

JRPP NO:	2010SYW097
REPORT TITLE:	2-8 ELEHAM ROAD, LINDFIELD – DEMOLITION OF EXISTING BUILDINGS AND CONSTRUCTION OF TWO RESIDENTIAL FLAT BUILDINGS COMPRISING 52 UNITS, BASEMENT CAR PARKING, ASSOCIATED LANDSCAPING AND CONSTRUCTION OF A NEW ROAD.
WARD:	Roseville
DEVELOPMENT APPLICATION N^o:	929/10
SUBJECT LAND:	2 – 8 Eleham Road, Lindfield
APPLICANT:	M Projects Pty Ltd
OWNER:	HAF Pty Ltd and Ku-ring-gai Council
DESIGNER:	P D Mayoh Pty Ltd
PRESENT USE:	School
ZONING:	Special Uses 5(a) School (IDO 79)
HERITAGE:	Yes
PERMISSIBLE UNDER:	No – Prohibited
COUNCIL'S POLICIES APPLICABLE:	IDO 79, DCP 31 - Access, DCP 40 – Construction and Waste Management, DCP - 43 Car Parking, DCP 47 - Water Management, DCP - 56 Notification, Section 94 Contribution Plan
COMPLIANCE WITH CODES/POLICIES:	No
GOVERNMENT POLICIES APPLICABLE:	SEPP 55 – Remediation of Land, SEPP 65 – Design Quality of Residential Flat Development, BASIX 2004, SEPP Infrastructure 2007, SREP 2005 – (Sydney Harbour Catchment)
COMPLIANCE WITH GOVERNMENT POLICIES:	No
DATE LODGED:	8 December 2010
40 DAY PERIOD EXPIRED:	17 January 2011
PROPOSAL:	Demolition of existing buildings and construction of two residential flat buildings comprising 52 units, basement car parking, associated landscaping and construction of a new road.
RECOMMENDATION:	Refusal

DEVELOPMENT APPLICATION N^o**PREMISES:
PROPOSAL:****0929/10****2-8 ELEHAM ROAD, LINDFIELD
DEMOLITION OF EXISTING BUILDINGS
AND CONSTRUCTION OF TWO
RESIDENTIAL FLAT BUILDINGS
COMPRISING 52 UNITS, BASEMENT CAR
PARKING, ASSOCIATED LANDSCAPING
AND CONSTRUCTION OF A NEW ROAD.
M PROJECTS PTY LTD
HAF PTY LTD AND KU-RING-GAI COUNCIL
P D MAYOH PTY LTD****APPLICANT:
OWNER:
DESIGNER:****PURPOSE FOR REPORT**

To determine Development Application No.0929/10, which is for demolition of existing buildings and construction of two residential flat buildings comprising 52 units, basement car parking, associated landscaping and construction of a new road.

The application is required to be reported to the Joint Regional Planning Panel as the stated cost of works (CIV) at \$16.47 million exceeds \$10 million.

EXECUTIVE SUMMARY

Issues:	Prohibited development
Submissions:	Yes
Land & Environment Court Appeal:	No
Recommendation:	Refusal

HISTORY**Current application DA0929/10:**

26 October 2010

A Pre-DA consultation was held regarding a proposal for demolition of existing dwellings, school and site works and construction of four residential flat buildings consisting of 109 units, carparking for 165 vehicles and associated works.

Issues discussed at the meeting included reliance upon Council owned land – Eleham Road, staging of development and preference for the sites not to be development independently with separate applications given the reliance upon vehicular access from Eleham Road and concerns about orderly development of land.

8 December 2010

DA0929/10 lodged. At the time of lodgement, the site was zoned Residential R4 pursuant to the Town Centres LEP 2010. Multi-unit housing was permissible within the R4 zone.

22 December 2010 – 21 January 2011	Application notified.
17 March 2011	Council officers brief the JRPP on the application.
18 March 2011	Council sent a letter to the applicant raising issues with building separation, unit layout, solar access, non-compliance with communal open space, building entrances, streetscape impacts and impact upon adjoining Park. Concern was raised regarding non-compliance with SEPP BASIX and SEPP Infrastructure. Owner's consent in regards to construction of Eleham Road was requested and concern raised regarding orderly development of land and preference for the proposed road to be included in the subdivision application.
18 April 2011	The applicant submits further information and amended plans.
9 May 2011	The amended information was referred to RailCorp and Urban Designer for consideration.
18 May 2011	Council advised the applicant of issues raised by RailCorp and requested further information.
19 May 2011	The amended plans were notified to surrounding properties.
27 May 2011	Further information was submitted by applicant in response to the issues raised by RailCorp.
29 June 2011	RailCorp writes to Council requesting further information and advises that their concurrence is still not granted.
26 July 2011	Council requests further information regarding the concerns raised by RailCorp.
28 July 2011	Land and Environment Court decision handed down in <i>Friends of Turrumurra Inc v Minister of Planning</i> which declares the Ku-ring-gai Town Centres Local Environmental Plan to be of <i>no legal force or effect</i> .
3 August 2011	Applicant submits further information directly to RailCorp for consideration.
11 August 2011	Council writes to the applicant advising of the Court decision and requests withdrawal of the application.

Relevant Applications

DA0926/10

Development Application for demolition of existing buildings and construction of two residential flat buildings comprising 54 units, basement car parking, and associated landscaping.

This application relies upon the road proposed under the subject application to provide vehicular access to the development. The development application relies upon the approval of this DA for the boundary realignment and lot consolidation to support the proposed RFB.

This application is presently recommended for refusal to the Sydney West Joint Regional Planning Panel as it is prohibited development.

DA0927/10

Development Application for boundary realignment to accommodate retained buildings in Synagogue use, lot consolidation to incorporate most of a small contiguous allotment (Lot 858) owned by the Synagogue, and demolition of existing dwellings within the boundaries of the proposed RFB under DA0926/10.

This application has not been determined at the time of preparing this report.

FINDINGS OF LAND AND ENVIRONMENT COURT

The Land and Environment Court proceedings in the matter of *Friends of Turramurra Inc v Minister of Planning* commenced in December 2010 were Class IV proceedings concerning the process adopted in the preparation of the Ku-ring-gai Town Centres Local Environmental Plan 2010. The Court declared the Ku-ring-gai Town Centres Local Environmental Plan to be of *no legal force or effect*. The decision was critical of the upzoning of the subject site by the Minister of Planning contrary to the Ku-ring-gai Planning Panel and staff recommendation.

The main implications of the decision are:

- All land to which the Ku-ring-gai Town Centres LEP applied will now revert to the relevant zoning and provisions under the *Interim Development Order Ku-ring-gai 79* as it applied immediately before the making of the Town Centres LEP on 25 May 2010.
- The *Ku-ring-gai Town Centres Development Control Plan 2010* no longer has any application to any land or any form of development. Applicants will need to refer to the relevant DCPs.
- All development applications lodged after 28 July 2011, must be made under the KPSO or other relevant planning instruments such as IDO 79. No applications can be made under the Town Centres LEP.
- The *Ku-ring-gai Contributions Plan 2010* is not affected by the Court's ruling and will continue to apply.

THE SITE

Zoning:	Special Uses 5(a) School (IDO 79)
Lot Number:	Lot 61, 62, 63 and 64 in DP 6608
Area:	3,721.3m ²
Side of Street:	Southern (Eleham)
Cross Fall:	North-east to south-west
Stormwater Drainage:	Easement through site proposed to be relocated along Wolseley Road
Heritage Affected:	No
Integrated Development:	Yes
Bush Fire Prone Land:	No
Endangered Species:	Yes – Sydney Blue Gum High Forest
Urban Bushland:	No
Contaminated Land:	No

THE SITE AND SURROUNDING AREA

The site

The site comprises four lots and is located on the south-eastern corner of Eleham Road and Wolseley Road. The site is irregular in shape, with an area of 3721.3m². The site has a frontage to the unmade road along Eleham Road of approximately 101 metres and 66 metres to Wolseley Road. The site is bounded by Railcorp owned land to the east and Ibbitson Park to the south.

Along Eleham Road, the site falls from the north-east (RL98.34) to the north-west corner at Wolseley Road (RL97.58). While along the Wolseley Road frontage, it falls from the intersection (RL97.58) to the south-west (RL95.28). The low point of the site is the south-eastern corner (RL94.88).

A drainage easement, 1.83 metres in width from Eleham Road running generally parallel with Wolseley Road traverses the site and drains in a south-easterly direction towards Ibbitson Park. The easement continues through Ibbitson Park to Wolseley Road.

The site presently contains single storey brick school buildings. Other site works include a bitumen playground, retaining walls and pathways.

The site is characterised by mature trees within open expanses and a perimeter planting of mixed tree species adjacent to the Wolseley Road frontage. The site contains significant vegetation which form part of the Sydney Blue Gum High Forest Endangered Ecological Community.

Surrounding development

The site is located opposite the area formerly known as the Wolseley Road Conservation Area to the west pursuant to the Town Centres LEP. The area is of significance for its collection of Federation and Inter-War period housing and is representative of suburban development in Lindfield following the opening of the North Shore railway line in 1890.

Ibbitson Park is located to the south of the subject site. The park contains significant specimens of the Sydney Blue Gum High Forest Critically Endangered Ecological Community and children's play equipment.

THE PROPOSAL

The application has been amended through out the assessment process. The proposal as amended is for:

Construction of two residential flat buildings containing 52 units (16 x 1 bedroom, 23 x 2 bedroom and 4 x 3 bedroom) and construction of basement levels for parking over three levels with a total of 58 car spaces.

Details of each floor level are as follows:

Basement 3 RL 86.80	28 residential car parking spaces including 2 disabled, 2 lifts, stair access and 33 residential storage areas.
Basement 2 RL 89.80	25 resident car parking spaces including 3 disabled, 2 lifts, stair access, 19 residential storage areas and plant and exhaust room.
Basement 1 RL92.80	13 visitor parking spaces including 1 disabled, 2 residential parking spaces, service zone and car wash bay, 2 separate garbage rooms (23 bins and 32 bins) 2 lifts, plant room air supply, hydrant booster pump room, communications room, switchboard and stair access.

BLOCK A

Level 1 RL97.2 and 96.0	3 units (2 x 2 bedrooms (non visitable), 1 x 3 bedroom (visitable))
Level 2 RL 100.25	5 units (4 x 2 bedrooms (3 x visitable and 1 x visitable/adaptable) 1 x 1 bedroom (visitable)
Level 3 RL103.30	5 units (4 x 2 bedrooms (3 x visitable and 1 x visitable/adaptable) 1 x 1 bedroom (visitable)
Level 4 RL106.35	5 units (4 x 2 bedrooms (3 x visitable and 1 x visitable/adaptable) 1 x 1 bedroom (visitable)
Level 5 RL109.50	3 units (2 x 2 bedrooms (both visitable) and 1 x 1 bedroom (visitable)

BLOCK B

Level 1

RL96.5 and 96.0	7 units (4 x 2 bedrooms (2 x non-visitable, 1 x visitable and 1 x visitable/adaptable)), 3 x 1 bedroom (2 x non-visitable and 1 visitable)
Level 2 RL 99.55	7 units (4 x 2 bedrooms (1 x non-visitable, 2 x visitable and 1 x visitable/adaptable)), 3 x 1 bedroom (2 x non-visitable and 1 visitable)
Level 3 RL102.60	7 units (4 x 2 bedrooms (1 x non-visitable, 2 x visitable and 1 x visitable/adaptable)), 3 x 1 bedroom (2 x non-visitable and 1 visitable)
Level 4 RL105.65	7 units (4 x 2 bedrooms (1 x non-visitable, 2 x visitable and 1 x visitable/adaptable)), 3 x 1 bedroom (2 x non-visitable and 1 visitable)
Level 5 RL108.80	3 units (1 x 3 bedrooms (visitable), 1 x 2 bedroom (visitable) and 1 x 1 bedroom (visitable))

Vehicular access to the basement car park area is proposed from Eleham Road via a curved entry/exit driveway ramp located approximately 35 metres to the east of the Eleham Road and Wolseley Road intersection. Two main pedestrian entrances are proposed from Eleham Road which provides two entrances to the lifts.

CONSULTATION - COMMUNITY

In accordance with Part 15 of the Town Centres Development Control Plan (2010), owners of adjoining properties were given notice of the application on 22 December 2010. In response, Council received twenty (20) submissions from the following:

1. SL & GJ Donovan
32 Wolseley Road, Lindfield
2. WH & N Oliver (3 submissions)
12 Wolseley Road, Lindfield
3. L. A Quirk
5/425 Pacific Highway, Lindfield
4. J. G Quirk
5/425 Pacific Highway, Lindfield
5. Amanda Swann & Garry Crowhurst
8 Wolseley Road, Lindfield
6. Hunt & Hunt on behalf of Mrs Bonny Behr
5 Treatts Road, Lindfield
7. Janet Roberts

- 40 Wolseley Road, Lindfield
8. Leigh Hudson
26 Wolseley Road, Lindfield
 9. TPR Planning on behalf of WTRRAG
 10. Sue Klein
6/425 Pacific Highway, Lindfield
 11. Christine Wells
36 Wolseley Road, Lindfield
 12. Larry and Patsy Noble
14 Wolseley Road, Lindfield
 13. Warwick Butt – no address provided
 14. Hong Huang and Robson Wong
22 Wolseley Road, Lindfield
 15. Sally and Craig Cogle
6 Treatts Road, Lindfield
 16. Fred and Gullian Bowers
24 Wolseley Road, Lindfield
 17. Barry O'Farrell on behalf of Mr and Mrs Hudson
 18. Kathy and Robert Cowley
1 Kenilworth Road, Lindfield.
 19. Associate Professor Vlado and Mrs Silvija Perokovic
38 Wolseley Road, Lindfield.
 20. Max Sulman
20 Wolseley Road, Lindfield

The amended plans were notified on 20 May 2011 for 30 days. Submissions were received from the following:

1. Amanda Swann & Garry Crowhurst
8 Wolseley Road, Lindfield
2. Mr and Mrs Wong
11 Treatts Road, Lindfield
3. Mr Max Sulman
20 Wolseley Road, Lindfield
4. Garth Gum Gee and Teresa Lee
10 Boronia Avenue, Turramurra

5. Janet Roberts
40 Wolseley Road, Lindfield
6. Dr Stephen and Caroline Allnutt
28 Wolseley Road, Lindfield
7. Christine Wells
36 Wolseley Road, Lindfield

No consideration of the submissions received is provided as the proposed development is prohibited which precludes a planning merits assessment. The submissions raised related to the inappropriate scale of the development, streetscape, amenity, traffic and heritage impacts.

CONSULTATION – EXTERNAL TO COUNCIL

The application was referred to RailCorp as an adjoining property owner. At the time of preparing this report concurrence had not been given by RailCorp.

CONSULTATION - WITHIN COUNCIL

The application and amended plans were considered by Council's Landscape Assessment Officer, Ecological Assessment Officer, Development Engineer, Building Surveyor, Heritage Officer and Urban Designer. Given the proposal is a prohibited development no further comments are considered necessary relating to these areas.

STATUTORY PROVISIONS

Environmental Planning and Assessment Regulation 2000

The application includes a proposal to carry out works on a public road vested in Council. Any application in relation to land lodged by a person who is not an owner of the land cannot be approved unless the owner of land has consented in writing to the lodgement of the application. There is presently no consent by Council as owner to the lodgement of the application.

State Environmental Planning Policy No. 55 - Remediation of Land

The provisions of SEPP 55 require consideration of the potential for a site to be contaminated. The subject site has a history of school use and, as such, it is unlikely to contain any contamination and further investigation is not warranted in this case.

State Environmental Planning Policy No.65 - Design Quality of Residential Flat Development (RFDC)

SEPP65 aims to improve the design quality of residential flat buildings across NSW and provides an assessment framework, the Residential Flat Design Code (RFDC), for assessing 'good design'. Clause 50(1A) of the EPA Regulation 2000 requires the submission of a design verification statement from the building designer at lodgement of the development application. This documentation has been submitted. The proposed development being a residential flat building which requires an assessment pursuant to SEPP 65 is a prohibited land use and therefore no assessment is provided.

State Environmental Planning Policy Infrastructure 2007 (SEMPI 2007)

The proposed development is adjacent to the rail corridor. The application was referred to RailCorp for concurrence. At the time of preparing this report, concurrence has not been received from RailCorp due to concerns being raised regarding the submitted plans showing anchors within RailCorp land and concerns regarding the geotechnical report submitted with the application.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted.

SREP (Sydney Harbour Catchment) 2005

Matters for consideration under SREP 2005 include biodiversity, ecology and environmental protection, public access to and scenic qualities of foreshores and waterways, maintenance of views, control of boat facilities and maintenance of a working harbour. The proposal is not in close proximity to, or within view, of a waterway or wetland and is considered satisfactory.

INTERIM DEVELOPMENT ORDER 79 - KU-RING-GAI

The subject site is zoned Special Uses 5(a) Schools pursuant to Interim Development Order 79. Pursuant to clause 4(1) the following land uses are permissible:

4(1) Interim development may, with the consent, under this order, of the Council be carried out on land to which this order relates for the purposes of a child care centre, an educational establishment, drainage, open space, roads or utility installations (other than gas holders and generating works).

The development application proposes a residential flat building development which is not permissible within the zone.

Section 94 Plan

The development if permissible would attract a section 94 contribution. However, as the application is recommended for refusal, no Section 94 contribution is applicable.

LIKELY IMPACTS

The proposed development is prohibited.

SUITABILITY OF THE SITE

The construction of a residential flat building and road is not suitable for the subject property. The site is not zoned for this land use.

ANY SUBMISSIONS

The matters raised in the submissions have been addressed in this report.

PUBLIC INTEREST

The proposal is a prohibited development and it would be contrary to the public interest to recommend anything other than refusal.

CONCLUSION

The proposal is a prohibited development and is therefore recommended for refusal.

RECOMMENDATION

THAT the Joint Regional Planning Panel, as the consent authority, refuse development consent to Development Application No. 929/10 for demolition of existing buildings and construction of two residential flat buildings comprising 52 units, basement car parking, associated landscaping and construction of a new road on land at 2 – 8 Eleham Road, Lindfield for the following reasons:

PROHIBITED DEVELOPMENT

1. The proposed development for a residential flat building and road are not permissible within the Special Uses 5(a) zone under IDO 79.

Particulars:

- (a) The site is zoned Special Uses 5(a) Schools.
- (b) Residential Flat Building is not a permissible use within the zone and therefore prohibited development. The site is not zoned for the proposed land use pursuant to clause 4(1) of Interim Development Order 79.

OWNER'S CONSENT

2. Owners consent has not been submitted for the construction of the road.

Particulars:

- (a) The application includes a proposal to carry out works on a public road vested in Council.
- (b) Any application in relation to land lodged by a person who is not an owner of the land cannot be approved unless the owner of land has consented in writing to the lodgement of the application pursuant to clause 49 of the Environmental Planning and Assessment Regulation 2000.
- (c) Council has not provided owner's consent.

INTEGRATED DEVELOPMENT

3. The application constitutes integrated development as it proposes excavation of more than 2 metres and is subject to a rail corridor.

Particulars:

- (a) In accordance with Clause 86 of SEPP Infrastructure, the proposal requires RailCorp's concurrence.
- (b) Concurrence has not been received from RailCorp in relation to the subject application.

K Munn
Executive Assessment Officer

S Garland
Team Leader
Development Assessment – South

C Swanepoel
Manager
Development Assessment Services

M Miocic
Director
Development & Regulation

Attachments: Locality Map
 Zoning Extract
 Site analysis
 Landscape Masterplan
 Interim Development Order 79