

JRPP NO:	2010SYW098
REPORT TITLE:	7 - 9 ELEHAM ROAD AND 15 TREATTS ROAD, LINDFIELD – DEMOLITION OF EXISTING BUILDINGS AND CONSTRUCTION OF TWO RESIDENTIAL FLAT BUILDINGS COMPRISING 54 UNITS, BASEMENT CAR PARKING AND ASSOCIATED LANDSCAPING
WARD:	Roseville
DEVELOPMENT APPLICATION N^o:	926/10
SUBJECT LAND:	7 - 9 Eleham Road and 15 Treatts Road, Lindfield
APPLICANT:	M Projects Pty Ltd
OWNER:	HAF Pty Ltd and North Shore Synagogue
DESIGNER:	P D Mayoh Pty Ltd
PRESENT USE:	School, dwellings and Synagogue
ZONING:	Special Uses 5(a) School and Church
HERITAGE:	Yes – within vicinity of 6, 8 and 26 Treatts Road
PERMISSIBLE UNDER:	No – prohibited.
COUNCIL'S POLICIES APPLICABLE:	Interim Development Order 79 and 78 and S94 Development Contributions 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 54 units, basement car parking and associated landscaping.
RECOMMENDATION:	Refusal

DEVELOPMENT APPLICATION N^o	0926/10
PREMISES:	7-9 ELEHAM ROAD & 15 TREATTS ROAD, LINDFIELD
PROPOSAL:	DEMOLITION OF EXISTING BUILDINGS AND CONSTRUCTION OF TWO RESIDENTIAL FLAT BUILDINGS COMPRISING 54 UNITS, BASEMENT CAR PARKING AND ASSOCIATED LANDSCAPING.
APPLICANT:	M PROJECTS PTY LTD
OWNER:	HAF PTY LTD AND NORTH SHORE SYNAGOGUE
DESIGNER:	P D MAYOH PTY LTD

PURPOSE FOR REPORT

To determine Development Application No.0926/10, which is for demolition of existing buildings and construction of two residential flat buildings comprising 54 units, basement car parking, and associated landscaping.

The application is required to be reported to the Joint Regional Planning Panel as the stated cost of works (CIV) at \$16.83 million exceeds \$10 million.

EXECUTIVE SUMMARY

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

HISTORY

Current application DA0926/10:

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 developed independently with separate applications given the reliance upon vehicular access from Eleham Road and concerns about orderly development of land.

8 December 2010	DA0926/10 was 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.
16 December 2010	Council wrote to the applicant and requested further copies of traffic report and full sets of plans and documents for referral purposes.
22 December 2010 – 21 January 2011	Application notified.
17 March 2011	Council officers brief the JRPP on the application.
13 May 2011	Council sent a letter to the applicant raising issues with the orderly development of land and the zone interface. Concern raised regarding non-compliance with SEPP BASIX and SEPP Infrastructure. Concerns were also raised regarding context and exclusion of Lot 54 from the development site, issues pertaining to building amenity and configuration, communal open space, building entrances, height and deep soil non-compliance. Non compliance with the BCA requirements which would alter the built form, engineering, landscaping issues and accessibility were also raised.
18 June 2011	The applicant submits further information and amended plans.
28 June 2011	The amended information was referred to RailCorp and Council's Consultant Urban Designer for consideration.
28 June 2011	The amended plans were notified to owners of surrounding properties.
26 July 2011	Council requests further information regarding the concerns raised by RailCorp.
28 July 2011	The Land and Environment Court decision is 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	The 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.

30 August 2011

RailCorp grants concurrence to the proposed development.

Relevant Applications

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.

The subject development application relies upon the approval of this DA for the boundary realignment and lot consolidation to support the proposed RFB.

This application is as yet undetermined.

DA0929/10

Development Application 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 subject development application relies upon the approval of the road under this DA to provide vehicular access to the site. Without this approval, the subject application is fatally flawed.

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

FINDINGS OF LAND AND ENVIRONMENT COURT

The Land and Environment Court proceedings in the matter of *Friends of Turrumurra 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 and 78. 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 and Church
Lot Number:	Lot 54, 55, 56, 57 & 58 in DP46025 and Parcel 858 in Crown Plan 10685 (to be consolidated under DA0927/10 proposed Lot 102)
Area:	3,680m ²
Side of Street:	Northern (Eleham)
Cross Fall:	North-east to south-west
Stormwater Drainage:	Easement to Wolseley Road
Heritage Affected:	Yes – within vicinity of 6, 8 and 26 Treatts Road
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 five lots and is located on the northern side of Eleham Road. The site is irregular in shape with an area of 3680m². The site has a frontage to the unmade road along Eleham Road of approximately 81 metres. The site is bounded to the north by the North Shore synagogue land, by Railcorp land to the east and existing single dwellings to the west.

The site presently contains dwellings and other ancillary development such as sheds, driveways, pathways.

The site is characterised by mature trees within open expanses. The site contains significant vegetation which form part of the Sydney Blue Gum High Forest Endangered Ecological Community.

Surrounding development

The site adjoined to the south-west and west by residential dwellings predominantly two storeys in scale. The site is adjoined to the north by an existing Synagogue and associated land uses. The adjacent property on Eleham Road contains an existing school which comprises buildings and play equipment. The Lindfield Railway station is located to the north-east of the property.

THE PROPOSAL

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

Construction of two residential flat buildings containing 54 units (13 x 1 bedroom, 39 x 2 bedroom and 2 x 3 bedroom) and construction of basement levels for parking over three levels with a total of 68 car spaces.

Details of each floor level are as follows:

Basement 3 RL 91.00	32 residential car parking spaces including 2 disabled, 10 bicycle spaces, 2 lifts, stair access, 29 residential storage areas and plant room.
Basement 2 RL 94.00	22 resident car parking spaces including 4 disabled, 5 visitor spaces, 10 bicycle spaces, 2 lifts, stair access, 16 residential storage areas, rainwater collection tank and garbage storage room.
Basement 1 RL97.00	9 visitor parking spaces including 1 disabled, service zone and car wash bay, loading zone, 6 bicycle spaces, garbage room (32 bins) 1 lifts, switchboard, hydrant booster pump, hot water plant, and stair access.

BLOCK C

Level 1 RL98.0/ 98.9	5 units (3 x 2 bedrooms (non visitable), 1 x 1 bedroom (non visitable) and 1 x 2 bedroom (visitable))
Level 2 RL 101.96	5 units (5 x 2 bedrooms (3 x visitable and 1 x visitable/adaptable and 2 x non visitable)
Level 3 RL105.00	5 units (5 x 2 bedrooms (3 x visitable and 1 x visitable/adaptable and 2 x non visitable)
Level 4 RL108.05	5 units (5 x 2 bedrooms (3 x visitable and 1 x visitable/adaptable and 2 x non visitable)
Level 5 RL111.2	2 units (2 x 3 bedrooms (both visitable)

BLOCK D

Level 1 RL101.0/100.3	7 units (5 x 2 bedrooms (3 x non-visitable, 1 x visitable and 1 x visitable/adaptable)), 2 x 1 bedroom (visitable)
Level 2 RL 104.05	7 units (5 x 2 bedrooms (1 x non-visitable, 3 x visitable and 1 x visitable/adaptable)), 2 x 1 bedroom (visitable)
Level 3 RL107.10	7 units (5 x 2 bedrooms (1 x non-visitable, 3 x visitable and 1 x visitable/adaptable)), 2 x 1 bedroom (visitable)
Level 4 RL110.15	7 units (5 x 2 bedrooms (1 x non-visitable, 3 x visitable and 1 x visitable/adaptable)), 2 x 1 bedroom (visitable)
Level 5 RL113.3	4 units (3 x 2 bedrooms (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 between the two proposed buildings, approximately 52 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 perpendicular to Eleham Road.

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 eighteen (18) submissions from the following:

1. WH & N Oliver (3 submissions)
12 Wolseley Road, Lindfield
2. L. A Quirk
5/425 Pacific Highway, Lindfield
3. J. G Quirk
5/425 Pacific Highway, Lindfield
4. Hunt & Hunt on behalf of Mrs Bonny Behr
5 Treatts Road, Lindfield
5. Janet Roberts
40 Wolseley Road, Lindfield
6. Leigh Hudson
26 Wolseley Road, Lindfield
7. TPR Planning on behalf of WTRRAG

8. Sue Klein
6/425 Pacific Highway, Lindfield
9. Christine Wells
36 Wolseley Road, Lindfield
10. Larry and Patsy Noble
14 Wolseley Road, Lindfield
11. Hong Huang and Robson Wong (2 submissions)
22 Wolseley Road, Lindfield
12. Sally and Craig Cogle
6 Treatts Road, Lindfield
13. Fred and Gullian Bowers
24 Wolseley Road, Lindfield
14. Barry O'Farrell on behalf of Mr and Mrs Hudson
15. Kathy and Robert Cowley
1 Kenilworth Road, Lindfield.
16. Richard and Robyn Dean Bucher
16A Treatts Road, Lindfield
17. Associate Professor Vlado and Mrs Silvija Perokovic
38 Wolseley Road, Lindfield.
18. Max Sulman
20 Wolseley Road, Lindfield

The amended plans were notified on 28 June 2011 for 30 days. Submissions were received from the following:

1. Mr Max Sulman
20 Wolseley Road, Lindfield
2. Janet Roberts
40 Wolseley Road, Lindfield
3. Larry Noble
14 Wolseley Road, Lindfield
4. CKJ Leung and WSW Chan
7/445 Pacific Highway, Lindfield
5. Fred and Gullian Bowers
24 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. RailCorp expressed concern regarding future occupants of the development being subject to rail related noise and vibration from the adjacent rail corridor. RailCorp requested that Council include conditions of development consent in accordance with the requirements of the Department of Planning which released the document titled “Development Near Rail Corridors and Busy Roads- Interim Guidelines”. The proposal however is a prohibited development and is recommended for refusal.

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 Design Consultant. Given that the proposal is a prohibited development no further comments are considered necessary relating to these areas.

STATUTORY PROVISIONS

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 residential and school facility 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 (SEPI 2007)

The proposal involves excavation greater than 2 metres within the rail corridor and requires concurrence pursuant to Clause 83 of the SEPP. RailCorp have provided concurrence subject to conditional requirements. The application however is recommended for refusal.

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 ORDERS 78 AND 79 - KU-RING-GAI

Lot 58 within DP46025 is subject to the provisions of Interim Development Order 78 – Ku-ring-gai. Pursuant to clause 4 the following land uses are permissible:

4. *Subject to clauses 5 and 7, interim development may be carried out –*
 - (a) *without the consent of the council under this order for the purpose of a dwelling-house*
 - (b) *with the consent of the Council under this order for the purposes of open space, roads and 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. A dwelling is defined as follows and the proposal does not satisfy this definition:

“dwelling” means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile;

“dwelling-house” means a building or group of buildings containing one but not more than one dwelling;

Lot 54, 55, 56 & 57 in DP46025 and Parcel 858 in Crown Plan 10685 are subject to the provisions of Interim Development Order 79 – Ku-ring-gai. These allotments are zoned Special Uses 5(a) Schools and Church 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, the proposal is a prohibited development.

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. 926/10 for demolition of existing buildings and construction of two residential flat buildings comprising 54 units, basement car parking, and associated landscaping on land at 7 – 9 Eleham Road and 15 Treatts Road, Lindfield for the following reason:

PROHIBITED DEVELOPMENT

The proposed development for a residential flat building is not permissible pursuant to Interim Development Order 78 and 79 – Ku-ring-gai.

Particulars:

- (a) Lot 58 within DP46025 is subject to the provisions of Interim Development Order 78 – Ku-ring-gai. The development application proposes construction of a residential flat building which is not permissible within the zone.
- (b) Lot 54, 55, 56 & 57 in DP46025 and Parcel 858 in Crown Plan 10685 are subject to the provisions of Interim Development Order 79 – Ku-ring-gai. These allotments are zoned Special Uses 5(a) Schools and Church pursuant to interim development order 79.

K Munn
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Development Assessment – South

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Attachments: Locality Map
 Zoning Extract
 Site analysis
 Basement plans
 Floor plans
 Elevations
 Sections
 Landscape Masterplan
 Interim Development Order 78
 Interim Development Order 79