has been adequately addressed and no longer remains as an issue.

"7. HERITAGE IMPACT

The proposal is unsatisfactory with regard to heritage impact on the surrounding items at Nos. 724-726 Pacific Highway and 17 Yarabah Avenue, Gordon.

Particulars

The external materials, finishes and colours of the proposed building are unsatisfactory with regard to adverse impacts on the adjoining and nearby heritage items, the adjoining draft Conservation Area and the UCA."

Planning Comment:

The amended proposal was referred to Council's Heritage Advisor, whose revised comments are noted below. There have been some minor amendments to the development, however, these did not address the heritage issue. The applicant has provided comments from Wier Phillips, Heritage Consultants, in response to this reason for refusal. This submission, along with relevant information was reviewed by Council's Heritage Advisor.

In summary, Council's Heritage Advisor maintains that the materials, finishes and colours of the proposed building are unsatisfactory. Further, given the gazettal of the Ku ring gai Local Environmental Plan (Town Centres) 2010, the revised comments note that design amendments are necessary to address the impacts of the development on the nearby heritage items and conservation area.

Given the comments by Council's Heritage Advisor, it is concluded that this issue has not been addressed by the applicant and remains as a reason for refusal.

"8. TRAFFIC IMPACT

The proposal is unsatisfactory with regard to traffic impact.

Particulars

Non-compliance with Council's Traffic Improvement Concept Plan for the Gordon Town Centre:

The proposed development would jeopardise Council's proposed Traffic Improvement Concept Plan for the Gordon Town Centre, which the Roads and Traffic Authority has agreed to. A road widening reservation is proposed on the western side of Pacific Highway, between No.728 and Bushlands Avenue, to accommodate future signalisation of the intersection and a dedicated right turn bay. The proposed road widening is of a width approximately 3.5 metres. This will affect the driveway grades, basement layout and stormwater management plan."

Planning Comment:

To address the above issue, the applicant has submitted a letter from their Traffic Engineer stating that Council should review the feasibility of the widening the western side of the highway to contain a plan to widen the road on the other side. The approach taken by the

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applicant's Traffic Engineer has not taken into account the heritage item 'Lolanthe' located on the other side of the Highway. Nevertheless, Council's Team Leader, Development Engineer's is satisfied that this issue can be resolved by a condition requiring the dedication of the land for road widening prior to the operation of consent. Given that this issue may be resolved, it no longer remains as a reason for refusal.

"9. WASTE COLLECTION

The proposal is unsatisfactory with regard to waste collection.

Particulars

Insufficient information regarding waste collection and unsatisfactory access to waste storage area:

- (a) *A longitudinal section along the entry driveway, including realistic slab and beam depths, was not provided to demonstrate that the minimum head clearance of 2.6 metres is available for the entire path of travel of Council's small waste collection vehicle.*
- (b) *The access corridor into the main garbage storage area is 10 metres. One 240 litres container is required for each two units, which means that 35 containers have to be wheeled out each time. This will not be efficient and is unlikely to be accepted by Council's Manager, Waste Services. The waste storage area should be relocated."*

Planning Comment:

The waste storage area has been re-configured so there are now two storage areas. There is one small area located at the base of the entry ramp and a larger store at the end of Basement Level 1. This area is sufficient for the number of containers required for the development. Council's Manager of Waste, Drainage and Cleansing is satisfied in principle with the amended waste storage areas but has recommendations regarding headroom and dimensions for the manoeuvring area for garbage vehicles. This issue is capable of being addressed by conditions of consent. In addition, sufficient information has been provided including a longitudinal section along the driveway to demonstrate that adequate vehicle headroom is available at the entry point to the Basement 1 car-park.

"10. STORMWATER DRAINAGE

The proposal is unsatisfactory with regard to stormwater drainage.

Particulars

- (a) *The Stormwater Management Plan shows an on site detention tank at the Upper Ground Floor Level. The top water Level is shown as RL121.75. This may be a misprint, but if it is correct then the habitable rooms do not have 300mm freeboard above the detention storage top water level as required by Appendix 5.1 of DCP 47 Water Management. Furthermore, a failsafe overflow outlet is not shown on the drawings and the access points are not indicated clearly. These cannot be within a private area, but must be in a common area.*
- (b) *The configuration of the detention and drainage system appears to have been proposed in order to avoid having to obtain a drainage easement over the downstream property(ies) to Yarabah Avenue. The report by Northrop addresses the requirements of the RTA that the runoff into the Pacific Highway drainage system not be increased, however, there is only one property between the subject site and Yarabah Avenue and a drainage solution which follows the natural fall of the land is preferred.*

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- (c) *The applicant should approach the downstream neighbours regarding a drainage easement, and submit written evidence of the negotiations."*

Planning Comment:

The additional information contains some further details of the proposed system. Council's Team Leader, Development Engineers has reviewed the information and maintains that the details provided do not allow a full understanding of the operation of the system and specifically notes the following:

1. *"The rainwater tank is located directly adjoining Unit 3, Unit 12 and the liftwell. This relies on a high level of waterproofing. In places the rainwater tank is less than 1 metre across and almost 4 metres deep (scaled from the drawings as not dimensioned). How is waterproofing to be maintained here?"*
2. *Two discharge control pits are provided. The reason for this is not clear.*
3. *The drawings do not indicate how the rainwater tank overflows into the detention storage.*
4. *SK01/1 – the scale is wrong, and it appears that the location of the orifice plate is shown incorrectly. Insufficient levels and dimensions are shown.*
5. *The extent of the on site detention tank is not clear – it seems to extend under the water feature and part of the planter. The volume is given as 23.8 cubic metres but this seems a large overestimate. The plan area scales off the architectural plans as 15 square metres, and even if the depth is 1.1 metres as shown on Drawing DA01, that only gives a volume of 16.5 cubic metres, not 23.8 cubic metres as shown on the plans.*
6. *The drawing still shows floor wastes connected to the rainwater tank – stormwater cannot be re-used inside the building without treatment and no treatment is indicated.*
7. *A rainwater tank volume of 96 000 litres is still shown – this is excessive.*
8. *The access to the rainwater tank is in a fire stair, which is acceptable, but this tank is intended to be 4 metres deep and step irons or a ladder would require fixing to the wall of Unit 12, which is likely to compromise any water proofing."*

The applicant has indicated via e-mail, that neighbouring properties have been approached for a drainage easement to the benefit of the subject site. It has been reported that the neighbours have refused the request. As a consequence, this specific issue has been addressed and no longer constitutes a reason for refusal.

Given that there remains insufficient information to complete an informed assessment of the impacts of the proposal in this regard this reason substantially remains as a reason for refusal.

"II. INADEQUATE INFORMATION

The proposal is deficient in a number of respects with regard to the information submitted.

Particulars

- (a) *Proposed levels to external hard and soft landscape areas have not been provided, particularly in the vicinity of existing trees to be retained.*
- (b) *The landscaping plan is practically illegible. Plant symbols prevent legibility of levels and finishes and should be revised or a separate hardworks plan should be submitted.*
- (c) *The trunk of following trees have not been shown at its correct size: Tree 16*
- (d) *Spot levels at the base of existing trees to be retained have not been provided.*

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- (e) *Accurate canopy spread of Tree 6 and Tree 19 to be shown.*
- (f) *The Fire Stairs 3 and 4 that exit from south of building have no access to Pacific Highway due to 1.2m high wall along driveway and front boundary. A gate would be required.*
- (g) *Clarification of impacts of pruning and demolition of lower part of existing retaining wall to Tree 19 - The proposed amount to be removed differs from the arboricultural report (1.5m) and on the architectural/landscape plans (5.5m). This should be clarified. (Section 5.0, Arboriculturalist Report, Advanced Treescape Consulting, 14/01/10). Pruning required to allow for building clearance should be detailed in arborist report.*
- (h) *Arborist report to include assessment of proposed new front fence and stormwater pit within TPZ of Jacaranda mimosifolia (Jacaranda) (Refer Concept Stormwater Plan, Northrop, dwg DAD1 Issue 4, 13/01/10). Assessment to include proposed site construction access located within structural root zone of Tree 1.*
- (i) *Further investigation is required on the following tree to identify degree of risk in accordance with arborist recommendation (Appendix 5, Arboriculturalist Report, Advanced Treescape Consulting, 14/01/10): Tree/Location - Eucalyptus paniculata (Grey Ironbark) Tree 20, southern boundary, rear yard*
- (j) *A longitudinal section was not provided through the driveway and as far as the waste collection area, so it is not possible to determine whether adequate headroom will be available for the small waste collection vehicle. In addition, the access corridor to the main waste storage area is 10 metres long. One 240 litre container is required for each two units, which means that 35 containers have to be wheeled out each time. This will not be efficient and is unlikely to be accepted by Council's Manager, Waste Services. The waste storage area should be relocated."*

Planning Comment:

Council's specialist officers have reviewed the information lodged. The landscape deficiencies noted above have been partially addressed, however, the majority of matters remain outstanding. In addition to design changes, the written submission from Concept Landscape Architects are of the opinion that the following outstanding information could be conditioned as matters to be resolved prior to the issue of a Construction Certificate:

1. *"Proposed external levels shall be provided for all hard and soft landscaped areas.*
2. *A separate hardscape plan shall be prepared, making this information more legible.*
3. *Unit 4 courtyard to be setback a minimum 4m from boundaries, for additional planting.*
4. *KMC requests a dedicated 3m planting buffer to the side setbacks. Concept proposes to retain the screen planting indicated on the Landscape Plan LPDA 10 - 56/1 Issue B, and as described in "Side Setbacks" above. This aim is to achieve a layered screening effect and transition from the landscape and pedestrian zone to the built form.*
5. *Tree # 16 trunk size will be updated.*
6. *spot levels will be shown at the bases of trees on the hardscape plan.*
7. *Trees # 13, 17, 21, 23 and 31 will be removed: as advised by KMC.*
8. *Accurate canopy spread for Trees # 6 and 19 will be shown.*

BASIX

The landscape plan and the amendments arising from KMC instructions will be co-ordinated with BASIX requirements. Low water-use planting will be updated to be clearly distinguished from other planting. This planting will not be mixed with higher water-use planting."

The outstanding matters listed from (a) to (g) and (i) remain outstanding. The points noted as Issue (h) and (j) have been addressed by the additional information. The applicant's note to defer the necessary information is inappropriate given it is necessary to determine the

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impacts of the development. The outstanding information has not allowed an assessment of the impacts of the development. Given that the information is necessary for an assessment it is inappropriate to condition such a requirement. In addition, the commitments required under BASIX are also required at the Development Application stage and as such it would be contrary to the provisions contained within this SEPP to defer this requirement to the Construction Certificate stage.

Consequently, this issue remains unaddressed for the most part, however, it has been amended to reflect those points addressed by the additional information.

"12. PUBLIC INTEREST

The proposal is not in the public interest

Particulars

A number of objections have been received from surrounding properties raising a range of concerns with the proposal and on this basis, the proposal is not in the public interest."

Planning Comment:

This issue remains for the reasons given throughout the supplementary report.

ADDITIONAL PLANNING COMMENT

The additional information lodged with the amended plans also included a written reference to the location of air conditioning plant on the roof of the proposed building. Details of the plant/ equipment such as elevations, plans, design including height and screening were not provided. Council's controls contained within DCP 55 require such plant and equipment to be integrated into the building and not to be visible. Due to the lack of information, the impact of this design and consistency with the control cannot be determined. As a consequence, this will form an additional reason contained within Reason II for refusal.

As noted in the comments by Council's Urban Design Consultant, the development now fails to meet the minimum 70% solar access requirement contained within the RFDC. The Rule of Thumb provides that at least 70% of apartments should receive at least 3 hours of sunlight to the balcony and main living areas. Council's Urban Design Consultant's calculation provides that approximately 66.6% of the total units meet this requirement. A subsequent review of the submitted information has revealed a greater non compliance however the final number of units failing to meet this requirement cannot be determined without sufficient information. This detrimental amenity impact further supports the position that the development will have poor residential amenity. This non compliance should therefore also form an additional reason for refusal.

CONSULTATION WITHIN COUNCIL**Heritage**

Council's Heritage Advisor, commented on the amended plans and information as follows:

"heritage referral – amended plans

This referral amends the previous heritage referral dated 12/2/10.

Heritage Conservation Area (HCA)

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The HCA was gazetted in May 2010. The status of the adjoining land has changed and is now a small HCA – C7 Yarrabah, Gordon. The consent authority is required to consider the impacts of development on the heritage significance of the HCA.

The HCA is an intact precinct of 1920s residential subdivision and is significant for its historic and aesthetic values. The precinct includes two listed items including 17 Yarrabah Avenue and 724 – 726 Pacific Highway.

The Town Centres LEP requires assessment of the extent to which the carrying out of the proposed development would affect the heritage significance of the adjoining HCA.

DCP 55 Design Objectives for development within a UCA

With reference to the provisions in DCP 55 (Clause 3.4) for sites in UCAs a number of the design guidelines should be addressed.

C – 1 New development should respect the predominant architectural character of the UCA and be designed with reference to it. Major issues are massing, style, roof pitch and complexity of roof shapes, proportions of doors and windows, materials and colours

Comment – the proposed development is a contemporary building and does not draw its character from the existing area. The proposed design is not respectful of the predominant design elements in the UCA such as the massing, style, complexity of shapes, proportions of doors and windows. The UCA is characterised by Inter - War period housing, mainly single storey with some larger houses from the Federation period.

The applicant has questioned use of the term "respectful", however, this is the wording adopted in DCP 55. It is considered that a building can have a contemporary form and a larger scale than the nearby buildings but can still respect the architectural language of the nearby buildings and impacts can be minimised. There is no requirement to copy the forms of nearby buildings such as a steeply pitched roof and turret of the adjoining heritage item and if this was proposed it would be inappropriate and would mock, rather than complement the adjoining heritage item. Good quality design is an objective in this scenario.

The revised design has resulted in very little change to the facades or overall appearance of the building. The only apparent changes are minor changes to the front fence, some windows and a privacy screen on the side elevation near the heritage item.

C – 2 Facades well articulated to avoid long continuous facades.

Comment – the façade has a reasonable amount of articulation along the Pacific Highway. The long facades (about 43m) face the side boundaries. Although they have reasonable articulation, there is also considerable repetition. It is considered the scheme achieves the intent of this control.

C – 3 Scale and massing should be proportioned to respect and enhance character of adjacent development.

Comment – it is acknowledged that it is difficult to achieve an appropriate scale context between one and two storey residential development and 5 storey residential flat buildings. The proposed building is designed with some variations in scale on the south western side where it adjoins the heritage buildings and the lower scale of the UCA. Landscaping is used to mitigate impacts on the boundaries.

C – 4 Form and outline of new development to respect existing development, particularly roof forms.

Comment – the roof is low pitched which is not characteristic in the UCA. This contrasts with the complex roof form of the adjoining item which has steeply pitched roofs and a turret and the various pitched forms of houses in the UCA. The applicant claims the use of flat and low pitched roof forms avoids excessive bulk and scale.

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The low pitched roof form does assist in reducing the overall height of the development in relation to the UCA.

C – 5 Setback should not be located forward of existing development.

Comment – the proposed building is located behind the building line of the neighbouring development consistent with the control.

C – 6 Buildings should not be orientated across a site contrary to the existing lot pattern.

Comment – the development is largely consistent with this control.

C – 7 Development should be good contemporary design complimentary to the existing UCA.

Comment – The design is contemporary in nature, however, it is not complimentary to the UCA.

C – 8 Different building materials should be chosen for external finishes and the colour range should blend with existing development.

Comment – it is considered that amendments to the colours, textures, detailing, proportions and materials need to be made to blend with the existing development in the UCA.

C – 9 Colours and building textures to be complimentary to UCA

Comment – the proposed building is a mix of face brick, painted rendered surfaces and metal cladding. Metal cladding is not generally used in the UCA. There is a predominance of face brickwork, not rendered or painted brickwork, in the UCA. The choice of colours and building textures is not considered to be complementary to the UCA as the building will not be perceived as a recessive element blending into the existing streetscape and character of the UCA but one that stands out against it.

C – 10, 11 & 12.

Front fences to be compatible with existing and neighbouring sites. If existing fences contribute to overall UCA, they should be retained. If the existing fences are unsympathetic they should be removed and replaced with more appropriate type.

Comment – the existing front fence is to be partially retained and extended with new stone to a height of 1200mm to match the existing. This is satisfactory.

DCP 55 Design Controls for development within the vicinity of a heritage item

C – 1 Medium density development shall be:

- (i) Setback the first and second stories at least 10m from the heritage building.*
- (ii) Setback the third and fourth floor levels at least 15m from the heritage building.*
- (iii) Be setback from the front boundary so that it is not closer than the heritage item.*

Comment – the proposed scheme complies with the minimum heritage set backs required at the side boundary with No 724 - 726 Pacific Highway. The proposed building is setback about 5m behind the front building line of the adjoining item and achieves this control.

C – 2 – Screen plantings should achieve visual screening with a height of at least 4 meters on all boundaries.

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Comment – this control is achieved.

C – 3 – Respect aesthetic character of nearby heritage items and not dominate it.

Comment – the amendments have resulted in insignificant changes to the external appearance of the building. The heritage item at 724 – 726 is a large Federation period building built as two separate dwellings, divided by a party wall. It has a strong architectural character. The item at 17 Yarabah is a fine, low scaled, Californian Bungalow.

The proposed development is contemporary in style and its architectural language is not related to the nearby items. When viewed from the south, the proposed development would be seen behind the heritage item at 724 – 726 Pacific Highway. Although the item is relatively prominent when seen from this view corridor, the proposed development would still be a dominant element in the background. Mitigation of the development from the nearby heritage items is largely dependent upon its separation and tree screen planting. There appears little attempt to design the facades to be recessive or complimentary or to respect the architectural character of the item.

The item at 17 Yarabah Avenue is located further from the proposed development and there is reasonable tree screening between it which assists in mitigating visual impacts. However, it would be seen as a relatively large and dominant building in the background.

There are always different opinions about the success of new buildings in areas that contain heritage items and collections of buildings that collectively have historic and aesthetic consistency. Depending upon its design, a new building can have beneficial or detrimental effects on the historic and aesthetic values of the immediate area. New buildings in such a context should provide continuity in the built form rather than seeking to create an iconic or individualistic building.

C – 4 – Colours should be complimentary to heritage building.

Comment – there is no change to the proposed finishes of colours in the revised plans. There is a limited palate of finishes and textures. Additional use of face brick would assist in providing an appropriate relationship with the nearby items and HCA.

C – 5 – The front fence should be no higher than the front fence of the heritage item.

Comment – this is achieved.

C – 6 – A heritage impact statement must be submitted and should discuss any impacts on the item including its garden and setting.

Comment – a heritage impact statement was submitted and concludes that the proposal is in line with the objectives of LEP 194 and consistent with the changing character of the surrounding area. It also concludes that the effect of the works will be minimal on No 17 Yarabah Avenue and manageable on the item at No 724- 726 Yarabah Avenue. Additional heritage comments were sought on the revised plans which refers to the colour scheme, the design and its respectfulness. It concludes that the colours are appropriate but advice could be sought from Council on alternative schemes, and generally finds the design acceptable. It notes that the success of the scheme would depend upon good landscaping in integrating the development into the existing context.

Comments

As previously noted, the amended scheme does not make changes to the exterior appearance of the development apart from very minor changes to some windows and a privacy screen. There are some interior changes that do not alter the relationship of the building to the nearby items, the HCA or UCA.

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The proposed development immediately adjoins a heritage item, is within the vicinity of several other items and is within a UCA. Recent gazettal of a draft HCA now means the southern boundary of the site adjoins a HCA. The HCA is identified as a small precinct of intact Inter War cottages that have aesthetic and historic values.

There is conflict between the single storey scale of the HCA and the subject proposal. The applicant is relying upon landscape screening to mitigate impacts between the HCA and the proposed development. Landscape screening by itself should not be relied upon to mitigate heritage impacts. The design of the proposed development is not complimentary to the HCA and the buildings would not be seen as a recessive element blending into the streetscape and character but would stand out against it. The design of the building should be amended to mitigate the conflicts and achieve an acceptable outcome.

The HIS claims that the proposed development would have "manageable impacts" on the UCA. It is unclear what a "manageable impact" can be. Once the new development occurs the impact is apparent. Management of heritage impacts should be a primary consideration during the design phase.

Further amendments to the design of the development need to be made. Appropriate amendments would include the proportion of window and door openings, detailing particularly window and door reveals, the design of balustrades, its external materials, textures and colours, particularly more extensive use of face brickwork and timber rather than metal elements to achieve an appropriate relationship with the heritage context of the site.

Conclusions and recommendations

Demolition of the existing houses is acceptable provided archival photographic recording is undertaken.

As proposed the scheme is not supported. Amendments are sought to the design of the development to minimise impacts on the adjoining and nearby heritage items, the adjoining Conservation Area and the wider context of the UCA."

Engineering

Council's Team Leader, Development Engineers, commented on the amended plans and information as follows:

"The applicant has submitted amended plans and documentation. The following additional documents were used for this assessment:

- *MA Architects Drawings SK01A to SK11A and SK33 Section EE';*
- *Varga Traffic Planning letter dated 12 April 2010;*
- *Northrop letter dated 19 April 2004 (but probably meant to read 2010), Drawing DA01 Issue 5, DA02 Issue 3, SK01/1 (scale wrongly indicated as 1:20) and SK02/4.*

The architectural plans list the BASIX commitments, however there is an error – in the note ;

"The development must have a central water tank – rainwater or stormwater of about 2000 litres"

The above should actually read ...a central tank – rainwater or stormwater of minimum 20 000 litres." This note is on every plan. This could be amended by condition, since compliance with the actual BASIX Certificate is mandatory.

Of the issues identified previously, the only remaining issue is Water management, as follows.

Water management

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An amended BASIX Certificate was not submitted. The BASIX water commitments are for a 20 000 litre rainwater tank with re-use for toilet flushing (Units 1-15) and irrigation. The entire roof area is to drain to the rainwater tank.

Detail sketches of the proposed system have now been submitted, but they do not promote a full understanding of the operation of the system. Specifically:

- 1. The rainwater tank is located directly adjoining Unit 3, Unit 12 and the liftwell. This relies on a high level of waterproofing. In places the rainwater tank is less than 1 metre across and almost 4 metres deep (scaled from the drawings as not dimensioned). How is waterproofing to be maintained here?*
- 2. Two discharge control pits are provided. The reason for this is not clear.*
- 3. The drawings do not indicate how the rainwater tank overflows into the detention storage.*
- 4. SK01/1 – the scale is wrong, and it appears that the location of the orifice plate is shown incorrectly. Insufficient levels and dimensions are shown.*
- 5. The extent of the on site detention tank is not clear – it seems to extend under the water feature and part of the planter. The volume is given as 23.8 cubic metres but this seems a large overestimate. The plan area scales off the architectural plans as 15 square metres, and even if the depth is 1.1 metres as shown on Drawing DA01, that only gives a volume of 16.5 cubic metres, not 23.8 cubic metres as shown on the plans.*
- 6. The drawing still shows floor wastes connected to the rainwater tank – stormwater cannot be re-used inside the building without treatment and no treatment is indicated.*
- 7. A rainwater tank volume of 96 000 litres is still shown – this is excessive.*
- 8. The access to the rainwater tank is in a fire stair, which is acceptable, but this tank is intended to be 4 metres deep and step irons or a ladder would require fixing to the wall of Unit 12, which is likely to compromise any water proofing.*

It appears (copy of an email from the real estate agent) that the downstream neighbours have been approached regarding a drainage easement and have refused, even though stormwater runoff was raised in submissions.

Traffic and parking

The applicant has submitted a letter from his traffic engineer which states that Council should review the feasibility of the widening proposed on the western side of the highway and contain a plan for road widening on the other side. This does not take into account the heritage building Lolanthe on that side, and Council maintains that the widening as proposed in the Gordon Town Centre Traffic Study will achieve the objectives. Therefore a condition requiring the dedication of the land for road widening prior to operation of the consent would be recommended.

The applicant has relocated the waste storage area, which has shifted the basement excavation back from the front boundary. Therefore, the only actual new structure remaining within the proposed road widening is the entry structure and the stormwater surcharge pit, which can be deleted or moved by condition. It appears that the entry driveway grades need not be adversely affected by future road works, as the drive is on the southern side of the property frontage. The RTA has recommended changes to the front fence and hedge to improve sight distance and this could be included in the recommended conditions.

The site is further than 400 metres from Gordon Station. The application, for 45 units (38x1br, 3x2br and 4x3br), requires 49 resident and 12 visitor parking spaces.

The carparking spaces are adequate in dimension and the manoeuvring areas comply with the Australian Standard in regard to dimensions and gradients.

The development is expected to generate 13 to 20 vehicle trips per peak hour. This is not likely to adversely affect traffic flows in the vicinity.

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Waste management

The waste storage areas have been reconfigured so that there are two storage areas, one small one at the bottom of the entry ramp and a larger store at the end of Basement Level 1. Space is available for the correct number of containers. This arrangement will be satisfactory if headroom is available for the entire path of travel of the small waste collection vehicle.

A longitudinal section along the driveway (SK33) demonstrates that adequate headroom is available at the entry to the Basement 1 carpark. This is dependent on an upturned beam which is shown in a detail. The minimum headroom of 2.6 metres must also be provided as far as Garbage Store 1, which will require careful placement of beams and services. There is 3 metres available between finished floor levels so this should be feasible.

The applicant has been in touch with Council's Manager, Waste, Drainage and Cleansing, who has agreed to the two storage areas in principle and also made recommendations regarding headroom and dimensions for the manoeuvring area. Conditions could be recommended to reinforce these requirements.

Construction management

A detailed Construction Traffic Management Plan would be required prior to the commencement of works. Access to the site will be from the Pacific Highway, but conditions would be recommended to prevent heavy vehicles from using nearby residential or busy streets (eg around Ravenswood).

Geotechnical investigation

Excavation to achieve basement level will be to a maximum of 10 metres. The site is expected to be underlain by weathered shale, possibly with some stronger bands. The report contains recommendations for excavation methods and support, vibration monitoring, inspection and replacement where necessary of existing retaining walls which are to remain, and for further investigation following demolition of the structures. These recommendations could be incorporated into conditions of consent.

Reason for refusal:

Insufficient information regarding water management.

Particulars

The applicant has not demonstrated that the proposed water management system for the development will function as intended.

- 1. The rainwater tank is located directly adjoining Unit 3, Unit 12 and the liftwell. This relies on a high level of waterproofing. In places, the rainwater tank is less than 1 metre across and almost 4 metres deep (scaled from the drawings as not dimensioned). How is waterproofing to be maintained here?*
- 2. Two discharge control pits are provided. The reason for this is not clear.*
- 3. The drawings do not indicate how the rainwater tank overflows into the detention storage.*
- 4. SKD1/1 – the scale is wrong and it appears that the location of the orifice plate is shown incorrectly. Insufficient levels and dimensions are shown.*
- 5. The extent of the on site detention tank is not clear – it seems to extend under the water feature and part of the planter. The volume is given as 23.8 cubic metres but this seems a large overestimate. The plan area scales off the architectural plans as 15 square metres and even if the depth is 1.1 metres, as shown on Drawing DA01, that only gives a volume of 16.5 cubic metres, not 23.8 cubic metres as shown on the plans.*
- 6. The drawing still shows floor wastes connected to the rainwater tank – stormwater cannot be re-used inside the building without treatment and no treatment is indicated.*
- 7. A rainwater tank volume of 96 000 litres is still shown – this is excessive.*

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The access to the rainwater tank is in a fire stair, which is acceptable, but this tank is intended to be 4 metres deep and step irons or a ladder would require fixing to the wall of Unit 12, which is likely to compromise any water proofing."

Landscaping

Council's Landscape Assessment Officer, commented on the amended proposal as follows:

Deep soil

Numerical compliance 50.77%

Agree with areas included in calculations? No

An amended landscape plan has not been included with the amended Deep Soil Compliance Diagram, MA Architects, Dwg SK32A, 20/04/10.

Tree & vegetation removal & impacts

An arboricultural report, prepared by Advanced Treescape Consulting, dated 14/01/10, has been submitted as part of the original application. Tree numbers refer to this report.

Significant trees to be removed

Cupressus sempervirens (Italian Cypress) Tree 4/12H/2S – removed to provide site access.

Jacaranda mimosifolia (Jacaranda) Tree 28/11H/8S, 5200BH – described as in good health and condition. Removed due to central location within the site.

The following trees, Celtis sinensis (Chinese Hackberry), are considered urban environmental weeds under Council's Weed Policy. Their removal will have a beneficial environmental impact and is recommended.

Trees 13, 17, 21, 23 and 31

Trees to be retained

Jacaranda mimosifolia (Jacaranda) Tree 1/6H/6S/multi - proposed new front fence is 2.75m from tree. Proposed 900mm sq. pit is within TPZ. (Refer Concept Stormwater Plan, Northrop, dwg DAD1 Issue 4, 13/01/10). Retaining wall for on site detention basin is 5m from tree and permeable gravel path is 3m from the tree. Arborist considers impacts are acceptable subject to an AQF Level 5 arborist being on site during excavation. This can be conditioned.

Jacaranda mimosifolia (Jacaranda) Tree 3/6H/6S/multi – existing levels to be retained within TPZ of tree.

Cupressus macrocarpa 'Brunniana' (Golden Cypress) Tree 8/15H/3S – proposed driveway 4 metres from tree. Impact is considered acceptable with appropriate tree protection measures.

Cupressus macrocarpa 'Brunniana' (Golden Cypress) Tree 9/15H/3S – proposed driveway 4 metres from tree. Impact considered acceptable with appropriate tree protection measures.

Cupressus macrocarpa 'Brunniana' (Golden Cypress) Tree 10/15H/3S – proposed driveway 4.5 metres from tree. Impact is considered acceptable with appropriate tree protection measures.

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Cupressus macrocarpa 'Brunniana' (Golden Cypress) Tree 12/15H/3S – proposed driveway 4.5 metres from tree. Impact is considered acceptable with appropriate tree protection measures.

Citharexylum spinosum (Fiddlewood) Tree 16/15H/3S/410/4S – proposed retaining wall and associated fill to private courtyard of Unit 12 is 2.2m from tree and within the tree's structural root zone. To preserve the health and condition of this tree, the private courtyard wall should be set back a minimum of 3m from the tree. Similarly, to preserve health of tree and allow sufficient area for screen planting, the proposed path should be set back a minimum of 3 metres from the site boundary. This may be conditioned.

Eucalyptus paniculata (Grey Ironbark) Tree 19/18H/10S/850/10S (north) – proposed building is 4.5m from tree. Canopy extends approximately 7 metres to north of the tree. Pruning is required to allow for building clearance and should be detailed in the arborist report. Levels within the canopy spread of the tree to be shown on the Landscape Plan. Part of existing retaining wall within the canopy spread of tree to be retained. The lower section is to be removed as the 'ground level is similar on both sides of the wall to be removed'. The amount to be removed differs from the arboricultural report (1.5m) and on the architectural/landscape plans (5.5m) (Section 5.0, Arboricultural Report, Advanced Treescape Consulting, 14/01/10). A separate letter dated 19/04/10 from the above arborist has verified that the removal of the section of wall would be 'beneficial'.

Eucalyptus paniculata (Grey Ironbark) Tree 20/24H/12S/1000/4S, trunk wounds at 5-6 metres, no testing was carried out to determine the structural stability of the tree, despite a hazard rating of 10 out of 12 with associated comments by arborist recommending the need for an aerial inspection (Arborist letter, Advanced Treescape Consulting, 19/04/10).

The following trees are considered significant in terms of amenity due to their location along the site boundaries – Tree 11, 32, 33, 34, 35. They are shown to be retained on the Landscape Plan.

Street trees to be retained

Eucalyptus microcorys (Tallowood) Tree 6/12H, 240/220DBH, SULE 2B – front fence within Tree Protection Zone. Arborist supervision recommended during excavation of footings for front fence.

Eucalyptus microcorys (Tallowood) Tree 5/poor condition, significant dieback in central leader. Recommended for removal.

Street trees to be removed

Eucalyptus microcorys (Tallowood) Tree 7/10H, 2000DBH, SULE 2D – 'good' condition. Proposed to be removed for driveway. Tree 6, in 'fair condition' to be retained.

Landscape plan

Common open space

The proposal provides the major communal open space at the rear of the site. The area consists of level lawn in association with remnant trees. Planting that continues the Blue Gum High Forest community through the centre of the site is recommended. Increased planting bed widths to the site boundaries of the communal open space can be conditioned.

Screen planting

Northern boundary – Backhousia myrtifolia (Grey Myrtle) 3m, Notalaea longifolia (Long Leaved Mock Olive) 5m, Syzigium leumanii (Small Leaved Lilly Pilly) 5m, Elaeocarpus reticulatus (Blueberry Ash) 6-8m

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Western boundary – Persoonia linariis (Geebung) 3m, Backhousia myrtifolia (Grey Myrtle) 3m, Ceratopetalum gummiferum (NSW Christmas Bush) 4m
Southern boundary – Syzigium leucomanthu (Small Leaved Lilly Pilly) 5m, Leptospermum trinervium (Flaky Barked Tea Tree) 3m

Landscape Plan need to be amended as follows.

- 1. Proposed levels to external hard and soft landscape areas to be provided, particularly in the vicinity of existing trees to be retained.*
- 2. To ensure plans are legible, a separate hardworks plan should be submitted to enable legibility of levels and finishes.*
- 3. To preserve neighbour amenity and provide sufficient area for effective screen planting, the proposed private courtyard to Unit 3 is to be set back a minimum 4 metres from the site boundaries. Screen planting to the boundary is to include shrubs that can attain a minimum of 2 metres in height and small trees that can attain 6 metres in height.*
- 4. Trunks of following trees to be shown at their correct size, Tree 16*
- 5. Spot levels at the base of existing trees to be retained to be shown.*
- 6. Existing Celtis sinensis to be removed including Trees 21, 23, and 31.*
- 7. Accurate canopy spread of Tree 6 and Tree 9 to be shown.*

BASIX

The BASIX certificate has nominated 226.2m² of indigenous low water use species to common areas. A BASIX Plan has been submitted. There are no areas of indigenous low water use species nominated for individual units.

The Low water use plan is unsatisfactory for the following reason:

- *Areas of low water use species at the front of planting areas of moderate-high water use, west of Unit 3, are not supported. Garden beds are to be clearly defined as areas of high or low water use.*

Other issues and comments**Front fence**

The existing front fence to No. 730 Pacific Highway is a fine rough cut sandstone block fence, with shark tooth capping. This fence is typical of many fences in the area and is proposed to be retained as part of the development. This is supported.

Unit 6 private courtyard

Unit 6 private courtyard extends in front of terrace of Unit 7. This may be a privacy issue considering only 1.2m high walls are proposed to courtyards.

Private open space – neighbouring heritage item (724-726 Pacific Highway Gordon)
Heritage Impact Statement does not include any discussion regarding overshadowing of the garden and associated plantings on the heritage property at No. 724-726 Pacific Highway. The main area of private open space for no.726 (northern part of subdivided block) is located between the house and the pool and an area to the north of the rear of the dwelling. The SOEE states that the pool is overshadowed between 12 and 3pm in winter, however the solar access when the pool would be in use Oct-Mar, described as 'reasonable', has not been demonstrated.

CONCLUSION

Further information is required to enable a proper assessment.

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Landscape Issues to be addressed.

1. *To preserve the health and condition of Tree 16, the private courtyard masonry and timber slat wall should be set back minimum of 3m from the tree (Refer Fence Type 3, Details Plan, Concept, LPDA1-56/38, Jan 2010). Similarly to preserve the health of the tree and to allow sufficient area for screen planting, the proposed path should be set back a minimum of 3 metres from the site boundary.*
2. *BASIX - Garden beds that include a strip of low water use species at the front, west of Unit 13, are not supported. Garden beds are to be clearly defined as areas of high or low water use.*

Drawing inadequacies/ inconsistencies

1. *Clarification of impacts of demolition of lower part of existing retaining wall to Tree 19 - The proposed amount to be removed differs from that described in the arboricultural report (1.5m) and on the architectural/landscape plans (5.5m). This should be clarified. (Section 5.0, Arboriculturalist Report, Advanced Treescape Consulting, 14/01/10).*
2. *Further investigation is required of the following tree to identify degree of risk in accordance with arborist recommendation (Appendix 5, Arboriculturalist Report, Advanced Treescape Consulting, 14/01/10 and Letter dated 19/04/10, Advanced Treescape Consulting):*

Tree/Location

Eucalyptus paniculata (Grey Ironbark) Tree 20, southern boundary, rear yard

3. *The Landscape Plan is considered unsatisfactory for the following reasons:*
 - *Landscape Plan is inconsistent with the amended architectural and stormwater plans*
 - *Proposed levels to external hard and soft landscape areas have not been provided, particularly in the vicinity of existing trees to be retained.*
 - *The plan is practically illegible. Plant graphics prevent legibility of levels and finishes. A separate hardworks plan should be submitted.*
 - *To preserve neighbour amenity and provide sufficient area for effective screen planting, the proposed private courtyard to Unit 4 should be set back a minimum 4 metres from site boundaries. Screen planting to boundary to include shrubs that can attain a minimum heights of 2 metres and small trees that can attain 6 metres.*
 - *Area of gravel to private courtyards and gravel paths is not to exceed 1m in width.*
 - *Trunk of following tree to be shown at correct size, Tree 16.*
 - *Spot levels at the base of existing trees to be retained to be shown.*
 - *Existing Celtis sinensis to be removed including Trees 21, 23, and 31.*
 - *Accurate canopy spread of Tree 6 and Tree 19 to be shown.*

Urban Design

Council's Urban Design Consultant, commented on the amended proposal as follows:

" These are further comments on drawings the applicant has amended in response to Council's preliminary assessment of the proposal. The following will provide further comment in regards to SEPP 65 and the associated Residential Flat Design Code (RDFC). The issue noted by the applicant in regard to a road widening under the Gordon Town Centre has been discussed with Council and it is understood this will not be an impediment to this proposal.

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1.1 CONTEXT

The proposed development is located on the western side of the Pacific Highway, between Yarabah and Bushland Ave. The development is proposed in an area that is undergoing transition from single dwelling lots to apartment buildings, which is appropriate given the proximity to the railway station. The railway station is located approx 800m to the north.

Ravenswood School is directly opposite the site. The southern boundary of the site adjoins a heritage item known as 724-726 Pacific Highway and to the immediate south west of the site is a heritage item known as Nebraska at 17 Yarabah Avenue. Also in the vicinity is a heritage item known as Lolanthe at 691 Pacific Highway.

The proposed development is well set back from the southern common boundary with the adjoining heritage item, providing satisfactory curtilage and separation in compliance with DCP 55. This separation is further enhanced through retaining the existing mature trees along this boundary.

1.2 SCALE

The proposal is the first RFB within the immediate vicinity. The proposal is provided with some articulation and modulation to assist in reducing the building bulk.

2 and 2a Bushlands Avenue are also zoned 2(d3). In the interim, before these sites are developed they will experience visual impact from the proposal to their rear yards. Fortunately, there are existing mature trees in these locations.

1.3 BUILT FORM

The supplied photo montages allow an appropriate review of the proposal, where the elevations on their own, do not do the proposal justice. The setbacks from the heritage item are satisfactory and the bulk and scale consistent with the heritage item and the desired future character. However, in regard to the layout of the proposed building footprint on the site and the amount of units proposed therein, this produces many of the amenity problems discussed in more detail under 1.7 of this report.

1.4 DENSITY

This proposal is marginally compliant on FSR, site cover and deep soil landscaping. It is recommended that Council check that these are in fact correct. It is commendable that the units have been amended to enable better solar access and ventilation generally in to the proposed apartments. This has improved amenity generally. Please see further comment under Amenity. Although the applicant has retitled the one bedroom units as studios, these studios are the same size as the one bedroom units in this proposal. A one bedroom unit of approximately 58m² in size is small.

Studios and one bedroom units make up 89% of this proposal. This is not considered to be a good mix in terms of creating a diverse community within the proposal.

1.5 RESOURCE, ENERGY AND WATER

Cross ventilation appear to satisfy the RFOC at 60%. A large number of apartments have a single orientation. Single orientation does not necessarily result in poor amenity. 3 apartments (6.6%) are orientated towards the south. This satisfies the RFOC requirement of 10%. The rearrangement of the bedrooms in many single aspect apartments has improved amenity to the units

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with the bedroom at the unit frontage, however the planning of these apartments is not ideal and they are hard to furnish. The proposal satisfies DCP 55 for solar, however not the RFDG.

1.6 LANDSCAPE

The communal open space to the rear of the RFB with an associated access path alongside the northern boundary should receive some sunlight. Access can also be gained from the internalised walkway to this space.

1.7 AMENITY

The amended unit layout to units 17, 18, 27, 28, 36 and 37 which includes a light shelf and highlight window to access daylight and ventilation to the internalised walkway unfortunately will not provide any acoustic privacy to the bedrooms of these one bedroom units. This is unacceptable amenity as this walkway is a semi private access way. It is commended that the applicant has deleted the internalised bedrooms in units 23 and 33.

From our review of solar access the proposal complies with DCP 55 (71%), however not with the RFDG (66.6%). Both require a minimum of 70% of the apartments to receive 3 hours solar, however DCP 55 requires the solar access to primary balconies and the RFDG requires access to primary balconies and to living spaces.

A development schedule that provides a summary of each apartment (floor space, storage, car parking, no. bedrooms, and terrace area) would be useful in the assessment.

Ensure that there is no overlooking to the private courtyard to unit 11 from semi public spaces as already this courtyard is located adjacent to the entry driveway.

1.8 SAFETY AND SECURITY

Satisfactory.

1.9 SOCIAL DIMENSIONS

The proposed mix is predominantly for studios and one bedroom units at 89% of the proposal. It is noted that the applicant has obtained a letter from a local real estate agent in this regard, however the mix is not considered ideal.

1.10 AESTHETICS

The aesthetics of the proposal should be in character and complimentary to the adjoining heritage item. A finishes and colour schedule has not been sighted. The proposed colours should be appropriate to the context and proximity of the heritage items. The building types are very different however of a similar scale. The scale is assisted by the existing trees on the common boundary with the heritage item.

The aesthetics rely heavily on articulation around windows and proportion of windows. A condition could be provided in any potential consent to ensure that the reveals be retained in the final building.

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Considering that the building adjoins a heritage item, glass balustrades are not an appropriate choice for the proposed adjacent balconies. These should be reconsidered. Also further architectural resolution of the lower scale built form adjacent to the heritage item is required. A heritage architect is the appropriate expert to respond fully to this principle.

CONCLUSION AND RECOMMENDATIONS

1. *Generally, the modifications to this proposal are considered minor in nature. The fact that the 'mix' of units is 89% studios and one bed units is testament to the fact that the yield has not been significantly amended. Also, the building footprint has generally remained the same.*
2. *The applicant should ensure that one bedroom units including 17, 18, 27, 28, 36 and 37 have adequate acoustic amenity to their bedrooms from the internal semi public walkway. It is not acceptable to just shut the ventilation off, (to the internalised walkway) by closing the windows. This should be rectified.*
3. *The mix for the development is not broad as 89% of the proposal is for studios (7) and one bedroom apartments.*
4. *The proposal should satisfy both DCP 55 and the RFOC in terms of solar access.*
5. *Ensure that there is no overlooking to the private courtyard to unit 11 from semi public spaces as already this courtyard is located adjacent to the entry driveway.*
6. *A condition of consent shall be added in regard to retaining the articulation around windows.*
7. *Materials and colours (not sighted) be given further consideration in terms of their relationship to the immediate context and particularly the heritage item. The selection of glazed balustrades for the balconies adjacent to the heritage item seems ill thought out.*
8. *Council's Heritage Advisor should consider the appropriateness of the aesthetics of the proposal."*

SUMMARY

The amended plans and information have been considered against the reasons for refusal recommended in the report to the JRPP meeting of 29 April 2010. The information submitted addresses some of the issues that formed the recommended reasons for refusal, however, the majority of the reasons remain. The amendments to the proposal also raise additional concerns, particularly in relation to solar access, heritage impacts and insufficient information that have also added to the reasons for refusal. Despite being given the opportunity to lodge amended plans, the applicant has failed in the main to seriously address the reasons for refusal and has also generated new issues, which further highlights the poor residential amenity of the proposal. As a consequence, it is recommended that the JRPP refuse consent to Development Application DA0022/10 for the reasons listed below.

RECOMMENDATION

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PURSUANT TO SECTION 80(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

That pursuant to Section 80(1) of the Environmental Planning and Assessment Act 1979, the Sydney West Joint Regional Planning Panel, as the consent authority, refuse development consent to DA0022/10 for demolition of two existing dwellings and ancillary buildings and construction of a residential flat building comprising 45 units with basement car parking and landscaping on land at Nos.728-730 Pacific Highway, Gordon, for the following reasons:

1. DEEP SOIL LANDSCAPING

The development does not comply with the minimum deep soil landscape area requirement of Clause 25(2) of the KPSO.

Particulars

- (a) By operation of clause 25(2)(c) of the KPSO the proposal must achieve 50% deep soil landscape area. The proposal has a deep soil landscape area of approximately 48%.
- (b) A SEPP 1 Objection has not been submitted. The development therefore cannot be approved.

2. SEPP 65/RESIDENTIAL FLAT DESIGN CODE

The proposal is inconsistent with a number of the requirements and rules of thumb contained in the RFDC referenced in SEPP 65.

Particulars

Crime risk assessment

- (a) A lighting plan for all communal open spaces and pedestrian entry points has not been provided.

Visual privacy

- (a) The proposal does not achieve the 12m building separation to the adjoining dwelling at No. 732 Pacific Highway and the proposal will have adverse privacy impact on this property, due to the proximity of the proposed balconies and living rooms to the adjoining dwelling.

Apartment layout

- (a) A total of 24 units (53%) have a depth greater than 8m resulting in poor internal amenity for occupants.

Internal circulation

- (a) The ground floor of the proposed development has 10 units accessed from a single corridor, being in excess of the maximum of 8 units.

Natural ventilation

- (a) The building depth of 19m-25m is greater than the typical range of building depths which support natural ventilation, being 10m-18m.
- (b) Only 48.8% of units are naturally cross ventilated (excluding the units relying on the vertical light-well, which does not provide adequate cross ventilation)

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Solar access

- (a) Significantly less than 70% of the units would receive 3 hours of sunlight to the balconies and main living rooms within the development. The development fails to meet the minimum 70% requirement with only 66.6% of units achieving this requirement.

Amenity

- (a) The amendments to Unit 22 to provide fixed opaque glazing to the bedrooms of this south facing unit will further deteriorate the poor amenity to this unit which is contrary to the design principles contained in SEPP 65.

3. DCP 55 - MULTI UNIT HOUSING

The proposal does not comply with a number of the requirements contained in DCP 55.

Particulars

- (a) Section 4.7 of DCP 55 requires that a range of unit types, sizes and layouts are provided in order to provide housing choice. The proposed development includes 40 studio and one bedroom units out of a total of 45 units. This is unsatisfactory with regard to housing mix, given the excessive number of studio and one bedroom apartments.
- (b) The development is contrary to the aim of Part IIIA set out in Clause 25C(2)(g) of the KPSO which requires development to achieve a high level of residential amenity in building design for the occupants of the building through sun access, acoustic control, privacy protection, natural ventilation, passive security design, outdoor living, landscape design and indoor amenity.

4. LANDSCAPING

The proposed landscaping is unsatisfactory with regard to the provisions of the KPSO and DCP 55.

Particulars

- (c) The BASIX certificate has nominated 226.2m² of indigenous low water use species to common areas. A BASIX Plan has been submitted. There are no areas of indigenous low water use species nominated for individual units. The low water use plan is unsatisfactory for the following reasons:

Areas of low water use species at the front of planting areas of moderate to high water use, west of Unit 3, are not supported. Garden beds are not clearly defined as areas of high or low water use.

5. HERITAGE IMPACT

The proposal is unsatisfactory with regard to heritage impact on the surrounding items at Nos. 724-726 Pacific Highway and 17 Yarabah Avenue, Gordon.

Particulars

The external materials, finishes, colours and design of the proposed building are unsatisfactory with regard to adverse impacts on the adjoining and nearby heritage items, the adjoining Conservation Area and the UCA. Further amendments to the design of the development need to be made. Amendments would include the proportion of window and door openings, detailing particularly window and door reveals, the design of balustrades, its external materials, textures and colours particularly more extensive use of face brickwork and timber rather than metal elements to achieve an appropriate relationship with the heritage context of the site.

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6. STORMWATER DRAINAGE

The proposal is unsatisfactory with regard to stormwater drainage.

Particulars

- (a) The rainwater tank is located directly adjoining Unit 3, Unit 12 and the liftwell. This relies on a high level of waterproofing. In places the rainwater tank is less than 1 metre across and almost 4 metres deep (scaled from the drawings as not dimensioned). It is unclear as to how waterproofing would be maintained.
- (b) Two discharge control pits are provided. The reason for this is not clear.
- (c) The drawings do not indicate how the rainwater tank overflows into the detention storage.
- (d) SK01/1 – the scale is wrong and it appears that the location of the orifice plate is shown incorrectly. Insufficient levels and dimensions are shown.
- (e) The extent of the on site detention tank is not clear. It seems to extend under the water feature and part of the planter. The volume is given as 23.8 cubic metres but this seems a large overestimate. The plan area scale off the architectural plans as 15 square metres and even if the depth is 1.1 metres as shown on Drawing DA01, that only gives a volume of 16.5 cubic metres, not 23.8 cubic metres as shown on the plans.
- (f) The drawing still shows floor wastes connected to the rainwater tank – stormwater cannot be re-used inside the building without treatment and no treatment is indicated.
- (g) A rainwater tank volume of 96 000 litres is still shown – this is excessive.
- (h) The access to the rainwater tank is in a fire stair, which is acceptable, but this tank is intended to be 4 metres deep and step irons or a ladder would require fixing to the wall of Unit 12, which is likely to compromise any water proofing.

7. INADEQUATE INFORMATION

The proposal is deficient in a number of respects with regard to the information submitted.

Particulars

- (a) Proposed levels to external hard and soft landscape areas have not been provided, particularly in the vicinity of existing trees to be retained.
- (b) The landscaping plan is practically illegible. Plant symbols prevent legibility of levels and finishes and should be revised or a separate hardworks plan should be submitted.
- (c) The trunk Tree 16 has not been shown at its correct size.
- (d) Spot levels at the base of existing trees to be retained have not been provided.
- (e) The canopy spread of Tree 6 and Tree 19 have not been shown correctly.

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- (f) The Fire Stairs 3 and 4 that exit from south of building have no access to Pacific Highway due to a 1.2m high wall along driveway and front boundary. A gate would be required.
- (g) Clarification of impacts of pruning and demolition of lower part of existing retaining wall to Tree 19 - The proposed amount to be removed differs from the arboricultural report (1.5m) and on the architectural/landscape plans (5.5m) This should be clarified.(Section 5.0, Arboriculturist Report, Advanced Treescape Consulting, 14/01/10). Pruning required to allow for building clearance should be detailed in arborist report.
- (h) Further investigation is required on the following tree to identify degree of risk in accordance with arborist recommendation (Appendix 5, Arboriculturist Report, Advanced Treescape Consulting, 14/01/10): Tree/Location - Eucalyptus paniculata (Grey Ironbark) Tree 20, southern boundary, rear yard.
- (i) There are no details of the proposed air conditioning units to be located on the roof. The application fails to provide any dimensioned elevations or plans including any screening of the plant and equipment. As a result of the lack of information, the impacts of the location of air conditioning units cannot be determined.
- (j) Accurate solar diagrams/ electronic information including a compliance table are necessary to determine the percentage of units that receive adequate sunlight access in accordance with SEPP 65 RFOC Rule of Thumb.

8. PUBLIC INTEREST

The proposal is not in the public interest

Particulars

A number of objections have been received from surrounding properties raising a range of concerns with the proposal and on this basis, the proposal is not in the public interest.

S Garland
Team Leader
Development Assessment - South

C Swanepoel
Manager
Development Assessment Services

M Miocic
Director
Development & Regulation

Attachments: **Location sketch**
 Zoning extract
 Architectural plans
 Previous assessment report.