

<b>JRPP NO:</b>	2010SYW099
<b>PURPOSE FOR REPORT:</b>	To address the issues raised by the Sydney West Joint Regional Planning Panel (JRPP) at the 28 July 2011 meeting and for the JRPP to determine DA0410/09 for the demolition of existing dwellings and construction of a residential flat building comprising 43 units, basement car parking, landscaping and associated works.
<b>BACKGROUND:</b>	An assessment report was considered by the JRPP on 28 July 2011, the JRPP resolved to defer its determination pending further information and amended plans from the applicant to address the officer's reasons for refusal of the application.
<b>COMMENTS:</b>	The additional information and amended plans are addressed in this report.
<b>RECOMMENDATION:</b>	Refusal

## PURPOSE FOR REPORT

To address the issues raised by the Sydney West Joint Regional Planning Panel (JRPP) at the 28 July 2011 meeting and for the JRPP to determine DA0410/09 which proposes demolition of existing dwellings and construction of a residential flat building comprising 43 units, basement car parking, landscaping and associated works.

## BACKGROUND

The Panel deferred the determination of the development application to allow the applicant to address the issues raised in the officer's recommendation for refusal by submission of additional information and amendments. In particular, the applicant was requested to address:

1. building materials and finishes
2. landscape plan including the amendments recommended by the applicant's arborist
3. drawing inconsistencies
4. single aspect unit definition and size
5. single aspect unit amenity
6. internal amenity of units generally
7. appropriate treatment to secure privacy to Unit A17
8. the opportunity for conditions to be applied to address other outstanding matters
9. provide a detailed Construction Traffic Management Plan to the satisfaction of the Roads and Traffic Authority

## REASONS FOR REFUSAL

The reasons for refusal as recommended to the JRPP by Council Officer's were:

### RESIDENTIAL AMENITY

- 1. The orientation of the units in the proposal is in breach of the amenity provisions set out in the RFDC (page 85), which limit the number of single aspect apartments with a southerly aspect (SW-SE) to a maximum of 10% of the total units proposed.**

#### *Particulars:*

- (a) The development includes eight (8) apartments A4, B1, B6, B 12, B18, B11, B 17 and B 23 which are single aspect south facing apartments. The Residential Design Flat Code and Part 4.5.1 Solar Access of DCP 55 C-4 states no single aspect units should have a southern orientation. 18.6% of the apartments in the proposal have a southern orientation which results in poor residential amenity. This is unacceptable for a new development and occurs as a result of the poor internal layout design which does not optimise

solar amenity to all living rooms with the proposed recessed bedroom/living room configurations.

- (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 solar access, acoustic control, privacy protection, natural ventilation, passive security design, outdoor living, landscape design, indoor amenity and storage provision.

## **ACOUSTIC IMPACT**

- 2. The proposal has not been designed to adequately address the noise source of the Pacific Highway and results in poor internal amenity in relation to acoustic privacy and cross ventilation.**

### *Particulars:*

- (a) The proposal has not been designed to address the noise source of the Pacific Highway other than through the reliance upon mechanical equipment. The proposed relies upon single aspect units which front the highway (A8, B6, B11 typical and to a lesser extent A1) which results in 19 of the 43 units proposed (44%) having to deal with noise issues. The development is contrary to the objectives of the RFDC (page 83).
- (b) The development indicates that the 60% cross ventilation requirement of the RFDC (page 87) is satisfied. The acoustic report prepared by Vipac Engineers requires windows and doors to be shut in order for complaint noise levels within apartments and requires reliance upon air conditioning and mechanical ventilation. This is contrary to the purpose of requiring a minimum of 60% of units to be naturally cross ventilated.
- (c) The development relies upon air conditioning/mechanical ventilation for amenity to be consistent with the noise levels stipulated in clause 87(3) of the SEPP Infrastructure (2007).
- (d) 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 solar access, acoustic control, privacy protection, natural ventilation, passive security design, outdoor living, landscape design, indoor amenity and storage provision.

## **VISUAL PRIVACY**

- 3. The development provides inadequate spatial separation at the top storey which results in visual privacy impacts on occupants of the development and of surrounding properties. This is contrary to the building separation requirements of the RFDC (page 29), which requires a 18 metres separation at the fifth storey.**

### *Particulars:*

- (a) The proposal is set back a minimum of 14.9 metres to the property to the north (32 Marian Street), 12.6 metres to 26 – 30 Marian Street and 12 metres to the property to the south (571 Pacific Highway). The Residential Design Flat Code and Part 4.5.2 Visual Privacy of DCP 55 C-2 refers 18 metres separation between habitable rooms. The separation provided is inadequate and results in amenity impacts upon surrounding properties and future occupants.
- (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 solar access, acoustic control, privacy protection, natural ventilation, passive security design, outdoor living, landscape design, indoor amenity and storage provision.

## **APARTMENT LAYOUT**

- 4. The proposal has been designed with open plan kitchens, dining and living rooms. The apartment layouts raise concern regarding internal amenity in relation to size, sunlight and ventilation and are contrary to the requirements of the RFDC.**

### *Particulars:*

- (a) The proposal utilises long building depths which compromises the internal amenity of 16% of units being A3, B2, B3, B4 (typical floors G, L1, L2 and L3). The proposal has a depth of 17 metres and proposes an opening to the second bedroom within a 4.5 metres recess in order to achieve cross ventilation. This is an unacceptable design response and occurs due to poor layout design. The proposal is contrary to the RFDC (page 69).
- (b) The proposal includes 15 x 1 bedroom units equating to 34.8% of the development. Nine units (A4, B3, B4, B8, B9, B14, B15, B20 and B21) of the proposed single aspect units are 50m<sup>2</sup> in size. These apartments have compromised acoustic privacy, poor solar access and cross ventilation. It is not considered appropriate to permit a reduced floor area for an apartment with compromised internal amenity.
- (c) The design relies upon excessively long corridors linking the entry door to the living space of units B5, B10, B16 and B22. These corridors have no natural light or access to a secondary natural light source from an adjacent room which is required by the RFDC (page 79).
- (d) The proposal does not provide with the minimum storage areas to Units A10, B15, A6, A14 and is considered unsatisfactory given it is a new development and contrary to the RFDC (page 82).
- (e) The development is contrary to the aims 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 solar access, acoustic control, privacy protection, natural ventilation, passive security design, outdoor living, landscape design, indoor amenity and storage provision.
- (f) The development is contrary to the aim of Part IIIA set out in Clause 25C(2)(c) of the KPSO which requires high quality urban and architectural design.

## ECOLOGICAL IMPACT

- 5. No assessment has been made in the arborist's report on the impacts of the proposed vehicle shake down areas on Trees 30 and 33 both of which are *Eucalyptus saligna* (Sydney Blue Gum).**

*Particulars:*

- (a) Trees 30 and 33 are *Eucalyptus saligna* (Sydney Blue Gum) and comprise part of the onsite Blue Gum High Forest a Critically Endangered Community listed under the Threatened Species Conservation Act 1995.
- (b) A flora and fauna assessment has not been prepared to assess the impacts of the current proposal on threatened species, endangered populations and endangered ecological communities (7-part test).
- (c) No impact assessments has been completed in accordance with section 5A of the *Environmental Planning and Assessment Act 1979* (the seven-part test) for those threatened species listed under the Threatened Species Conservation Act 1995 that are likely to be impacted upon as a result of the proposal.

## TREE IMPACTS

- 6. The arborist's report has not adequately addressed the tree impacts from the proposed stormwater line along Caithness Walk and the proposed excavation within the front setback.**

*Particulars:*

- (a) The proposed driveway location, reduced building levels and associated excavation within the front of the site is not supported as it results in an impact upon the health and condition of the existing trees 27, 30, 32 and 33.
- (b) No details have been provided regarding the required pruning of Tree 14.
- (c) The OSD tank is proposed to be located within the driveway, draining to the south-eastern corner of the site via an easement along Caithness Street Walkway. The arborist's assessment of tree impacts resulting from the proposed stormwater line is inconclusive.
- (d) The development is contrary to the aim of Part IIIA set out in Clause 25D(2)(b) of the KPSO which encourages protection of existing trees within setback areas and (d) which requires adverse impacts from car parking to be minimised on the landscape character.

## LANDSCAPE PLAN AMENDMENTS

- 7. The landscape plan is considered unacceptable and further design changes are required to provide increased setbacks, address inconsistencies with architectural plans and provide further level details in order to enable an accurate assessment of the proposal.**

*Particulars:*

- (a) The private open space areas of Apartments A3, B2, B3 and B4 are to be set back a minimum of 4 metres from the eastern side boundary. The proposed access pathway is to be relocated to be adjacent to the private open space.
- (b) The proposed location of fence types and retaining walls as shown on the Landscape Detail Plan are to be identified on the Landscape Plan.
- (c) The proposed and existing levels are to be shown to the communal open space. Spot levels to the base of existing trees are to be shown.
- (d) The proposed treatment of the triangle of private courtyard of Unit A2 at the northern end of the slab is to be shown. Similarly, triangles of the basement to the north of Unit A2 kitchen and living room that are above natural ground level conflict with the proposed planting shown on the Landscape Plan. Top of wall heights are to be shown to all areas of on-slab planting with proposed soil depths.

## 8. INADEQUATE INFORMATION

### *Particulars:*

- (a) Room dimensions are required to be shown on the architectural plans.
- (b) Colour specification is required to be shown on the architectural plans.
- (c) The architectural plans are to notate which windows are operable to determine compliance with cross ventilation requirements of the RFDC and should be consistent with the acoustic engineer's recommendations.
- (d) Further information is required to indicate clearances and furnishing of adaptable units.
- (e) No risers have been shown for mechanical/electrical or hydraulics.
- (f) Drawings 103, 104, 403 and 404 needs to have the location of B17 and B23 balconies above dotted on plans.

## PUBLIC INTEREST

9. **The proposed development is contrary to the aims and objectives of Clause 25C(2)(b), (c), (g) and 25D(2)(b) and (d) of the KPSO and LEP 194. The proposal is contrary to the public interest.**

### *Particulars:*

- (a) The proposal does not protect the significant Blue Gum on site and results in unacceptable tree impacts. The proposal is contrary to Clause 25C(2)(b) of the Kuring-gai Planning Scheme Ordinance.
- (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 solar access, acoustic control, privacy protection, natural ventilation, passive security design, outdoor living, landscape design, indoor amenity and storage provision.
- (c) The proposed driveway location and excavation within the front setback results in detrimental impacts upon significant vegetation and is contrary to Clause 25D(2)(b) of the KPSO which requires the protection of existing trees within setback areas.

- (d) The development is contrary to the public interest for the reasons identified in this Notice of Determination. The proposal is contrary to Section 79C(1)(b) and (e) of the Environmental Planning and Assessment Act 1979.

## **AMENDED PLANS AND INFORMATION**

The applicant submitted amended plans and information on 30 August 2011, which included:

- a construction management plan prepared by Varga Traffic Planning, dated 10 August 2011
- a Solar Impact Report, prepared by PSN matter, dated 28 August 2011
- a written statement by Chapman Planning Pty Ltd, dated 29 August 2011
- a landscape plan LPDA 11 – 215/1C, dated August 2011
- details plan LPDA 11 -215/3B, dated April 2011
- roof planter LPDA 11 – 215/4, dated July 2011
- site/roof plan A-100 Revision C, dated 30 August 2011
- basement 2 A-101 Revision C, dated 30 August 2011
- basement 1 A-102 Revision C, dated 30 August 2011
- floor plan 00 A-103 Revision C, dated 30 August 2011
- floor plan 01 A-104 Revision C, dated 30 August 2011
- floor plan 02 A-105 Revision C, dated 30 August 2011
- floor plan 03 A-106 Revision C, dated 30 August 2011
- floor plan 04 A-107 Revision C, dated 30 August 2011
- elevations 1 A-200 Revision C, dated 30 August 2011
- elevations 2 A-201 Revision C, dated 30 August 2011
- sections 1 A-300 Revision C, dated 30 August 2011
- 50% Deep Soil A-400 Revision C, dated 30 August 2011
- environmental site management plan A-600 Revision C, dated 30 August 2011

Council Officer's requested an amended arborist report relating to the amended plans and the impact upon Tree 27. The applicant has failed to provide this and instead seeks to reply on the arborist report provided to the JRPP on 27 July 2011.

## **CONSULTATION – EXTERNAL TO COUNCIL**

### **Roads and Traffic Authority**

The application was referred to Roads and Traffic Authority pursuant to Section 138 of the Roads Act. The RTA granted concurrence on 12 September 2011, subject to conditions of consent.

## **CONSULTATION - WITHIN COUNCIL**

### **Urban Design**

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

### **“Principle 1 - Context**

**SEPP 65** : *Good design responds and contributes to its context.....Responding to context involves identifying the desirable elements of a location’s current character, or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies.*

Satisfactory

### **Principle 2 – Scale**

**SEPP 65** : *Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings. Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing transition proposed bulk and height needs to achieve the scale identified for the desired future character of the area.*

Satisfactory.

### **Principle 3 - Built Form**

**SEPP 65**: *Good design achieves an appropriate built form for a site and the buildings purpose, in terms of building alignments, proportions, building type and the manipulation of building elements..... The built form is a response to both the regulatory controls and the neighbouring built fabric.*

Satisfactory.

Note: See Principle 7 Amenity for qualifying comments.

### **Principle 4 - Density**

**SEPP 65**: *Good design has a density appropriate to its site and its context, in terms of floor space yields (or numbers of units or residents)...*

Satisfactory.

### **Principle 5 - Resources, Energy and Water Efficiency**

**SEPP 65** : *Sustainability is integral to the design process. Aspects include...layouts and built form, passive solar design principle.....soil zones for vegetation and re-use of water. The following is noted in the amended BASIX documentation compared to the original DA submission:*

Amended – as Certificate	Original – as Report
<ul style="list-style-type: none"> <li>• Certified</li> <li>• Development described as 4 storeys above ground</li> <li>• Alternative water source – 10 units (toilets only)</li> <li>• Heating and Cooling – none indicated any units</li> <li>• Artificial lighting – not indicated to living/dining, bedrooms or kitchens</li> </ul>	<ul style="list-style-type: none"> <li>• Not certified</li> <li>• Described as 5 storeys above ground</li> <li>• Alternative water source – 26 units (toilets only)</li> <li>• Heating and cooling - to all unit living areas</li> <li>• Artificial lighting – indicated to living/dining, bedrooms and kitchens indicated</li> </ul>

*Council would need to confirm BASIX compliance. It is noted that some performance achievements have been lowered in the revised BASIX documentation.*

### **Natural ventilation**

*Satisfactory.*

*Note: The Residential Flat Design Code requires that at least 60% of the apartments are naturally cross-ventilated.*

*The application proposes the minimum 60%, however, best practice design should be aiming for a much higher level of cross ventilation particularly for new buildings where primary design decisions will drive the level of amenity achieved. It is further noted that windows shown on the units to the SW elevation A3, B2 (typical) appear inadequate to provide sufficient cross ventilation and result in overly deep floor plans of essentially single orientation units. It is acknowledged that cross ventilation is possible, however the reality is likely these windows will be permanently closed as they are bedrooms facing a noise source. See Principle 7 Amenity.*

### **Passive solar design**

*Unsatisfactory*

*Units A2, A3 (typical) and penthouse units provide good solar access.*

*The RFDC stipulates that a maximum of 10% of the units should not have a single aspect orientated SW-SE. The amended plans demonstrate six units receive no sunlight to living areas or private open space at the winter solstice. This equates to 13% of units receiving no sunlight.*

*The Solar Impact Report, prepared by PSN Matter, dated 25th August 2011 has been reviewed. It is acknowledged that the proposal complies with the minimum requirement of 70% of units receiving a minimum 3hrs of sunlight at the winter solstice.*

*It is accepted that some solar access after 3pm is achieved to Units A4, A8, A12, A16, B18. Units A16, B18 and B23 will benefit from newly proposed skylights. Internal sun shading should be provided for solar control during summer.*

### **Water collection on roof**

*It is noted that no falls appear to have been allowed for in the 'flat roof' area of the penthouses see indicative roof space in the elevations as identified in original SEPP 65 report.*

### **Principle 6 – Landscape**

**SEPP 65** : *Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.*

*The site has substantial established trees along both the street and rear boundary, which are shown as being retained. The planting to the street frontage significantly contributes to the streetscape, and the character of the area more generally. It is assumed that Council's Landscape Officers will check the tree retention strategies embodied in the DA, and if necessary, provide specific consent conditions to safeguard these trees.*

*Sufficient landscape area appears to have been provided.*

*RL information for all the courtyards and landscape is minimal.*

*Further consideration of the privacy between the ground level units and the communal open space to provide adequate screen planting is required.*

*The proposed communal spaces have adequate solar access at present prior to any further development of the lots on Caithness Street. It is noted that the proposed pool has been removed from the amended scheme.*

*These communal areas are accessed from building exits on the south-eastern elevation including an additional exit for Building B units. The paths appear to provide accessible access although corridor and path widths are not provided to confirm compliant clearances.*

*Council's engineers and landscape advisors need to confirm whether Tree 27 can be retained with the applicant's proposed driveway alignment.*

*Current driveway alignment remains intrusive.*

*It was noted during the meeting with the applicant on 2 August 2011 that a realignment of the driveway is required for a better address of the building entries and to address landscape concerns.*

### **Principle 7 - Amenity**

**SEPP 65** : *Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts, and service areas, outlook and ease of access for all age groups and degrees of mobility.*

*Best practice primary design decisions will drive the level of amenity achieved.*

*Street address*

*See Principle 6 - Landscape*

*Noise barrier planning*

*Noise barrier planning principles should be engaged for development addressing noise sources and should be addressed at concept design stage to avoid reliance on air-conditioning/mechanical ventilation and for general amenity - 19 of the proposed 43 units (44%) have to deal with noise issues.*

*Enclosed balconies to units addressing the Pacific Highway are noted and the applicant will need to ensure that:*

- solar access is maximised particularly as these units are oriented SW*
- acoustic requirements can be met at all times, and preferably*
- ventilation can be controlled when balconies are closed*

*Internal layout*

*Units A3, B2, A7, B7, A11, B13, A15, B19 – The window to the second bedroom is orientated SW within a 4.5m recess. The quality of light access and aspect of this room remains poor.*

*Units B5, B10, B16, B22 – These units continue to have excessively long corridors linking the entry door to the living space. This corridor has now been placed in the common area rather than being located internally to the unit (B5). All levels remain unsatisfactory. There remains no natural light source, or access to secondary natural light from an adjacent room. The applicant claims this to be ‘unavoidable’ in the amended submission. Primary design decisions have resulted in compromised amenity all of which is avoidable in our experience. The living space would benefit from more northern solar access if proposed glazing was more generous to the northern elevation – still not addressed on all levels.*

*Lift lobbies*

*The lift lobbies benefit from being naturally lit, with the windows well placed adjacent to the lifts.*

*Services*

*No risers have been shown for mechanical/electrical or hydraulics despite this being identified in the previous assessment. These will be required and could end up in wardrobe/storage cupboards, which will affect the storage calculation totals or will encroach on habitable space and may be an issue for accessible/adaptable units.*

*Solar access*

*Meets RFDC requirements.*

*Driveway undercroft*

*The proposed driveway undercroft is significant. It is doubtful that the proposed windows in the ground level lobby would add any amenity to the convoluted internal corridor as it appears to be wholly within the undercroft space facing south.*

*Further general notes*

- *Drawings should allow for roof thicknesses for falls and insulation.*
- *A reasonable number of kitchens and bathrooms are placed on the external walls, allowing for day light and fresh air to these service rooms. All kitchens, bathrooms and laundries on external walls and upper floors should have natural daylight and operable windows/clerestory windows.*
- *Ceiling fans should be provided throughout – Applicant to show dotted in plan.*
- *Cross ventilation should be able to be maintained at night without compromising security, sliding doors alone to balconies will not provide this and consideration needs to be given to fanlights, windows or other ventilation options.*
- *Window operation should be indicated on the elevations.*
- *Operable windows should be provided to the ground floor foyers and the upper lobbies to achieve natural light and ventilation.*
- *Ventilating top-lights or skylights should be provided to internal rooms on the top floor, wherever possible.*

### **Principle 8 - Safety and security**

**SEPP 65:** *good design optimises safety and security, both internal to the development and for the public domain. This is achieved by maximising activity on the streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.*

*Satisfactory.*

*A BCA assessment should be undertaken and the recommendations incorporated into the plans.*

### **Principle 9 - Social dimensions**

**SEPP 65:** *Good design responds to the social context and needs of the local community in terms of lifestyles, affordability and access to social facilities. New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood, or, in the case of precincts undergoing transition, provide for the desired future community.*

*Satisfactory.*

### **Principle 10 - Aesthetics**

**SEPP 65:** *Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.*

*Material use – The proposed façade is formed from brick, painted panels, and painted render. The use of brick and less fibre cement sheeting for main walls is encouraged as forming part of the local character. The fibre cement sheeting should be limited to bays and some infill panels.*

*The extent of frosted and clear balustrading is unclear. There are recognised privacy issues with the whole balustrade being made of clear glass. It is preferable to offer some level of screening, as on the front elevation.*

### **Conclusion**

*The proposal is generally satisfactory and generally meets SEPP 65 requirements.*

*However, further work should be undertaken to realign the driveway to provide an improved, direct street address for each building entry and to improve the public domain interface of the proposal.*

Concerns remain regarding the driveway configuration in regard to the length and visibility in the streetscape and the resultant impact upon Tree 27. Tree 27 is a mature Fig which provides landscape amenity and will perform an important function in providing immediate screening of the proposed five storey development.

The design of the amended proposal creates an exposed, elongated driveway into the site which, combined with the positioning of the substation in the south-western corner of the site, limits landscape screening of the structure. The presentation of the building, particularly at this point with the loss of the Fig tree would be unacceptable.

Amendments need to be made in consultation with the applicant's engineer to achieve a design solution which provides for compliant grades. Despite what the applicant contends, there is an alternative design solution which can be provided.

The plans proposed in Revision A provided a more acceptable driveway arrangement notwithstanding the height breach. The amendments undertaken appear to still result in a height breach, however now additionally include an elongated driveway within the front setback which will adversely impact upon Tree 27. The retention of this tree is important to achieve the required balance between the built form and landscaping within the streetscape character given the driveway location.

## **Landscape**

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

*"The proposal is not supported in the current form for the following reasons:*

- *tree impacts*
- *insufficient information*

### **Tree & vegetation removal & impacts**

*An Arboricultural Assessment, prepared by Advanced Tree Consulting and dated 2/12/10, was submitted with the application. Tree numbers refer to this report. A further addendum to the arborist report, dated 29/04/11, was submitted with amended plans in May 2005, however, it did not address the issues raised particularly in regard to Tree 27, 30, 32 and 33. A further letter dated 26/07/11, was submitted prior to the JRPP meeting of 28/07/11 partially addressing issues raised in the Landscape referral, dated 17/05/11. Amended plans were submitted in September 2011. No arborist report was submitted with these plans.*

*The following abbreviations have been used to describe the size of existing trees: height (H), canopy spread(S), diameter at breast height (DBH), tree protection zone (TPZ) and structural root zone (SRZ).*

*To preserve the health and condition of existing trees and existing landscape character of the site, the proposed driveway relocation and the proposed path levels in the front setback are not supported.*

### **Trees to be retained**

*Tree 5/Lophostemon confertus (Brushbox) 18H, 8S, 900DBH, TPZ 10.8m. This is a mature canopy tree. The tree is to be retained and protected as part of south-eastern communal open space.*

*Tree 14/Jacaranda mimosifolia (Jacaranda) 15H, 8S, 700DBH, TPZ 8.4m. This is a mature canopy tree that provides amenity to the adjoining property. The proposed basement is 4.7m from tree and a proposed encroachment of 16.34% of the tree's protection zone has been calculated in the arborist's report. The private courtyard is 1.7m from the tree. The building is 4.75m from the tree. The canopy will require pruning to provide building and scaffolding clearance (Clause 4.5.6 AS4970-2009). Detailed consideration of the required pruning is to be provided.*

*Tree 27/Ficus microcarpa 'Hillii' (Hills Weeping Fig) 18H, 8S, 850DBH, TPZ 10.2m, This is a mature tree with a broad spreading canopy and extensive surface roots. The proposed basement is 8.4m from the tree, excavation for the entry path is 4.5m from the tree, the entry structure is 3.9m from the tree, the driveway is 1.8m from the tree. The private courtyard of Unit B1 is 6.8m from the tree, the retaining wall for the front path is 2.75m west of this tree. In addition the proposed works will encroach on two sides of the structural root zone (SRZ).*

*The encroachment has not been calculated, however, it can be assumed that the proposed impacts would be greater than 10% of the tree protection zone (TPZ). In accordance with the standard which states:*

*'if the proposed encroachment is greater than 10% of the TPZ or inside the SRZ(see clause 3.3.5), the project arborist must demonstrate that the tree(s) would remain viable.'*(3.3.3 AS4970-2009 Protection of trees on development sites).

*The arborist supports the works based on the tree species being the 'toughest trees in the urban area'. This assessment is considered an unsubstantiated opinion as it makes no consideration of the standard nor does it accept or acknowledge the constraints that existing trees generate.*

*Tree 30/Eucalyptus saligna (Sydney Blue Gum) 22H, 8S, 750DBH, TPZ 9.0m. This tree is 9.0m from the proposed basement. The entry path is 5m from the tree, the private courtyard is 9m from tree. The proposed entry path is approximately 600mm above the existing ground level. The impacts of the proposed level change would have significant implications for the long term health of this tree.*

*Tree 32/Ficus microcarpa 'Hillii' (Hills Weeping Fig) 20H, 6S, 420DBH, TPZ 5.1m. This is a mature tree with a suppressed canopy due to Trees 30 and 33. Removal is recommended.*

*Tree 33/Eucalyptus saligna (Sydney Blue Gum) 22H, 10S, 1200/680DBH, TPZ 15m. This large tree is 10.5m from the proposed basement excavation and approximately 7.5 metres from the entry path. The proposed entry path is approximately 600mm above the existing ground level. The proposed impacts would have significant implications for the long term health of this tree.*

*Tree 43/Ficus microcarpa 'Hillii' (Hills Weeping Fig) 19H, 6S, 600/500DBH, TPZ 9.4m This tree is 15.5m from the proposed basement excavation. This is outside the tree protection zone and is acceptable, subject to conditions.*

*Tree 47/Eucalyptus saligna (Sydney Blue Gum) 22H, 10S, 1100/500DBH, TPZ 14.5m This tree is 11.75m from the proposed basement excavation.*

*Tree 48/Ficus microcarpa 'Hillii' (Hills Weeping Fig) 22H, 10S, 680DBH, TPZ 8. This tree is 8.5m from the proposed basement excavation.*

*Tree 51/Cedrus deodara (Himalayan Cedar) 23H, 6S, 700DBH, TPZ 8.4m This tree is 5.5m from the proposed basement excavation.*

## **Pruning of trees**

The arborist's report states that pruning of Tree 14, a mature *Jacaranda mimosifolia* (*Jacaranda*) is required to clear the building line. Details have been requested to enable assessment of extent of pruning and to inform conditions. The arborist assessment is considered unsatisfactory as it describes the works as being in accordance with AS4373-2007 Pruning of amenity trees. This does not indicate the location or extent of proposed crown reduction.

## **Stormwater line proposed along Caithness Walk**

The proposed 150mm diameter pipe is located within the structural root zone of numerous small trees located along Caithness Walk and a recommendation to hand dig has been made. It is considered that, with appropriate tree protection conditions, the impact would be acceptable. It would be preferable to restrict mechanical plant along the walk and all works to be undertaken by hand with the use of an air knife or similar to minimise root severance. All works shall be conditioned to be undertaken under the supervision of a qualified arborist.

## **Trees to be removed**

The proposed removal of the following 22 trees and shrubs is supported:

- 4 environmental weeds: T6, 20, 21, 22: *Cotoneaster* sp. (*Cotoneaster*),
- 8 trees exempt from Council's Tree Preservation Order: T4: *Syagrus romanzoffiana* (*Cocos Palm*), T7: *Schefflera* sp. (*Umbrella Tree*), T8,9,10,11, 12, 29 : *Celtis occidentalis* (*Hackberry*)
- 2 trees in poor condition: T17: *Citharexylum spinosum* (*Fiddlewood*), T44: *Taxodium distichum* (*Swamp Cypress*)
- 8 trees in healthy condition: T15: *Sapium sebiferum* (*Chinese Tallow Tree*) of 14 metres height, T16, T23, T24: *Jacaranda mimosifolia* (*Jacaranda*) of 10 metres height, T34, 35, 36, 37: *Chamaecyparis obtusa* 'Crippsii' (*Golden Cripps Cypress*) of 7-9 metres height

## **Landscape plan/tree replenishment**

### **Front setback**

The front setback would primarily consist of existing trees including three mature *Eucalyptus saligna* (*Sydney Blue Gum*). Proposed underplanting should enhance the *Blue Gum High Forest* community.

### **Communal open space/deep soil area**

Useable and well designed communal open space is a requirement under SEPP65 and the NSW Residential Flat Design Code. The development should have at least one area of not less than 450m<sup>2</sup> of deep soil located at the rear or middle of the site (C-1, 4.1, DCP55).

Two areas of communal open space are located to the east of the building. A separate more formal communal open space of approx 200m<sup>2</sup> is located to the south east of the building consisting of lawn area and seating. The two areas are linked by a path. A larger area of deep soil has been provided in the front setback that is sufficient for the retention of large canopy trees on the site. The development would comply with the required provision for a large area of deep soil in the middle or rear of the site.

Disabled access to both areas is via ramps from the entry foyers.

### **Private open space**

Most of the courtyards are provided in the form of elevated decks. The decks to the rear ground floor units are up to approximately 0.9m above existing ground level.

### **Screen planting**

- Northern boundary – Syzigium ‘Cascade’ 2m, Persoonia linearis (Geebung) 2m, Glochidion ferdinandi (Cheese tree) 10m
- Southern boundary – Syzygium luehmannii (Small-leaved Lillypilly) 5m, Elaeocarpus reticulatus (Blueberry Ash) 5-10m
- Eastern boundary – Acmena smithii ‘Minor’ 5m, Dodonea viscosa ‘Purpurea’ 2m, Ceratopetalum gummiiferum (NSW Christmas Bush) 4-8m

### **Tree replenishment**

A minimum of 10 trees are required for the site, whilst 7 additional canopy trees are proposed in addition to the 3+ existing trees.

### **BASIX**

An amended BASIX Certificate and BASIX landscape plan has not been submitted with the amended plans.

### **Stormwater plan**

An OSD tank is proposed to be located within the driveway draining to the south-eastern corner of the site via an easement along the public right of way.

### **CONCLUSION**

The proposal is not supported in the current form for the following reasons:

### **Tree impacts**

Tree 27/Ficus microcarpa 'Hillii' (Hills Weeping Fig)

*The encroachment within the tree protection zone (TPZ) has not been calculated, however, it can be assumed that the proposed impacts would be greater than 10% of the tree protection zone. In accordance with the standard,*

*'if the proposed encroachment is greater than 10% of the TPZ or inside the SRZ(see clause 3.3.5), the project arborist must demonstrate that the tree(s) would remain viable.'*(3.3.3 AS4970-2009 Protection of trees on development sites).

*The arborist supports the works based on the tree species being the 'toughest trees in the urban area'. This assessment is considered an unsubstantiated opinion as it makes no consideration of the standard nor does it accept or acknowledge the constraints that existing trees generate*

*Tree 30/Eucalyptus saligna (Sydney Blue Gum) The proposed entry path is approximately 600mm above the existing ground level. The impacts of the proposed level change would have a significant impact on the long term health of this tree.*

*Tree 33/Eucalyptus saligna (Sydney Blue Gum) The proposed entry path is approximately 600mm above the existing ground level. The proposed impacts would have a significant impact on the long term health of this tree.*

### **Insufficient information in arborist assessment**

#### *Pruning of trees*

*Pruning details for the following trees is to be provided. Detailed consideration of the required pruning is required to enable assessment of the extent of pruning and to inform conditions (Clause 4.5.6 AS4970-2009). It is unsatisfactory to simply refer to AS4373-2007 Pruning of amenity trees.*

*Trees 14/Jacaranda mimosifolia (Jacaranda) This is a mature tree with a 8m canopy spread that provides amenity to the adjoining property. The building is 4.75m from the tree and the private courtyard is 1.7m from tree. The canopy will require pruning to provide building and scaffolding clearance.*

*Tree 27/Ficus microcarpa 'Hillii' (Hills Weeping Fig) This is a mature tree with a 8-10m canopy spread that provides streetscape amenity. The temporary driveway is 3.0m from the tree. The canopy will require pruning to provide vehicle clearance.*

### **Superseded BASIX certificate**

*An amended BASIX Certificate and BASIX landscape plan has not been submitted with the amended plans.*

### **Environmental site management plan**

*Tree protection to temporary driveway to be shown in accordance with Clause 4.5.3 AS4970-2009. Proposed gravel driveway is considered inadequate within the tree*

*protection zone of Trees 27 and 30. The plan is to clearly indicate that there shall be no construction access or machinery permitted within Caithness Walk. All trenching for the stormwater pipe is to be done by hand."*

## **Ecology**

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

*"During the site inspection remnant Blue Gum High Forest (BGHF) a Critically Endangered Ecological Community (CEEC) listed under the Threatened Species Conservation Act 1995 was identified within the frontage of the site.*

*A review of the amended Landscape Plan, prepared by Conzept Landscape Architects, now shows a proposed pathway at a level of 600mm above the existing ground level within the Tree Protection Zone of Trees 30 & 33 Eucalyptus saligna (Sydney Blue Gum). Trees 30 & 33 form part of the Critically Endangered Blue Gum High Forest community within the site.*

*An assessment of the proposed soil level changes within the TPZ of Trees 30 & 33 by Landscape Services as a result of the pathway has determined that the level changes are likely to have a significant impact on the long term health of these Blue Gum High Forest trees.*

*An impact assessment (7-part test) is required to be prepared in accordance with Section 5A of the Environmental Planning & Assessment Act 1979 to assess the impacts of the proposal (proposed pathway & associated fill) upon the critically endangered Blue Gum High Forest community."*

The proposal is considered unsatisfactory as a result of inadequate information addressing the likely ecological impacts.

## **ASSESSMENT**

The application was deferred to respond to the reasons for refusal contained within the assessment report considered by the JRPP on 29 July 2011 and to specifically address the following points:

### **1. Building materials and finishes**

The following comments were made in the assessment report considered by the JRPP on 29 July relating to materials and finishes:

*"Material use – The proposed façade is formed from brick, painted panels, and painted render. The use of brick is encouraged as forming part of the local character. It would be preferable to use more brick and less fibre cement sheeting for main walls. The fibre cement sheeting should be limited to bays and some infill panels.*

*There is no colour palette provided, we require this to enable full comment. Colours should be muted and harmonise with the landscape character of the area.*

*There is insufficient information regarding the balustrading. It is noted as being glass, but there is no note of the framing material/finish. It is noted that the rear elevations have clear glass balustrades. There are recognised privacy issues with the whole balustrade being made of clear glass. It is preferable to offer some level of screening, as on the front elevation.*

*The recessed uppermost level is noted as having metal cladding. If this were a light colour akin to zinc the visual mass of the building would be reduced.*

*The elevations will need to be developed in line with planning changes suggested in this report. 1:50 scale sections / part elevations need to be prepared for the main street façades, clearly indicating the palette of materials to be employed."*

The applicant has submitted Revision C of A200 and A201 elevations of the development. The plans are to a scale of 1:100 and do not include a part elevation for the main street façade. Changes to the elevation include the use with reference to the colour palette of *Boral Rio Blue* face brick in place of the previously proposed rendered and painted walls being *Wattyl Chino*.

The extent of frosted and clear balustrading remains unclear. There are recognised privacy issues with the whole balustrade consisting of clear glass and the rear elevations should incorporate frosted glass. Whilst the amended plans have still not addressed this issue, if the application were to be approved a condition of consent could be recommended to deal with this issue.

## **2. Landscape plan, including the amendments recommended by the applicant's arborist**

The recommendation to the JRPP in Reasons 6, 7 and 8 related to ecological and tree impacts in addition to amendments required to be undertaken to the landscape plan. The applicant submitted an amended landscape plan and seeks to rely upon the arborist report submitted on 27 July 2011 to the JRPP.

In accordance with the covering letter by Chapman Planning dated 27 July 2011, the arborist information prepared by Advanced Treescape Consulting provided to the JRPP was provided as "an assessment of impacts on Trees 14, 27, 30, 32 and 33".

The arborist information submitted to the JRPP is considered unsatisfactory for the following reasons:

- (i) The arborist does not refer to which plans have been assessed.
- (ii) A correct assessment in regard to the encroachment of the proposed works within the tree protection zone of all trees, including Tree 27 and Tree 33 has not been provided in accordance with AS4970-2009 Protection of trees on development sites.
- (iii) Reference to the AS4373-2007 pruning of amenity trees as a description of the required tree works in relation to Tree 14 is considered insufficient to enable assessment of the extent or impact of proposed pruning.

The information made one recommendation in regard to Tree 33 that the 'entry path will be redesigned to be raised above the existing ground level'. The amended landscape plan prepared by Conzept, dated September 2011, shows the finished level of the entry path in excess of 500mm above the existing ground level within the tree protection zone of two large Blue Gums, Trees 30 and 33. This amount of fill would have an adverse impact on these trees.

### **3. Drawing inconsistencies**

Reason 8 of the recommendation identified the following inadequacies.

*(a) Room dimensions are required to be shown on the architectural plans.*

The amended architectural plans show room dimensions.

*(b) Colour specification is required to be shown on the architectural plans.*

The amended plans reference the proposed colour specification.

*(c) The architectural plans are to notate which windows are operable to determine compliance with cross ventilation requirements of the RFDC and should be consistent with the acoustic engineer's recommendations.*

The application proposes the minimum 60%. It is further noted that windows shown on the units to the south-western elevation A3, B2 (typical) appear inadequate to provide sufficient cross ventilation and result in overly deep floor plans of essentially single orientation units. It is acknowledged that cross ventilation is possible, however, in reality it is likely that these windows will be permanently closed as they are bedrooms facing a noise source.

*(d) Further information is required to indicate clearances and furnishing of adaptable units.*

Further details have been shown on the plans to indicate clearances and furnishings of the adaptable units.

*(e) No risers have been shown for mechanical/electrical or hydraulics.*

No risers have been shown for mechanical/electrical or hydraulics despite this being identified in previous assessment. These will be required and could end up in wardrobe/storage cupboards, which will affect the storage calculation totals or will encroach on habitable space and may be an issue for accessible/adaptable units.

*(f) Drawings 103, 104, 403 and 404 needs to have the location of B17 and B23 balconies above dotted on plans.*

The amended plans show these balconies.

#### **4. Single aspect unit definition and size**

The RFDC on page 85 requires 70% of apartments in a development to receive a minimum of three hours direct sunlight between 9am and 3pm in mid winter. Additionally, the number of single aspect apartments with a southerly aspect (SW-SE) to a maximum of 10% of the total units proposed. The purpose of these controls is to ensure 70% of apartments receive a minimum of three hours sunlight, the number of units receiving no sunlight is limited to 10% with the remainder of the development receiving some light within this period.

The applicant does not agree with this interpretation. The applicant has indicated that the apartments should not be considered single aspect as they have an external wall to a western elevation. The RFDC defines a dual aspect apartment as follows:

*Apartments which have at least two major external walls facing in different directions, including corner, cross over and cross through apartments.*

In accordance with the strict definition of the RFDC, these apartments can be defined as dual aspect. However, the further information, being a Solar Impact Report prepared by PSN matter and dated 28 August 2011, demonstrates the level of solar access provided to each unit within the proposed development which is considered acceptable.

Page 69 of the RFDC provides rules of thumb. The fourth rule of thumb states:

*Buildings not meeting the minimum standards listed above, must demonstrate how satisfactory daylighting and natural ventilation can be achieved particularly in relation to habitable rooms.*

The minimum standards referred to in the table indicates an internal area of 63.4m<sup>2</sup> for single aspect one bedroom units. The proposal includes 15 x 1 bedroom units equating to 34.8% of the development. Nine units (A4, B3, B4, B8, B9, B14, B15, B20 and B21) of the proposed single aspect units are 50m<sup>2</sup> in size. Concern was raised regarding the size of these apartments due to the compromised acoustic privacy, poor solar access and cross ventilation. The further information has clarified the solar access available to these apartments and the amended plans demonstrate improved acoustic amenity to these apartments.

#### **5. Single aspect unit amenity**

The RFDC on page 85 requires 70% of apartments in a development to receive a minimum of three hours direct sunlight between 9am and 3pm in mid winter. Additionally, the number of single aspect apartments with a southerly aspect (SW-SE) to a maximum of 10% of the total units proposed. The purpose of these controls is to ensure 70% of apartments receive a minimum of three hours sunlight, the number of units receiving no sunlight is limited to 10% with the remainder of the development receiving some light within this period.

The applicant has submitted a Solar Impact Report prepared by PSN matter dated 28 August 2011. The report demonstrates the level of solar access provided to each unit within the proposed development.

The amended plans demonstrate six units receive no sunlight to living areas or private open space at the winter solstice. This equates to 13% of units receiving no sunlight. However, despite the non compliance, is it accepted some solar access after 3pm is achieved to units A4, A8, A12, A16, B18. Units A16, B18 and B23 will benefit from newly proposed skylights and will therefore receive an adequate level of solar amenity.

## **6. Internal amenity of units generally**

Within units A3, B2, A7, B7, A11, B13, A15, B19 the window to the second bedroom is orientated south-west within a 4.5m recess. The quality of light access and aspect of this room remains poor.

With respect to Units B5, B10, B16, B22, excessively long corridors are still proposed linking the entry door to the living space. These corridors have now been placed in the common area rather than being located internally to the units. All levels remain unsatisfactory. There remains no natural light source or access to secondary natural light from an adjacent room. The applicant claims this to be 'unavoidable'. Primary design decisions have resulted in compromised amenity all of which is avoidable. The living space would benefit from more northern solar access if proposed glazing was more generous to the northern elevation. This amendment has still not been addressed on each level of the building.

### **Storage**

No amendments have been made to address the non compliant storage areas. The proposal does not provide with the minimum storage areas to Units A10, B15, A6, A14 and is considered unsatisfactory given it is a new development and contrary to the RFDC (page 82). It is noted that no reference to this issue has been provided by the applicant in the amended information submitted on 30 August 2011.

### **Acoustic impact**

The amended plans propose sliding glass above the balustrades which enclosure the balconies. No details have been provided by the acoustic engineer regarding whether this is an adequate response to the acoustic amenity issues identified in the original acoustic report. In the applicant's advice to the JRPP on 27 July 2011, advice from Vipac Engineers indicated to meet noise level guidelines 'Silenceair Bricks' could be installed for the bedrooms achieving airflow to these rooms.

The proposed sliding glass windows enclose the private open spaces (balconies) of Units A8, B6, B11, A12, B12, B17, A16, B18, B23. No acoustic advice has been provided regarding this design amendment and, as a result of this design response, the proposal results in a breach of the FSR control.

## Density

Part 4.2 of DCP 55 specifies a maximum Floor Space Ratio of 1.3:1 for residential flat development. The amendments undertaken to the proposal have resulted in an increase in the floor space by 112.33m<sup>2</sup>.

Under Clause 25B of the KPSO, gross floor area is defined:

**Gross floor area** means the sum of the areas of each floor of a building where the area of each floor is taken to be the area within the inner faces of the external enclosing walls, as measured at a height of 1,400 millimetres above each floor level, but excluding:

- (a) columns, fin walls, sun control devices, awnings and any other elements, projections or works outside the general lines of the outer face of the external walls, and
- (b) lift towers, cooling towers, machinery and plant rooms, and air conditioning and ventilation ducts, and
- (c) ancillary car parking and any associated internal designed vehicular and pedestrian access thereto, and
- (d) space for loading and unloading of goods, and
- (e) internal public areas, such as arcades, atria and thoroughfares, terraces and balconies with outer walls less than 1,400 millimetres high.

The amended proposal has a FSR 1.32:1 and does not comply with the control. This has not been addressed by the applicant. Concern is raised regarding the streetscape presentation of the building. The additional floor space, combined with the elongated driveway and loss of landscape screening within the front setback, raises further concerns.

### **7. Appropriate treatment to secure privacy to Unit A17**

Reason 3 of the recommendation raised concerns with the non compliant spatial separation of the proposal in relation to the adjoining residential flat buildings to the north and the resultant privacy impacts.

The applicant has submitted a further plan Roof Planter LPDA 11 – 215/4, dated July 2011, in response to the concerns previously raised regarding privacy impact upon surrounding properties. The plan indicates the addition of six (6) Christmas bush which has a height of 1.5 metres.

The adjoining residential flat building has a ceiling level of RL126.49 at the third level. The proposal has a finished floor level at Level 3 at RL126.500 and the top storey RL129.500. The proposed planter box would also need to be provided to the Level 3 balcony associated with A14.

## **8. The opportunity for conditions to be applied to address other outstanding matters**

It is unclear from the submitted information as to whether the proposal breaches development standards relating to height. The proposal cannot be conditioned to comply with a development standard. Further survey information needs to be provided.

The applicant has not provided the requested information pertaining to the impact upon Tree 27 within the front setback. The amended plans, dated 30 August 2011, have relocated the driveway which is now set back 1.8 metres from Tree 27. The applicant relies upon arborist advice, dated 27 July 2011, to support the proposed development. An assessment has not been undertaken regarding the impact upon Tree 27 in the amended plans.

This issue cannot be dealt with by way of conditions of development consent. Council's Landscape Assessment Officer has reviewed the proposal and it is considered highly unlikely that Tree 27 will be retained as a result of the proposed works. The removal of this tree is not supported and would therefore necessitate a redesign of the driveway. This issue was discussed at length with the project Architect on 2 August 2011. The amended plans and information have not addressed this issue satisfactorily.

## **9. Provide a detailed Construction Traffic Management Plan to the satisfaction of the Roads and Traffic Authority**

The applicant submitted an amended construction management plan prepared by Varga Traffic Planning, dated 10 August 2011. The plan was referred to the RTA for concurrence. The RTA provided written advice dated 12 September granting concurrence to the proposed development subject to conditions of consent. This issue has been satisfactorily addressed.

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

The amended plans, submitted on 30 August 2011, propose changes to windows, floor area and landscape area. No amended BASIX Certificate has been provided to demonstrate compliance with the SEPP. The proposal is unsatisfactory in this regard.

## **State Environmental Planning Policy (Infrastructure) 2007**

The property has a frontage to a classified road, being the Pacific Highway, and consideration is required pursuant to Division 17 Clause 101 of the SEPP. The objectives of Clause 101 of the SEPP states:

### ***101 Development with frontage to classified road***

*(1) The objectives of this clause are:*

*(a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*

*(b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

*(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*

*(a) where practicable, vehicular access to the land is provided by a road other than the classified road, and*

*(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*

*(i) the design of the vehicular access to the land, or*

*(ii) the emission of smoke or dust from the development, or*

*(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

*(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The proposal is consistent with the objectives of this clause. The application is supported by a traffic and construction management plan to ensure the operation and function of the Pacific Highway is not compromised during construction of the development.

The site does not have an alternate street frontage. The vehicular access is provided in a similar position to the existing driveway access to the property. A traffic impact assessment has been considered by Council's Development Engineers and no concerns are raised regarding traffic impact.

The proposal is also supported by an acoustic report, prepared by Vipac Engineers, which indicates that, subject to mitigation measures, the noise levels to dwellings will meet the requirements contained within clause 87(3) of the SEPP. However, the mitigation measures compromise the internal amenity of the units. The units predominantly fronting the Highway are single aspect (A8, B6, B11 typical and to a lesser extent A1 typical) which results in 19 of the 43 units proposed having noise issues. The amended proposal has enclosed the balconies but no details have been provided by the acoustic engineer as to whether this is an acceptable design response. No details pertaining to the windows have been provided. Specific assessment should be provided with respect of clause 87(3) of the SEPP with respect of the stipulated noise levels.

## **OTHER MATTERS**

Drawing A201 Revision C the North-West elevation shows the natural ground line at approximately RL116.7 at the north-eastern corner of the basement. The upper level basement is identified at RL114.60. The amended plans were laid over the survey plan. The identified setbacks of 6.0 metres from the northern side boundary and rear setback of 12.4 metres from the rear boundary were drawn onto the survey. The natural ground level at this point cannot be identified at RL116.7. Specific reference is given to closest spot levels on the survey of RL116.22 and RL116.33.

The amended plans have undertaken changes to the basement arrangement along the north-western elevation including the additional of fire stairs within the 6.0 metre side setback.

The proposed ground floor is at RL117.500. Inadequate survey information is available to clearly determine whether there would be a breach of the development standard. Clause 25I(9) of LEP 194 indicates where a basement protrudes more than 1.2 metres above natural ground it constitutes a storey. If this is the circumstance, the proposal would result in breaches of the development standards of Clause 25I(5), 25I(7) and 25I(8) and could not be supported without a SEPP 1 objection.

## **CONSULTATION – COMMUNITY**

The additional information and works proposed by the applicant in response to the questions raised by the JRPP did not require notification to neighbouring properties.

## **CONCLUSION**

This application has been assessed under the heads of consideration of Section 79C of the Environmental Planning and Assessment Act 1979 and all relevant instruments and policies.

The amended plans and information submitted have not adequately addressed the issues raised in the assessment report considered by the Sydney West Joint Regional Planning Panel on 29 July 2011 and the specific issues identified. The amended proposal has resulted in an increase in floor space, has not adequately addressed the internal amenity and acoustic and tree impacts of the proposal. The amendments undertaken have not been supported by the relevant expert reports and a BASIX Certificate.

The amendments undertaken to the landscape plan will result in a significant impact upon the Sydney Blue Gum High Forest and no seven part test has been undertaken. The tree impacts resulting from the proposal remain a fundamental concern which is still not addressed by the information submitted. Assessment must be undertaken in accordance with the relevant Australian Standard and it is considered the resultant impacts will necessitate a redesign, particularly in relation to structures within the front setback and the driveway location.

Given that these outstanding matters have still not been addressed, the proposal remains unsatisfactory and accordingly, it is recommended for refusal.

## RECOMMENDATION

THAT the Sydney West Joint Regional Planning Panel, as the consent authority, refuse Development Application DA0925/10 for demolition of existing dwellings and construction of a residential flat building comprising 43 units, basement car parking, landscaping and associated works on land at 573 – 585 Pacific Highway, Killara for the following reasons:

## APARTMENT LAYOUT

- 1. The proposal has been designed with open plan kitchens, dining and living rooms. The apartment layouts raise concern regarding internal amenity in relation to passive sunlight and are contrary to the requirements of the RFDC.**

### *Particulars:*

- (a) The proposal utilises long building depths which compromises the internal amenity of 16% of units being A3, B2, B3, B4 (typical floors G, L1, L2 and L3). The proposal has a depth of 17 metres and proposes an opening to the second bedroom within a 4.5 metres recess in order to achieve cross ventilation. This is an unacceptable design response and occurs due to poor layout design. The proposal is contrary to the RFDC (page 69).
- (b) The design relies upon excessively long corridors linking the entry door to the living space of units B5, B10, B16 and B22. These corridors have no natural light or access to a secondary natural light source from an adjacent room which is required by the RFDC (page 79).
- (c) The proposal does not provide with the minimum storage areas to Units A10, B15, A6, A14 and is considered unsatisfactory given it is a new development and contrary to the RFDC (page 82).
- (d) The development is contrary to the aims 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 solar access, acoustic control, privacy protection, natural ventilation, passive security design, outdoor living, landscape design, indoor amenity and storage provision.
- (e) The development is contrary to the aim of Part IIIA set out in Clause 25C(2)(c) of the KPSO which requires high quality urban and architectural design.

## ECOLOGICAL IMPACT

- 2. No assessment has been made in the arborist's report on the impacts of the cut and fill on Trees 30 and 33, both of which are Eucalyptus saligna (Sydney Blue Gum).**

### *Particulars:*

- (a) Trees 30 and 33 are Eucalyptus saligna (Sydney Blue Gum) and comprise part of the onsite Blue Gum High Forest a Critically Endangered Community listed under the Threatened Species Conservation Act 1995.

- (b) A flora and fauna assessment has not been prepared to assess the impacts of the current proposal on threatened species, endangered populations and endangered ecological communities (7-part test).
- (c) No impact assessments has been completed in accordance with section 5A of the *Environmental Planning and Assessment Act 1979* (the seven-part test) for those threatened species listed under the Threatened Species Conservation Act 1995 that are likely to be impacted upon as a result of the proposal.

## **TREE IMPACTS**

### **3. The arborist's report has not adequately addressed the tree impacts from the proposed cut and fill within the front setback.**

#### *Particulars:*

- (a) The proposed driveway location, reduced building levels and associated excavation within the front of the site is not supported as it results in an impact upon the health and condition of the existing Trees 27, 30, 32 and 33.
- (b) The impact upon Tree 27 is unacceptable. The retention of this tree is necessary to provide immediate landscape screening to the proposal and maintained the landscape streetscape amenity.
- (c) No details have been provided regarding the required pruning of Tree 14.
- (d) The development is contrary to the aim of Part IIIA set out in Clause 25D(2)(b) of the KPSO which encourages protection of existing trees within setback areas and (d) which requires adverse impacts from car parking to be minimised on the landscape character.

## **STREETSCAPE IMPACT**

### **4. The driveway arrangement, landscape screening within the front setback and scale of the development will adversely impact the streetscape.**

#### *Particulars:*

- (a) The proposed elongated driveway 15 metres in length within the front setback adversely impacts upon landscape screening within the front setback and results in a poor presentation to the streetscape.
- (b) The proposal will result in the loss of Tree 27. The retention of Tree 27 is necessary to provide immediate landscape screening to the proposal and maintained the landscape streetscape amenity. Landscaping is required to screen the visual presence of development.
- (c) Part 4.2 of DCP 55 requires a maximum Floor Space Ratio of 1.3:1 for residential flat development. The amendments undertaken to the proposal has resulted in an increase in the floor space by 112.33m<sup>2</sup>. The proposal now has a non compliant FSR of 1:32:1. The increased scale within the streetscape presentation is unacceptable when considered in relation to the loss of

landscape amenity, structures within the front setback and length of the building.

## **INADEQUATE INFORMATION**

### *Particulars:*

- (a) The amended plans submitted on 30 August 2011 have made changes to windows, floor area and landscape area. However, no amended BASIX Certificate has been provided to demonstrate compliance with State Environmental Planning Policy (Building Sustainability Index: BASIX 2004).
- (b) An impact assessment (7-part test) is to be required to be prepared in accordance with section 5A of the *Environmental Planning & Assessment Act 1979* to assess the impacts of the proposal (proposed pathway & associated fill) upon the critically endangered Blue Gum High Forest community.
- (c) Insufficient information has been submitted regarding the proposed enclosure of the balconies fronting the Pacific Highway. An acoustic assessment has not been submitted to determine whether this achieves an acceptable level of noise attenuation for future occupants.
- (d) Insufficient survey information has been provided along the north-western elevation of the proposal. The ground level shown on the plans is inconsistent with the survey plan submitted. As a result, the proposal may effect a breach to a development standard and no SEPP 1 objections has been submitted.
- (e) The architectural plans are to notate which windows are operable to determine compliance with cross ventilation requirements of the RFDC and should be consistent with the acoustic engineer's recommendations.
- (f) No risers have been shown for mechanical/electrical or hydraulics.

## **PUBLIC INTEREST**

The proposed development is contrary to the aims and objectives of Clause 25C(2)(b), (c), (g) and 25D(2)(b) and (d) of the KPSO and LEP 194. The proposal is contrary to the public interest.

### *Particulars:*

- (a) The proposal does not protect the significant Blue Gum on site and results in unacceptable tree impacts. The proposal is contrary to Clause 25C(2)(b) of the Kuring-gai Planning Scheme Ordinance.
- (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 solar access, acoustic control, privacy protection, natural ventilation, passive security design, outdoor living, landscape design, indoor amenity and storage provision.
- (c) The proposed driveway location and excavation within the front setback results in detrimental impacts upon significant vegetation and is contrary to Clause 25D(2)(b) of the KPSO which requires the protection of existing trees within setback areas.

- (d) The development is contrary to the public interest for the reasons identified in this determination. The proposal is contrary to Section 79C(1)(b) and (e) of the Environmental Planning and Assessment Act 1979.

K Munn  
**Executive Assessment Officer**

S Garland  
**Team Leader**

C Swanepoel  
**Manager**  
**Development Assessment Services**

M Miocic  
**Director**  
**Development & Regulation**

**Attachments:**

1. Architectural plans
2. Landscape plans
3. Letter from applicant
4. Acoustic report submitted to JRPP on 27 July 2011
5. Tree assessment submitted to JRPP on 27 July 2011
6. Minutes from JRPP meeting on 28 July 2011
7. Previous report considered by the JRPP on 28 July 2011