

Development Assessment Report

Subject Determination of Development Application

Address 46-56 Liverpool Road, SUMMER HILL

DA No 10.2011.66.1

JRPP REF: 2011SYE054

PREPARED BY: Atalay Bas – Manager Development Services

PREPARED FOR: Sydney East Joint Regional Planning Panel

REASON: Capital Investment Value Greater Than \$10million

DATE: 25 July 2011

REPORT OVERVIEW

1.0 Description of Proposal

Pursuant to Clause 78A(1) of the Environmental Planning and Assessment (EP&A) Act 1979 (as amended) this application seeks consent for:-

- Alterations and additions and adaptive re-use of the existing heritage item known as 'Carleton' to create 7 dwellings and retain the existing billiard room for community use;
- Alterations to existing stables building to create a gymnasium at the ground floor and 1 x1 bedroom apartment and storage room at the upper floor;
- Demolition of various buildings and the construction of 2 residential buildings (part 4 and part 5 storey in height) comprising 70 dwellings over basement parking for 97 vehicles;
- Provide 10 at grade resident and visitor parking spaces for Carleton and The Stables;
- Retain and restore the existing driveway and grounds of Carleton; and
- Site landscaping.

Plans of the proposal are included at **Attachment 1**.

2.0 Executive Summary

The subject site is zoned Special Uses 5(a) – Hospital under the provisions of Ashfield LEP 1985. The redevelopment of the subject site for residential purposes is not permissible pursuant to the land use zone. However, in accordance with Clause 19(5) of State Environmental Planning Policy (Infrastructure) 2007, the Department of Planning on 8 September 2009 issued a Site Compatibility Certificate for the redevelopment of the subject site to allow for residential land uses in the form of residential flat buildings.

Assessment of the development application revealed that the scheme in its current form differs from that described in schedule 2 of the Site Compatibility Certificate issued by the Director General of the Department of Planning and as such the consent authority must not

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grant development consent.

However, notwithstanding the above, the proposal includes demolition of several buildings/structures on site together with conservation and adaptive reuse of the Carleton House and the Stables building. The proposal also involves the conservation of the landscape area to the western part of the site and construction of two (2) residential flat buildings 4 to 5 storeys in height to the north. The individual components of the proposed scheme is summarised below:-

Carleton House Building

The proposed restored Carleton House building will involve internal reconfiguration, introduction of openings in the structural walls and realignment of other walls. The proposed seven (7) residential apartments will consist of 5 x 1 bedroom and 2 x 2 bedroom maisonette apartments.

Ten (10) at grade car parking spaces are also provided for the Carleton and Stables buildings, including 2 visitor car spaces of which 1 space will also be used for the purposes of a carwash bay. As a recreational facility for the future residents of Carleton House the existing billiard room located at the western end of the building will be refurbished.

Stables Building

The existing stables are to be retained with some external and internal upgrade. The unsympathetic external portions of the stables building are proposed to be removed and the building reinstated to its original form.

The refurbished stables building will be used as a gymnasium and associated amenities at the ground floor to be used by future residents of the site. Also, a 1 bedroom unit with storage rooms is proposed at the upper floor.

Adjacent to the eastern side of the stables it is also proposed to construct a swimming pool to be used by future residents of the site.

New Residential flat Buildings

Several buildings will be demolished together with the removal of 58 trees in order to construct two (2) residential buildings on the northern and eastern portions of the subject site. Both buildings building A and building B have a height of 4 to 5 storeys with the upper levels setback from the levels below.

Building A consists of 29 residential apartments comprising of a mix of 8 x 1 bedroom and 21 x 2 bedroom apartments. Whereas Building B consists of 41 residential apartments comprising of a mix of 10 x 1 bedroom, 24 x 2 bedroom and 7 x 3 bedroom apartments.

Basement Car Parking

A basement car park is proposed beneath both buildings A and B. The basement is accessed from Gower Street and consists of a total of 97 car parking spaces including 14 visitor parking spaces and 7 accessible car parking spaces. Access from the basement to the buildings above is provided via two (2) lifts and stair access points. In essence, the

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proposed basement car park is not actually a typical basement car park for the reason that it is only 0.5m below the natural ground level at its lowest point.

Adaptable Apartments

The proposed scheme provides a total of Seven (7) adaptable apartments with seven (7) accessible car parking spaces.

For comparative purposes Council's development control plan has been taken into account in considering appropriate provision for adaptable housing. In this regard Council's DCP requires the provision of 10% adaptable apartments in a development. Considering buildings A and B contain 70 apartments a total of 7 adaptable apartments are required. However, the applicant has not included the 8 apartments proposed within the Carleton House and The Stables buildings.

The applicant's justification for not including these buildings is that this would require significant alterations to the heritage buildings which would not be appropriate given their heritage significance. It is agreed that providing adaptable apartments in Carleton House and the Stables building is problematic, however, there is no justification for not providing the required adaptable apartment in the proposed residential buildings A and B.

It is therefore considered that the proposed scheme has a shortfall of 1 adaptable apartment.

3.0 Site and Surrounding Development

The site is situated on the south-western corner of the intersection of Liverpool Road and Gower Street, Summer Hill. The site is known as No.46-56 Liverpool Rd, Summer Hill and has a legal description of Lot 2 in DP 562023.

The subject site is irregular in shape with a:-

- north-western frontage to Liverpool Road of approximately 137m;
- north-eastern frontage to Gower Street of approximately 77m;
- south-eastern rear boundary of approximately 99m which backs onto residential flat buildings fronting Sunning Place;
- an irregular common rear boundary with the Grosvenor Centre fronting Grosvenor Crescent of approximately 67.5m ; and
- south-western boundary of approximately 60.96m.

The site has a total area of 11,871m². Currently existing on the subject site is the heritage Victorian era mansion 'Carleton', its former stables and landscape setting as well as a variety of former hospital buildings associated with the previous use of the site as a children's hospital and, more recently, as the Grosvenor Centre, a respite care facility.

In terms of landscaped elements the site contains numerous significant tree species that contribute to the appearance of the site and the setting of the buildings.

The site slopes from south-west to north-east, with the majority of the site falling gently towards the two road frontages from a high point located approximately at the centre of the circular driveway adjacent to Carleton House. Accordingly, part of the property slopes towards the common rear boundary with the Grosvenor Centre fronting Grosvenor Crescent. A retaining wall extends along the Gower Street frontage of the site to its corner with

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Liverpool Road.

The land uses in the general vicinity of the subject site comprises a mix of commercial, medical and residential along Liverpool Road and predominantly residential uses in the streets to the south-east of Liverpool Road

The predominant built form in the locality comprises two storey high buildings. However, a number of four storey buildings are located in the area.

Refer to **Attachment 2** for a locality map.

4.0 Summary Recommendation

The development is recommended for refusal.

BACKGROUND

5.0 Application Details

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| Applicant | Saade Property Group Pty Ltd |
| Owner | Saade Property Group Pty Ltd & Magnas Property Group Pty Ltd |
| Value of work | \$ 16,500,000.00 |
| Lot/DP | LOT: 2 DP: 1148982 |
| Date lodged | 17 March 2011 |
| Date of last amendment | N/A |
| Application Type | The development application relates to a type of development that the Minister of Planning has categorised as being of regional significance. The Sydney East Joint Regional Planning Panel is the consent authority for the purposes of determining the application. |
| Construction Certificate | Not submitted as part of the DA. |
| Section 94 Levy | Applies. |

6.0 Development History

In June 2007, Ashfield Council approved (DA No.2007.028.1) for the demolition of the heritage item 'Llangollen', the relocation of on-site parking and construction of a residential health care facility and associated landscaping works on No.50-54 Grosvenor Crescent, to the south of the subject site. A residential health care facility has since been constructed on that site and is now operational.

On 8 September 2009, In accordance with Clause 19(5) of State Environmental Planning Policy (infrastructure) 2007, the Department of Planning issued a Site Compatibility Certificate for the redevelopment of the subject site to allow for residential land uses in the form of residential flat buildings. The Certificate is valid for a period of 5 years for the subject site and expires on 8 September 2014.

On 11 February 2010, a Crown Development Application (DA No 2009.167.1) was approved that permitted the subdivision of No.50 Grosvenor Crescent (to the south) from No.46-56 Liverpool Road (the subject site). The approved subdivision included consolidation of 17

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existing lots and Torrens Title subdivision of the consolidated lots into 2 new lots. The development of lot 2 is the subject of this development application.

Ashfield Council prepared "Development Assessment Briefing Notes" for the subject site with a view to establish guidelines for the future redevelopment of the site. The Development Assessment Briefing Notes address issues such as the impact on heritage items, traffic access considerations, waste storage, the location of bin storage outside the collection time periods, stormwater disposal, car parking and State Environmental Planning Policy No. 65 / Residential Flat Design Code.

Two separate pre-DA meetings were held. The first meeting was held on 10 November 2010 at the Council chambers and the second meeting was held on-site on 26 November 2010. Council provided written feedback dated 5 January 2011 as a combined response to both meetings raising issues in respect to height, projection of the basement car park, provision of access for people with disabilities, solar access, streetscape, setbacks and affordability.

ASSESSMENT

7.0 Statutory Consideration

The site is zoned 5(a) Special Uses-Hospital Zone under the provisions of Ashfield LEP 1985. The proposal to use the site for residential purposes is not permissible in this land use zone. However, the proposal to use the site for residential purposes can be considered and becomes permissible pursuant to Clause 19(5) of State Environmental Planning Policy (Infrastructure) 2007, in that the Department of Planning has issued a Site Compatibility Certificate for the subject site.

Assessment of the development application revealed that the scheme in its current form differs from that described in schedule 2 of the Site Compatibility Certificate issued by the Director General of the Department of Planning and as such may not be permissible. Please refer to development application plan No. 1003 - DA12 for a comparison between the 'development zone' in the Site Compatibility Certificate and the proposed scheme.

In response to this permissibility issue legal advice was sought as to whether the consent authority can grant consent in light of the difference between the proposal and the requirements outlined in the Compatibility Certificate.

In summary Council's solicitor is of the opinion that the proposed development identified in the development application documentation is not consistent with the development parameters outlined in the Site Compatibility Certificate and that pursuant to clause 18(3) of the State Environmental Planning Policy (Infrastructure) 2007, the consent authority must not grant development consent.

8.0 Terms of the Site Compatibility Certificate

It is important to note that the Site Compatibility Certificate states in part, that future development of the site will be for residential flat development and other uses compatible with the heritage items on site. The application for the Site Compatibility Certificate is supported by a detailed planning report prepared by Planning Ingenuity Pty Ltd dated 16 July 2009 which also includes a heritage assessment attached as Annexure A to the that report.

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The Site Compatibility Certificate is subject to the requirements set out in schedule 2 of the Site Compatibility Certificate. Amongst other things the Planning Ingenuity report identified the 'development zone' with figure 10 of the Planning Ingenuity report setting out appropriate development guidelines.

The proposed development depicted in the architectural drawings is not wholly contained within the 'development zone' referred to in Schedule 2 of the Site Compatibility Certificate. For instance building B in the development application documentation is outside of the 'development zone' and now significantly closer to the heritage listed item on the site.

The proposal also differs from the Compatibility Guidelines as follows:

Figure 10 identifies three (3) separate and distinct building blocks wholly contained within the 'development zone' whereas the development application drawings identify two (2) building blocks with part of building Block B being outside of the 'development zone'.

The three (3) building blocks identified in Figure 10 of the Planning Ingenuity report are between 3 - 4 storeys in height whereas the two (2) building blocks in the development application drawings are between 4 - 5 storeys in height.

The 'development zone' referred to in Schedule 2 of the Site Compatibility Certificate is an integral component of the certificate and should be adhered to.

9.0 Heritage

The site is listed as an item of environmental heritage in schedule 7 of Ashfield LEP. 'Carleton', its stables and their landscape setting are considered to be of state significance, with historical, associational, aesthetic, social, technical and rarity values for NSW.

As indicated above the proposed residential buildings are now significantly closer to the listed heritage item on the site which is considered to be inappropriate as adequate curtilage has not been maintained and the design of the new building is not sympathetic to the heritage item.

10.0 Compliance Table

Council's development control plans do not strictly apply to the proposed scheme for the primary reason that a residential flat building is not permissible within the Special Uses 5(a) – Hospital land use zone pursuant to the provisions of Ashfield LEP 1985. For this reason Ashfield Council has prepared 'Development Assessment Briefing Notes' for the subject site with a view to establish guidelines for the future redevelopment of the site.

The following table provides an assessment of the proposed development against the site specific guidelines adopted by Council.

| AREA A - DESIGN CONSIDERATIONS FOR RESIDENTIAL FLAT BUILDINGS | | | |
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| <i>Planning Guide</i> | <i>Requirement</i> | <i>Proposed</i> | <i>Compliance Yes/No</i> |

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| Impacts on heritage items | Pursuant to clause 32 (3) of the Ashfield LEP, Council must assess the impact of any development on the significance of the heritage items on Area A (western side). | Refer Attachment 3 for heritage comments. | Part compliance. |
| Traffic Access Consideration | The general rule of thumb is that traffic access should be 20 metres from a street corner with traffic lights. Advice should be sought from Council's Traffic Engineer. | 65m | Yes |
| Waste Storage- design considerations | There are likely to be many dwellings so it should not be acceptable for a large number of waste bins to be left on street, or within close vicinity to the street, so as to pollute the area either visually or by smell. Neither should a large dominant garbage room be placed within any "front garden" area. Waste Storage areas should be located and concealed so as not to be visible from the street. Part C3 of DCP 2007, Ashfield Town Centre has conceptual diagrams on how waste should be collected, the same principles are relevant for the subject land. | Council's Health Surveyor and Waste Management Officer have not raised any issues. | Yes |
| Location of bin storage outside the collection time periods - design considerations | Council will require that bins remain stored on site except during collection times. The method of transfer of bins to and from the street collection points should be documented on the Development Application to the satisfaction of Council's engineers, including the following; <ul style="list-style-type: none"> who will be responsible for this, and how this person shall be contractually engaged to provide this service for the life of the development. procedures for return of bins to the storage areas when emptying is complete, so as to ensure bins are not left on the street after collection times, in order to avoid smells and adverse visual impacts on the streetscape. | Waste storage is provided within the basement. The applicant has indicated that the building manager will be responsible for ensuring that bins are placed in appropriate locations. | Yes |
| Stormwater Disposal - concept | A conceptual stormwater drainage plan should be submitted showing how stormwater from Area A and Area B shown on Map 2 will drain into Council's stormwater system. This might require easements to be obtained through adjacent "downhill" properties. | Council's stormwater engineer has raised several issues. | No |
| Car parking | Residential 91 spaces | 91 | Yes |
| | Visitor 16 spaces | 16 | Yes |
| | Car wash bay 1 space | 1 car wash bay provided. | Yes |



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| State Environmental Planning Policy No 65 | Any flat development, e.g. 3 storeys or higher, will be subject to assessment under SEPP 65. The following are observations under each of the 10 assessment principles of SEPP 65, and where relevant the Residential Flat Design Code. | Council's SEPP 65 consultant has indicated that the proposal generally complies and satisfies all of the ten design quality principles of SEPP No. 65 – Design Qualities of Residential Flat Development with the exception of setbacks and cross ventilation to certain apartments. | Part compliance Council's consultant has indicated that these issues can be conditioned to achieve compliance. |
| Context | <p><u>Context</u> Principle says:</p> <p><i>Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area.</i></p> <p><i>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. New buildings will thereby contribute to the quality and identity of the area</i></p> <p>Some basic observations are:</p> <p>An obvious "spatial context", is the fact that the "development zone" is adjacent historic architecture and landscape, and given its close proximity, any new buildings and landscape will have a visual relationship with those aspects, which should be respected, and so tangibly demonstrated.</p> <p>Building heights in the Residential 2(c) zones are generally two or three storeys, noting that the "bulk" (spatial extent of the buildings) includes the roof, and so under the SCC there should be compatibility with this standard.</p> <p>Along the front boundaries of the site there are numerous trees, which have given this area a "green landscape streetscape" setting, which should be preserved in any redevelopment of the site.</p> | It is considered that the proposal does not respond to its context. | No |

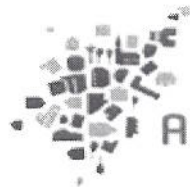
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| Scale | <p>Accompanying the SCC application was a planning/design concept by "Planning Ingenuity" submitted for the information purposes to DOP. This shows building envelopes for 4 storey buildings at the eastern (development zone) end of the site. Council's LEP allows 3 storey buildings in 2(c) zones and in the locality buildings of this scale already exist. Consequently, these principles should guide what built form take place on the subject land.</p> <p>The development on Area A should have maximum 3 storey visual building scale, except that a 4th storey may be permitted where it can be visually concealed within the roof space and the building has a 3 storey visual appearance. Dormer windows extrusions or similar and expressed balconies are permitted for the fourth storey.</p> <p>The height and location of new buildings adjacent and nearby the properties along Sunning Place should be of a height that ensures 3 hours of solar access in winter is maintained to those properties.</p> <p>New buildings whose parts have a direct visual interface with nearby heritage item buildings at Area B should have scale which is sympathetic to those heritage listed buildings. <u>Conceptually</u>, (not mathematically/ literally) this means</p> <p>an "equal height" where there is an "immediate visual interface", and then "a stepping up of bulk" past this point.</p> <p>a "compositional degree of open space separation" between the new buildings and the "old".</p> | <p>The proposal does not comply with the Site Compatibility Certificate in that it is 4 to 5 storeys in height and that the building exceeds the development zone.</p> | No |
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| Built form | Refer to <i>Scale</i> principles | Refer to <i>Scale</i> principles. | No |
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| Density | <p>A maximum dwelling density is not stated anywhere in the Residential Flat Design Code. Given this scenario, the maximum number of dwellings on the site should be base upon achieving compliance with the various planning instruments and controls affecting the Lot A site, and whether or not the design is acceptable in relation to these instruments:</p> <p>State Environmental Planning Policy No. 65</p> <p>Residential Flat Design Code which is referenced in State Environmental Planning Policy no 65, including basic provisions for open space, communal open space, separation distances between buildings, leaving building footprint parameters and then applying ideal maximum building heights.</p> <p>Other relevant controls are:</p> <p>Having regard to the Ashfield LEP, clause 17A, and maximum building ceiling height of 9 m for the "compatible" Residential 2(c) zones.</p> <p>Having regard to DCP Part C5 – Multi Unit Development in Residential Flat Zones, in relation to provisions for general open space between buildings, communal open space, and maximum building height of 3 storeys.</p> | <p>The proposal does not comply with the Site Compatibility Certificate in that it is 4 to 5 storeys in height and that the building exceeds the development zone. However, density of the proposal is considered to be appropriate</p> | Yes |
| Resource energy and water efficiency | <p>SEPP (Building Sustainability Index: BASIX) 2004 specifies requirements for any Residential Flat Buildings concerning Energy Efficiency, and stormwater reuse.</p> | <p>Basix Certificate is provided which achieves the required standard.</p> | Yes |



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| Landscape | <p><u>Retention of trees and historic open space</u></p> <p>Clause 8, of the Model Provisions referenced in the Ashfield LEP 1985, has a tree preservation order in place. Applicants should consult with Council's tree management officer to establish which trees are required to be retained or otherwise.</p> <p>As per the Site Compatibility Certificate requirements, applicants are required to consider as part of the Conservation Management Plan, which trees and landscape areas have heritage significance, and should be retained.</p> <p><u>Minimum open space and deep soil areas-DCP comparison</u></p> <p>As a comparison, one should have regard to open space and deep soil area, as defined in DCP 2007, Part C5, Section 8-Open Space and Landscaping, 8.3 definitions. This requires 50 percent of the site area for open space, and 35 percent of the site to contain deep soil planting areas.</p> <p><u>Minimum communal open space-RFDC requirements</u></p> <p>Under the Residential Flat Design Code, Part-Site Configuration – Open Space, pg 49, communal open space on Area A is required for any Residential Flat Building, at minimum of 25 percent of the site area of Area A. This needs to be located in a major space that it is functional and usable, and whose function is not solely to provide greenery for visual reasons to enhance the development's setting.</p> | <p>Council's Landscape Officer has not raised any issues in respect to tree removal.</p> <p>Adequate open space and recreational areas are provided.</p> | Yes |
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| Amenity | Car parking should be placed mostly below ground level so as to be concealed from view and not detract from the landscape setting and open space use of site. | The proposed basement car park significantly projects above the natural ground level and as such detracts from the landscape setting and open space use of the site as well as from the streetscape. | No |
| | All dwellings should have a minimum solar access/penetration of 3 hrs to their living room areas in winter. | | |
| | A communal open space area, with minimum clear width dimensions of 10m, as required by DCP 2007 Part C5, in order to make it useable relative to the number of residents, should be provided as required by clause 19 above. | Adequate communal open space is provided | Yes |
| | <u>Amenity for neighbouring properties – Section 79C consideration-“Public Interest”</u> | | |
| | Buildings should not overlook the rear garden area and windows of adjacent residential properties at Sunning Place. This will affect the location of proposed buildings and windows. | The proposal is setback in close proximity to adjoining neighbouring properties to the south east and is likely to result in privacy issues. | No |
| | New development should ensure that adjacent residential properties at Sunning Place are able to have 3 hours solar access in winter to their building facades and rear gardens. This will affect the location of proposed buildings and windows. | Adequate solar access is provided. | Yes |
| Safety and Security | New buildings should address Gower St and Liverpool Rd in way that provides passive surveillance of the street footpath for reasons of safety and security. | Ashfield Local Area Command has not raised any safety or security issues. | Yes |



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| <p>Social dimensions and housing affordability</p> | <p><u>Access for people with disabilities</u></p> <p>For reasons of "equity" and non discrimination of people with disabilities:</p> <p>All ground floor dwellings should be able to be visitable by a person with disabilities, by footpaths from Liverpool Rd and Gower Street up to the point of entry to each residential flat building's entrance.</p> <p>All ground floor dwellings should be able to be accessed by a person with disabilities and should have universal design principles applied (as defined in Part C1 of DCP 2007).</p> <p>All dwellings situated above the first storey, if accessible by a lift, should be able to be accessed by a person with disabilities and should have universal design principles applied (as defined in Part C1 of the DCP 2007) to their apartment layouts.</p> <p>In order to have adequate levels of affordable accommodation, any Residential Flat Building should have an adequate percentage of smaller apartments. The following is the standard applied in the Ashfield Town Centre part of the DCP.</p> <p>10% of the number of dwellings/flats amount of dwellings being of studio apartments no larger than 45 sqm in size.</p> <p>20% of the number of dwellings/flats amount being one bedroom apartments, no larger than 60 sqm.</p> | <p>The proposal does not comply with Social dimensions and housing affordability.</p> | <p>No</p> |
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| Aesthetics | <p>Aesthetic principle says</p> <p><u>Clause 18 Principle 10: Aesthetics</u> <i>Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development.</i></p> <p><i>Aesthetics should also relate to the context, particularly responding to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.</i></p> <p>High design standard Given that the development is set within grounds and adjacent buildings which are architecturally heritage listed, the design (visual building composition) should be of a high standard.</p> <p>The buildings to be conserved have a certain architectural style and language that needs to be respected.</p> <p>Where appropriate architectural cues should be taken from the existing heritage listed building, in order to form a visual dialogue between buildings.</p> <p>The building composition should produce an organised and complex composition, which traditionally meant giving consideration to basic design ingredients, such as:</p> <p>basic tripartite relationships, acknowledgement of the extremities of the extremities of the buildings, expression of architectural detailing throughout the body of the work, so that there is a visual dialogue between parts.</p> <p>solid wall facades which have "punched" openings for balconies and windows and sometimes vertically emphasised proportions, for purposes of avoidance of large areas of glass, beyond that required for passive solar design to meet the requirements of the BASIX SEPP.</p> <p>"Modern" interpretation can be applied to the above, but this does not make acceptable bland monolithic building composition outcomes which are intended to facilitate building construction methods or simply express the engineered building structure.</p> | <p>The Gower Street elevation is not in keeping with the established character of the locality, particularly the proposed wall height along Gower Street. It is very dominant and presents as a solid wall which is not in keeping with appropriate human scale.</p> <p>The proposal is not sympathetic with the heritage item on the site.</p> <p>Council's Heritage Adviser has raised issues in respect to design and external finishes.</p> | No |
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| Area B Guidelines | | | |
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| <i>Planning Guide</i> | <i>Requirement</i> | <i>Proposed</i> | <i>Compliance Yes/No</i> |
| Uses permissible on "Area B" (western side). | <p>Pursuant to the Ashfield LEP 1985, the area shown as "Area B" on Map 1, is zoned for Special Uses 5(a) Hospital</p> <p>Pursuant to the Ashfield LEP 1985, clause 37 allows Council to consider the use of a "heritage item" building for uses that would otherwise be prohibited, subject to the other requirements of that clause.</p> <p>Pursuant to the SCC, uses that are compatible with "adjacent" land uses are permissible, in terms laid out in Schedule 1 of the SCC. Immediate adjacent land uses include Residential 2(a) zones, and there are Residential 2(c) zones to the south-east.</p> | The proposal is to retain and use the heritage buildings for residential purposes as stipulated in the Site Compatibility Certificate. | Yes |
| Design Considerations AREA B & Dwellings | <p>In the event that "Area B" has a proposal for dwellings, the following are relevant considerations</p> <p>Conserving the buildings Firstly, it is required to identify which building structures need to be "preserved" (Burra Charter term) and what amount of adaptation (Burra Charter term-for "change") can be entertained. This will be informed by a professional report which will be examined by Council's heritage adviser.</p> <p>Reference can also be made to the Conservation Management Plan referenced by the SCC, and its diagram shown in Diagram 2 above which shows particular buildings being preserved. However, this CMP document does not go into the degree of detail required for the Development Application stage of the design.</p> | Council's Heritage Adviser has not raised any issues in relation to the use of the building. | Yes |

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| Curtilage and landscape | <p>Secondly, it is required to identify the extent of open space forming the landscape setting for the heritage buildings which needs preservation (Burra Charter term). This will be informed by a professional report which Council's heritage adviser will examine. Reference can also be made to the Conservation Management Plan referenced by the SCC, and Diagram 2 above. Whilst this document does not go into the degree of detail of required for this stage of the design, it is noteworthy for not showing any additional new buildings on the western side of Lot B. Any proposal to vary this situation would require sound justification and information to support such a consideration.</p> | <p>It is considered that the current scheme has not provided adequate curtilage around the heritage items.</p> <p>The proposed development is not consistent with the development identified in the Site Compatibility Certificate and is significantly closer to the heritage items. It is considered that significant landscape elements are not preserved.</p> | No |
| Flora | <p>The Conservation Management Plan makes reference to historic plantings (vegetation) and describes each plant that requires retention, however, that document does not show precisely where those plantings are located.</p> | <p>Council's Heritage Adviser has raised issues in respect to landscape conservation and setting. It is considered that significant landscape elements are not preserved.</p> | No |
| Design proposal - Conservation Management Plan | <p>Once assumptions for the above preservation criterion have been adopted, a design proposal will follow. This must be accompanied by a CMP, whose purpose is to show how the various building fabric (building elements) and landscape fabric (open space and plantings) will be conserved for the life of those elements. For example, straightforward things such as regular building maintenance, painting, and timing for these works.</p> <p>Assessment of the design proposal will require testing the matters in 3 - 4 above, under the guidance of Council's architectural heritage adviser.</p> | <p>Council's Heritage Adviser has assessed the application and has not raised significant concerns with the Conservation Management Plan.</p> | Yes |

COMMENTS & DISCUSSION

11.0 Building Height

The proposal involves the construction of two (2) residential flat buildings of 4 to 5 storeys in height. The proposal exceeds the 3 to 4 storey height limit as provided in the Site Compatibility Certificate.

The existing scale of residential development in the area is predominantly 2 storeys in height and as such the proposed 4 to 5 storey building height is not compatible with the context of the locality.

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12.0 Building Setback

As mentioned previously the proposal is not wholly contained within the development zone referred to in the Site Compatibility Certificate. For instance building B in the development application documentation is outside of the development zone and now significantly closer to the heritage listed item on the site and there is also an encroachment of the south-east wings of the development.

The encroachment results in the proposed building being closer to the rear boundaries of adjoining residential building and is likely to impact on the development potential of the properties on these sites. The non compliance with the Site Compatibility Certificate also results in reduced building separation which is undesirable in terms of amenity impacts.

13.0 Accessibility

The proposal provides lifts that will service the two residential buildings, however, concern is raised that adequate access to the property for people with disabilities is not provided from Gower Street.

Main pedestrian access to the proposed residential apartments is provided from Gower Street. Pedestrians can only access the site via two sets of stairs from Gower Street providing inadequate access for people with disabilities.

14.0 Basement Car park Projection

A basement car park is proposed beneath both buildings A and B. The basement is accessed from Gower Street and consists of a total of 97 car parking spaces including 14 visitor parking spaces and 7 accessible car parking spaces. In essence the proposed basement car park is not actually a typical basement car park for the reason that it is only 0.5m below the natural ground level at its lowest point.

The main concern with the proposed basement car park is that it substantially projects above the natural ground level thus adding excessive bulk and scale and also presents as a blank wall to Gower Street.

15.0 Streetscape

The proposal provides excessive blank walls along Gower Street. It is therefore considered that the Gower Street elevation is not in keeping with the established character of the locality, particularly as the proposed wall height along Gower Street is very dominant and presents as a solid wall which is not in keeping with an appropriate human scale.

16.0 Tree Removal

Eighty eight (88) trees are located within the subject site. It is proposed to retain fifty eight (58) of the eighty eight (88) trees. Six (6) of retained trees require transplantation from within the proposed building footprint to elsewhere on site.

Council's landscape officer has not raised any issues with the removal of the trees.

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17.0 Heritage

In August 2009 the NSW Department of Planning sought comments from Ashfield Council in respect to an application for a Site Compatibility Certificate under Clause 19(1) of the State Environmental Planning Policy (Infrastructure) 2007.

On 13 August 2009 Council wrote to NSW Department of Planning informing of the issues which included concerns relating to heritage. The concern raised related to inadequate curtilage to Carleton House and that the proposed scale, character and intensity of the development will adversely impact on the significance of the heritage item and its setting. Despite Council's concerns the Department of Planning issued a Site Compatibility Certificate which provided a 'development zone'.

Council's Heritage Adviser has provided pre-lodgement comments on 29 November 2010 and final comments in respect to the proposed scheme on 16 March 2011. Several issues are raised relating to landscape setting, inappropriate fence treatment, design and inappropriate external finishes

Heritage Adviser comments are included at **Attachment 3**.

18.0 SEPP 65 Considerations

Council's SEPP 65 consultant has indicated that the proposal generally complies and satisfies all of the ten design quality principles of SEPP No. 65 – Design Qualities of Residential Flat Development with the exception of setback and cross ventilation to certain apartments.

SEPP 65 Comments are included at **Attachment 4**.

19.0 Stormwater

The proposal does not meet Council's design standards for the following reasons:-

- (1) *No O.S.D. calculations have been supplied in order to prove the proposed stormwater storage is adequate. Council's Engineers requested these calculations from the applicant's consulting engineers to be forwarded, however, they have not been submitted.*
- (2) *The development will be required to drain directly to a street pipe network as stated in section 4.9 of Council's stormwater code. The current proposal indicates a connection to a pit in Liverpool Road yet no connection detail to an existing pipe network has been provided.*
- (3) *Separate calculation of stormwater flows for outlet in Gower Street has not been supplied as this discharge point may need to be connected into the proposed pipe network.*
- (4) *Calculations for the rate of stormwater discharge from the existing building connecting to Grosvenor Crescent have not been supplied.*
- (5) *A copy of the drainage easement for the existing building which drains over the lot facing Grosvenor Crescent (NSW Department of Ageing, Disability and Home Care.) has not been supplied.*
- (6) *Capacity details of the sump and pipe network proposed to be built over the line of the basement has not been provided.*
- (7) *The car park basement pumpout has not been included in the overall site's stormwater discharge. As it is proposed not to pump the basement discharge to the OSD tank.*

20.0 Affordable Housing

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The proposal does not provide or include any details in respect to affordable housing.

The applicant's justification for not providing affordable housing is that the SEPP (Affordable Rental Housing) 2009 does not apply to the proposed development and further the proposal provides a mix of 1, 2 and 3 bedroom apartments with the 1 bedroom apartments offering more affordable accommodation in comparison to the 2 and 3 bedroom apartments.

21.0 Section 79C Assessment

The following is an assessment of the application with regard to the heads of consideration under the provisions of Section 79C of the EP&A Act. The following planning instruments and controls apply to the development:-

Ashfield Local Environmental Plan 1985 (as amended)

The proposal for residential development is not permissible in the land use zone; however, the Department of Planning has issued a Site Compatibility Certificate for the site which permits residential uses.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

It is considered that the carrying out of the proposed development is generally consistent with the objectives of the plan.

State Environmental Planning Policy No. 55 – Remediation of land

The provisions of SEPP No. 55 have been considered in the assessment of the development application. The previous uses on site does not indicate that the site is contaminated, however, in the event the development application is approved a condition of consent can be imposed requiring the applicant to address potential contamination matters through a detailed site investigation.

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

Council's SEPP 65 consultant has indicated that the proposal generally complies and satisfies all of the ten design quality principles of SEPP No. 65 – Design Qualities of Residential Flat Development with the exception of setback and cross ventilation to certain apartments. Council's urban designer has also indicated that the non compliance with setback and cross ventilation can be conditioned to achieve compliance.

22.0 The provisions of any Draft Environmental Planning Instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority.

Not applicable.

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23.0 The provisions of any Development Control Plan.

As indicated previously the proposal can not be considered against the provisions of Ashfield Development Control Plan 2007 for the primary reason that a residential flat building is not permissible within the Special Uses 5(a) – Hospital land use zone pursuant to the provisions of Ashfield LEP 1985. For this reason Ashfield Council has prepared 'Development Assessment Briefing Notes' for the subject site with a view to establish guidelines for the future redevelopment of the site which has been taken into consideration (refer to section 10.0 of this report).

24.0 Any matters prescribed by the regulations that apply to the land to which the development application relates.

Clause 7 of the Environmental Planning and Assessment Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. Conditions of consent can be imposed in this regard, if the application is approved.

Clause 92 of the Environmental Planning and Assessment Regulations 2000 requires the consent authority to consider relevant Australian Standards relating to the demolition of structures. Appropriate conditions can be imposed in the event the application is approved.

25.0 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality.

These matters have been considered as part of the assessment of the development application. The proposal will not be in keeping with the existing character of development in the immediate vicinity of the subject site and have an adverse impact upon the streetscape in Gower Street.

26.0 The suitability of the site for the development

These matters have been considered as part of the assessment of the development application. There are no natural hazards or other site constraints that are likely to have a significant adverse impact upon the proposed development.

The proposed development is not considered to be suitable in the context of the locality when considering height and bulk, scale, contribution to the streetscape, access and treatment of ingress/egress, ground floor design and public domain treatment.

27.0 Any submissions made in accordance with this Act or the regulations

The proposal was notified to approximately 1,446 adjoining and nearby affected property owners and occupants, from 31 March 2011 to 6 May 2011.

28.0 Summary of submissions

Seven (7) individual letters and six (6) pro forma letters against the proposal were received during the notification of the development application. Refer to **Attachment 5** for a copy of the submissions.

The matters raised in these submissions are tabulated below:-

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| objector | Issues raised |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Six (6) pro forma letters from the owners of 26 Gower Street, Summer Hill:-</p> <p>Catherine Bashford – unit 8 Christopher Sullivan – unit 6 Jennifer Leigh – unit 2 Belinda Besant – unit 1 Dan Prior – unit 5 Satina Piccione – unit 7</p> | <ul style="list-style-type: none"> • Height not in keeping with the locality. There are no high buildings in the locality. • Height will restrict light to gardens and cast shadow. • Overlooking privacy issues. • Impact to on street parking which is already an issue. • Overdevelopment in respect to number of units proposed. • Waste management. • Location of the roller door underground car park will create noise as it operates. • Proposal will create future slums. • Development appears to be located right on 26 Gower Street's fence line. For a development of this height the building should be set back. |
| <p>Christopher Riley 1/23 – 25 Gower Street, Summer Hill</p> | <ul style="list-style-type: none"> • Already congested area. • On street parking is currently at a premium and the proposal will add to the problem. |
| <p>Amanda Fazio 37 Liverpool road, Summer Hill</p> | <ul style="list-style-type: none"> • Height of the proposal not in keeping with the surrounding neighbourhood. • Privacy to neighbours. • JRPP should reduce the height to 3 and 4 stories rather than 4 to 5. |
| <p>Barry Talbot Smith 10/37 Ormond Street, Ashfield</p> | <ul style="list-style-type: none"> • Height, density, footprint and increased proximity of both building blocks A and B to stables and Sunning Place Units. • Overshadowing. • On street parking impact. • Traffic impact. • Not in keeping with the allocated building zone. • Tree removal. • Overstepping allocated building zone. • Impact of the two storey addition to heritage item. |
| <p>Paul Martich and Janice Macdonald 2 Oaklands Avenue, Summer Hill</p> | <ul style="list-style-type: none"> • Retention of trees and other landscape items. • Height of the new building at 5 storeys not in keeping with locality. • On street parking will increase. • Privacy impact. • Solar access impact. |
| <p>Peter Carlini P.O.BOX 475 Haberfield owner of 138 – 158 Liverpool road</p> | <ul style="list-style-type: none"> • Height is excessive. • Overshadowing impacts. |

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|---------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ashfield & District Historical Society inc | <ul style="list-style-type: none"> The proposed building height will impact on heritage item. Treatment of heritage item not acceptable. Not in keeping with the Site Compatibility Certificate in that exceeds height and setback. JRPP refuse the application. |
| Lawrence & Marlene Fong 31 Gower Street, Summer Hill | <ul style="list-style-type: none"> Destroy the peace and quite living environment to the existing residents in Gower Street. |

29.0 Response to submissions

Issues relating to height, bulk and scale are discussed in detail in this report and these issue/concern warrants refusal of the application from a planning point of view.

The submitted shadowing diagrams illustrates that the proposal is unlikely to result in adverse overshadowing to adjoining properties. The shadow diagrams are considered to be accurate and adequately demonstrate that there will be no adverse shadow impacts to adjoining properties. However, as the proposed residential building B is now closer to the adjoining properties to the east there is likely to be privacy issues. This concern on its own does not warrant refusal of the application as the areas of concern are bedrooms being low use rooms compared to living rooms.

The proposal provides adequate on site car parking within the basement level and the traffic generation as a result of the proposal, whilst increasing traffic flows in the area, will not be detriment to Gower or surrounding streets. This issue does not warrant refusal of the application.

30.0 The public interest

Matters of the public interest have been taken into consideration in the assessment of the application. The proposed development is not considered to be suitable in the context of the locality and therefore warrants refusal.

31.0 Referrals

Comments received from both internal and external bodies are summarised below.

| Department | Objection/raises issues | Issue |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Council's SEPP No. 65 Consultant | Council's SEPP 65 consultant has indicated that the proposal generally complies and satisfies all of the ten design quality principles of SEPP No. 65 – Design Qualities of Residential Flat Development with the exception two issues. | <ul style="list-style-type: none"> Proposed setback to adjoining residential flat buildings not adequate. Cross ventilation to certain apartments to be improved. |
| NSW Police Force | No issues, please refer to Attachment 6 – Ashfield Local Area Command comments. | Standard conditions of consent. |
| Ausgrid previously Energy Australia | No Issues. | Requires the applicant to seek connection for development. |

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|-----------------------------|-------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| RTA | No response provided to date. | |
| Council Heritage Adviser | Council's Heritage Adviser has raised several issues. | <ul style="list-style-type: none"> • Landscape setting. • Inappropriate fence treatment. • Design. • Inappropriate external finishes. |
| Council Building Surveyor | No issues raised. | Conditions of consent. |
| Council Stormwater Engineer | Issues raised. | Proposed design does not meet Council's design standards for on site detention and stormwater disposal. |
| Council Traffic Engineer | No major issues raised. | <ul style="list-style-type: none"> • Allocation of car parking space not nominated on plans. • Minimum head height to be 2.3 and 2.5 for accessible parking spaces. |
| Council's Health Surveyor | No issues. | Standard conditions of consent. |
| Council Landscape Officer | No issues. | Standard conditions of consent. |

Financial Implications

Council's Contributions Plan (Section 94) are payable in accordance with the Plan in the event the application is approved.

Conclusion

The application has been assessed in accordance with the provisions of the EP&A Act 1979 with all matters specified under Section 79C (1) Clauses (a) to (e) having been taken into consideration.

The proposed development is not consistent with development parameters identified in the Site Compatibility Certificate and that pursuant to Clause 18(3), the consent authority can not grant development consent.

Notwithstanding the permissibility issue, from a merit assessment the proposed 4 and 5 storey building height is out of character with the established scale of the area. The application in its current form fails to establish the capacity for the subject site to be developed in a manner proposed within the Site Compatibility Certificate and hence does not provide adequate curtilage to the heritage item and is not sympathetic to the heritage setting.

The Gower Street elevation is not in keeping with the established character of the locality, particularly the proposed wall height along Gower Street which is very dominant and presents as a solid wall which is not in keeping with an appropriate human scale.

In conclusion the proposed development is inappropriate as it does not respond to the scale and pattern of development in the locality. The proposed residential buildings are too big and high and dominate their context to the detriment of significant heritage items and neighbouring residential buildings.

Attachments

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Attachment 1 – Plans of the Proposal
Attachment 2 – Locality Map
Attachment 3 – Heritage Adviser Comments
Attachment 4 – SEPP 65 comments
Attachment 5 – Submissions
Attachment 6 – Ashfield Local Area Command comments

RECOMMENDATION

A That the Sydney East Joint Regional Planning Panel as the consent authority pursuant to Clause 80(1)(b) of the Environmental Planning and Assessment Act 1979 (as amended) refuse Development Application No. 10.2011.66.1 on Lot 2 in DP 562023, known as 46 – 56 Liverpool Road, Summer Hill for the following reasons:

1. The proposed development is not consistent with the development identified in the Site Compatibility Certificate and that pursuant to Clause 18(3), the consent authority can not grant development consent.
2. The development is well outside of the 'development zone' parameters identified in the Site Compatibility Certificate and significantly closer to the listed heritage item on the site thus resulting in adverse curtilage impacts.
4. The Gower Street elevation is not in keeping with the established character of the locality, particularly the proposed wall height along Gower Street which is very dominant and presents as a solid wall which is not in keeping with an appropriate human scale.
5. The proposed 4 and 5 storey development is inappropriate as it does not respond to the scale and pattern of development in the locality. The proposed residential buildings are too big and high and dominate their context to the detriment of significant heritage items and neighbouring residential buildings.
6. The proposed residential 'Building B' does not provide adequate setback to the adjoining neighbouring properties to the east of the subject site.
7. The proposed basement car park substantially projects above the natural ground level, thus adding excessive bulk and scale and a large span of blank solid wall presentation to Gower Street.
8. Adequate accessible and affordable housing is not provided.
9. The proposal does not meet Council's design standards for stormwater disposal.
10. The proposed car parking spaces on the access driveway to Carlton are located where they will intrude into the open spacious setting of the building and the character of the garden around it.

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11. Inappropriate external cladding is proposed to the north-western corner of Carlton House.
12. The proposal is not in the public interest.